VIRGINIA REGISTER OF REGULATIONS

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THE VIRGINIA REGISTER INFORMATION PAGE

THE VIRGINIA REGISTER OF REGULATIONS is an official state publication issued every other week throughout the year. Indexes are published quarterly, and are cumulative for the year. The *Virginia Register* has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in the *Virginia Register*. In addition, the *Virginia Register* is a source of other information about state government, including petitions for rulemaking, emergency regulations, executive orders issued by the Governor, and notices of public hearings on regulations.

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

Unless exempted by law, an agency wishing to adopt, amend, or repeal regulations must follow the procedures in the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). Typically, this includes first publishing in the *Virginia Register* a notice of intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

Following publication of the proposed regulation in the *Virginia Register*, the promulgating agency receives public comments for a minimum of 60 days. The Governor reviews the proposed regulation to determine if it is necessary to protect the public health, safety, and welfare, and if it is clearly written and easily understandable. If the Governor chooses to comment on the proposed regulation, his comments must be transmitted to the agency and the Registrar of Regulations no later than 15 days following the completion of the 60-day public comment period. The Governor's comments, if any, will be published in the *Virginia Register*. Not less than 15 days following the completion of the 60-day public comment period, the agency may adopt the proposed regulation.

The Joint Commission on Administrative Rules or the appropriate standing committee of each house of the General Assembly may meet during the promulgation or final adoption process and file an objection with the Registrar and the promulgating agency. The objection will be published in the *Virginia Register*. Within 21 days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative body, and the Governor.

When final action is taken, the agency again publishes the text of the regulation as adopted, highlighting all changes made to the proposed regulation and explaining any substantial changes made since publication of the proposal. A 30-day final adoption period begins upon final publication in the *Virginia Register*.

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate legislative body and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*.

If the Governor finds that the final regulation contains changes made after publication of the proposed regulation that have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*. Pursuant to § 2.2-4007.06 of the Code of Virginia, any person may request that the agency solicit additional public comment on certain changes made after publication of the proposed regulation. The agency shall suspend the regulatory process for 30 days upon such request from 25 or more individuals, unless the agency determines that the changes have minor or inconsequential impact.

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

A regulatory action may be withdrawn by the promulgating agency at any time before the regulation becomes final.

FAST-TRACK RULEMAKING PROCESS

Section 2.2-4012.1 of the Code of Virginia provides an alternative to the standard process set forth in the Administrative Process Act for regulations deemed by the Governor to be noncontroversial. To use this process, the Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations become effective on the date noted in the regulatory action if fewer than 10 persons object to using the process in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency may adopt emergency regulations if necessitated by an emergency situation or when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or fewer from its enactment. In either situation, approval of the Governor is required. The emergency regulation is effective upon its filing with the Registrar of Regulations, unless a later date is specified per § 2.2-4012 of the Code of Virginia. Emergency regulations are limited to no more than 18 months in duration; however, may be extended for six months under the circumstances noted in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Virginia Register* and are on the Register of Regulations website at register.dls.virgina.gov.

During the time the emergency regulation is in effect, the agency may proceed with the adoption of permanent regulations in accordance with the Administrative Process Act. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia be examined carefully.

CITATION TO THE *VIRGINIA REGISTER*

The *Virginia Register* is cited by volume, issue, page number, and date. **34:8 VA.R. 763-832 December 11, 2017,** refers to Volume 34, Issue 8, pages 763 through 832 of the *Virginia Register* issued on December 11, 2017.

The Virginia Register of Regulations is published pursuant to Article 6 (§ 2.2-4031 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia.

Members of the Virginia Code Commission: **John S. Edwards, Chair; James A. Leftwich, Jr., Vice-Chair; Ward L. Armstrong; Nicole Cheuk; Richard E. Gardiner; Ryan T. McDougle; Christopher R. Nolen; Steven Popps; Charles S. Sharp; Malfourd W. Trumbo; Amigo R. Wade; Wren M. Williams.**

Staff of the *Virginia Register:* **Holly Trice,** Registrar of Regulations; **Anne Bloomsburg,** Assistant Registrar; **Nikki Clemons,** Regulations Analyst; **Rhonda Dyer,** Publications Assistant; **Terri Edwards,** Senior Operations Staff Assistant.

PUBLICATION SCHEDULE AND DEADLINES

This schedule is available on the Virginia Register of Regulations website (http://register.dls.virginia.gov).

August 2023 through August 2024

Volume: Issue	Material Submitted By Noon*	Will Be Published On
39:26	July 26, 2023	August 14, 2023
40:1	August 9, 2023	August 28, 2023
40:2	August 23, 2023	September 11, 2023
40:3	September 6, 2023	September 25, 2023
40:4	September 20, 2023	October 9, 2023
40:5	October 4, 2023	October 23, 2023
40:6	October 18, 2023	November 6, 2023
40:7	November 1, 2023	November 20, 2023
40:8	November 14, 2023 **(Tuesday)**	December 4, 2023
40:9	November 29, 2023	December 18, 2023
40:10	December 13, 2023	January 1, 2024
40:11	December 27, 2023	January 15, 2024
40:12	January 10, 2024	January 29, 2024
40:13	January 24, 2024	February 12, 2024
40:14	February 7, 2024	February 26, 2024
40:15	February 21, 2024	March 11, 2024
40:16	March 6, 2024	March 25, 2024
40:17	March 20, 2024	April 8, 2024
40:18	April 3, 2024	April 22, 2024
40:19	April 17, 2024	May 6, 2024
40:20	May 1, 2024	May 20, 2024
40:21	May 15, 2024	June 3, 2024
40:22	May 29, 2024	June 17, 2024
40:23	June 12, 2024	July 1, 2024
40:24	June 26, 2024	July 15, 2024
40:25	July 10, 2024	July 29, 2024
40:26	July 24, 2024	August 12, 2024
41:1	August 7, 2024	August 26, 2024

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Initial Agency Notice

Title of Regulation: **4VAC20. None specified.**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Name of Petitioner: Bill Dunn.

Nature of Petitioner's Request: Petition for regulation to ensure proper gear type use in Virginia waters pertaining to depth of current purse seine nets utilized by the Menhaden purse seine net fishery in relationship to the depth of waters of the Chesapeake Bay.

Currently "Ocean Harvesters," a subsidiary of Omega Protein and two other private menhaden companies (i.e., the Purse Seine Fishery) are utilizing purse seine nets that extend 50 to 60 feet down in the shallow water column within the confines of Virginia's portion of the Chesapeake Bay and Virginia waters inside the exclusive economic zone offshore. This has caused massive fish kills of both the primary target of menhaden as well as fish kills of game fish, such as Red Drum, that occurred this past year. Improper gear type usage in waters is allowing these nets to catch game fish that feed on menhaden, which can't escape through the bottom per design of the net before it is closed (or pursed), as they are dragged on the sea bottom. In addition, these nets when dragged along the bottom due to current cause net tears, which if the net has been "pursed," releases many dead or dying fish into the waters.

This improper use of purse seine nets, that is, allowing them to scrape the sea bottom, is also destroying massive amounts of submerged aquatic vegetation, such as sea grass and other bottom growth. When conditions are right this dead submerged aquatic vegetation shows up on the shore as occurred at Kiptopeke State Park last year when bycatch and massive amounts of displaced seagrass landed on the beach.

The most recent description of net depths used by Ocean Harvesters was evidenced in the December 6 Marine Resources Commission (MRC) meeting seen at approximately 3:06:40. These were nets depths of 50 to 60 feet by Captain Thomas Moore of Ocean Harvesters: https://www.youtube.com/watch?v=Cn-ow-dNfsE

This practice of ensuring a "safety zone" below the net when deployed is documented in many publications and is specifically outlined in the Marine Stewardship Council (MSC) of which Omega Protein has gone to great lengths to become an accredited member. MSC states that "Purse-seine fishing in open water is generally considered to be an efficient form of fishing. It has no contact with the seabed and can have low levels of bycatch (accidental catch of unwanted species)." https://www.msc.org/what-we-are-doing/our-approach/fishing-methods-and-gear-types/purse-seine

Purse Seine net design dictates that the net be deployed to a depth that is above the sea bottom in order to alleviate the issues described in this petition, but for some reason their use in the shallow waters of the Chesapeake Bay as well as inshore portions of Virginia's coastal waters has been overlooked by the management groups controlling their use and needs to be addressed as a gear type use restriction issue. Currently per § 28.2-410 of the Code of Virginia, Virginia only regulates a mesh size of these nets to not be less than 1-3/4 inches with no net depth restrictions listed to ensure a safety zone below the net when deployed.

The Virginia MRC has only recently acquired jurisdiction of this fishery and the depth of these nets used has never been discussed as a regulation to prevent the problems discussed in this petition. These problems need to be addressed as the proper method to regulate in order to prevent menhaden spill/kills, unwanted bycatch, and damage to Virginia's sea bottom vegetation.

I hereby request that the MRC implement regulations prescribing the depth of these purse seine nets within the shallow waters of Virginia's Chesapeake Bay and offshore waters to meet the purse seine net design criterion in order to provide no contact with the seabed and eliminate these issues. This could be implemented with a regulation such as "No Purse Seine net may be placed in any area of Virginia's waters that is less than five feet deeper that the depth of the actual net utilized."

Agency Plan for Disposition of Request: The Marine Resources Commission, as required by Executive Order 19 (2022), is submitting notice of the petition for publication in the Virginia Register of Regulations and announcing a public comment period. Following receipt of comments on the petition, the commission will consider whether to grant or deny the petition for rulemaking.

Public Comment Deadline: August 21, 2023.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Building 96, Fort Monroe, VA 23651, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

VA.R. Doc. No. PFR23-36; Filed July 6, 2023, 12:01 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF COUNSELING

Initial Agency Notice

Title of Regulation: **18VAC115-80. Regulations Governing the Registration of Qualified Mental Health Professionals.**

Statutory Authority: §§ 54.1-2400, 54.1-3500, and 54.1-3505 of the Code of Virginia.

Name of Petitioner: Alesha R. Perkins.

Nature of Petitioner's Request: The petitioner requests that the Board of Counseling amend 18VAC115-80-80 C to automatically approve an individual or business as a continuing education provider for qualified mental health professionals (QMHPs) if the individual or business can provide proof that they are qualified to provide continuing education to QMHPs.

Agency Plan for Disposition of Request: The petition for rulemaking will be published in the Virginia Register of Regulations on July 31, 2023. The petition will also be published on the Virginia Regulatory Town Hall at www.townhall.virginia.gov to receive public comment, which will open on July 31, 2023, and close on August 30, 2023. The board will consider the petition at its next meeting after the close of public comment. That meeting is currently scheduled for October 27, 2023. The petitioner will be notified of the board's decision after that meeting.

Public Comment Deadline: August 30, 2023.

Agency Contact: Jaime Hoyle, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4406, or email jaime.hoyle@dhp.virginia.gov.

VA.R. Doc. No. PFR23-35; Filed July 3, 2023, 10:03 a.m.

BOARD OF SOCIAL WORK

Initial Agency Notice

Title of Regulation: **18VAC140-20. Regulations Governing the Practice of Social Work.**

Statutory Authority: § 54.1-2400 of the Code of Virginia.

Name of Petitioner: Shanta Denard Clay.

Nature of Petitioner's Request: The petitioner requests that the Board of Social Work amend 18VAC140-20-70 to set passage of the licensure examination at a score of 99 for all levels of licensure.

Agency Plan for Disposition of Request: The petition for rulemaking will be published in the Virginia Register of Regulations on July 31, 2023. The petition will also be published on the Virginia Regulatory Town Hall at www.townhall.virginia.gov to receive public comment, which will open on July 31, 2023, and will close on August 30, 2023. The board will consider the petition and all comments in support or opposition at the next meeting after the close of public comment. That meeting is currently scheduled for November 3, 2023. The petitioner will be notified of the board's decision after that meeting.

Public Comment Deadline: August 30, 2023.

Agency Contact: Jaime Hoyle, Executive Director, Board of Social Work, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4441, or email jaime.hoyle@dhp.virginia.gov.

VA.R. Doc. No. PFR23-37; Filed July 6, 2023, 12:13 p.m.

TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Virginia Waste Management Board conducted a periodic review and a small business impact review of **9VAC20-60, Virginia Hazardous Waste Management Regulations**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated April 25, 2023, to support this decision.

This regulation continues to be needed to protect public health, safety, and welfare. The regulation establishes requirements for the treatment, storage, and disposal of hazardous waste, and incorporates federal requirements into state regulation. The regulation is clearly written and understandable.

The requirements of the regulation continue to be needed to regulate the treatment, storage, and disposal of hazardous waste, and the regulation is being retained without changes. Eight comments were received on the regulation during the comment period for the periodic review. All the comments related to the need to keep the existing regulation applicable to small businesses.

The regulation is technical and complex in nature. The regulation adopts federal regulations into state regulation and minimizes confusion concerning applicable requirements. This regulation does not conflict with federal or state laws or regulations. The most recent amendment, which became effective January 18, 2023, was to incorporate 40 CFR into this regulation. This regulation is typically updated annually as necessary to address changes that are made to the federal regulation and to maintain consistency with federal requirements. Annual updates minimize the impact the regulation has on all regulated entities, including small businesses, associated with complying with federal requirements that potentially may be changed throughout the year.

Contact Information: Lisa A. Ellis, Hazardous Waste Compliance Program Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 912-7366.

STATE WATER CONTROL BOARD

Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **9VAC25-820, General Virginia Pollutant Discharge Elimination System (VPDES) Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia**. The review of this regulation will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins July 31, 2023, and ends August 21, 2023.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Joseph Bryan, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-2659.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Health conducted a periodic review and a small business impact review of **12VAC5-542, Rules and Regulations Governing the Virginia Nurse Practitioner/Nurse Midwife Scholarship Program**, and determined that this regulation should be amended. The board is publishing its report of findings dated March 3, 2023, to support this decision.

Pursuant to § 2.2-4017 of the Code of Virginia, the regulation meets the criteria set out in Executive Order 19. The regulation allows the board to set the general terms and conditions necessary to administer a scholarship program that is a key strategy for the protection of public health and welfare throughout the Commonwealth. The regulation is comprehensible, clear, and consistent.

The board is proposing to amend the Virginia nurse practitioner/nurse midwife nursing scholarship program to

adhere to Virginia Administrative Code style requirements. Amendments will ensure that the language is readable, clear, and consistent and in the public's interest.

The regulation is required by the Code of Virginia, and there is continued need for the regulation. The Virginia Department of Health did not receive any comments during the public comment period. The regulation is not complex, and it does not overlap with or duplicate any state or federal regulations. Technical amendments were made and became effective in 2016. There has been no change in technology or other conditions since the 2016 regulatory action that would necessitate a substantive change to scholarship program or regulations. The program administered by the regulation promotes nursing recruitment and retention, which is intended to address the nursing shortages throughout the Commonwealth. As such, facilities that provide nursing services and that qualify as a small business benefit from the implementation of the regulations. The regulation has no adverse economic impact on small business.

Contact Information: Olivette Burroughs, Statewide Health Workforce Manager, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7431.

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TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

COMMON INTEREST COMMUNITY BOARD

Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulations are undergoing a periodic review and a small business impact review: **18VAC48-10, Public Participation Guidelines; 18VAC48-45, Time-Share Regulations; 18VAC48-50, Common Interest Community Manager Regulations; 18VAC48-60, Common Interest Community Association Registration Regulations;** and **18VAC48-70, Common Interest Community Ombudsman Regulations**. The review of each regulation will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether each regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to these regulations, including whether each regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins July 31, 2023, and ends August 21, 2023.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Stephen Kirschner, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510.

REAL ESTATE BOARD

Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulations are undergoing a periodic review and a small business impact review: **18VAC135-11, Public Participation Guidelines; 18VAC135-20, Virginia Real Estate Board Licensing Regulations;** and **18VAC135-50, Fair Housing Regulations**. The review of each regulation will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether each regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to these regulations, including whether each regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins July 31, 2023, and ends August 21, 2023.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Stephen Kirschner, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Suite 400, Richmond, VA 23233, telephone (804) 367-8552.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS, WETLAND PROFESSIONALS, AND GEOLOGISTS

Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulations are

undergoing a periodic review and a small business impact review: **18VAC145-11, Public Participation Guidelines; 18VAC145-20, Professional Soil Scientists Regulations; 18VAC145-30, Regulations Governing Certified Professional Wetland Delineators;** and **18VAC145-40, Regulations for the Geology Certification Program**. The review of each regulation will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether each regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to these regulations, including whether each regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins July 31, 2023, and ends August 21, 2023.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Kathleen R. Nosbisch, Executive Director, Board for Professional Soil Scientists, Wetland Professionals, and Geologists, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514.

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TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION BOARD

Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulations are undergoing a periodic review and a small business impact review: **24VAC30-401, Change of Limited Access Control; 24VAC30-580, Guidelines for Considering Requests for Restricting Through Trucks on Primary and Secondary Highways;** and **24VAC30-620, Rules, Regulations, and Rates Concerning Toll and Bridge Facilities**. The review of each regulation will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether each regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to these regulations, including whether each regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins July 31, 2023, and ends August 21, 2023.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: JoAnne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830.

TITLE 1. ADMINISTRATION

DEPARTMENT OF VETERANS SERVICES

Final Regulation

REGISTRAR'S NOTICE: The Department of Veterans Services is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 24 of the Code of Virginia, which exempts the department when promulgating regulations pursuant to § 58.1-3219.7 of the Code of Virginia regarding an exemption from taxes on real property.

Title of Regulation: **1VAC80-10. 100% Disabled Veteran Real Property Tax Exemption (amending 1VAC80-10-100).**

Statutory Authority: § 58.1-3219.7 of the Code of Virginia.

Effective Date: September 1, 2023.

Agency Contact: Claudia Flores, Agency Regulatory Coordinator, Department of Veterans Services, 101 North 14th Street, James Monroe Building, 17th floor, Richmond, VA 23219, telephone (804) 212-8928, or email claudia.flores@dvs.virginia.gov.

Summary:

The amendment (i) removes the ability of a surviving spouse of a disabled veteran to appeal a decision denying an application for exemption from real property taxes by an assessing official and (ii) states a veteran appealing such a decision may contact the commissioner using U.S. mail or delivery to the commissioner at the department offices in Richmond, Virginia.

1VAC80-10-100. Informal requests for information; formal appeals process.

A. The commissioner will provide written guidance to and respond to requests for information from Commissioners of the Revenue, other assessing officials, or veterans regarding the exemption, including interpretation of the provisions of subdivision (a) of Section 6-A of Article X of the Constitution of Virginia and the implementing statutes. Such requests may be by telephone or in writing. Request for an appeal must be in writing.

B. The commissioner does not have the authority to answer questions regarding the assessed value of any property. Such questions should be answered solely by the veteran's respective Commissioner of Revenue or other assessing official.

C. A veteran ~~or surviving spouse~~ desiring to appeal a denial of an application for exemption by a Commissioner of the Revenue or other assessing official shall ~~send a written request for appeal and the document from the veteran's respective Commissioner of Revenue or other assessing official denying the veteran's application as follows: 1. By electronic mail to john.newby@dvs.virginia.gov; carrieann.alford@dvs.virginia.gov with a subject line that states "ATTN: Tax Exemption - APPEAL"; or 2. By~~ contact the Commissioner of the Virginia Department of Veterans Services by U.S. mail or delivery to Commissioner, Virginia Department of Veterans Services, "ATTN: Tax Exemption - APPEAL," 101 N. 14th Street, 17th Floor, Richmond VA 23219.

D. The commissioner may conduct hearings telephonically, by video conferencing means, or if the commissioner determines it necessary, in person at the department's headquarters in Richmond. The appeal shall be limited to issues involving the tax exemption eligibility criteria. The commissioner is not authorized to hear or decide appeals regarding a dispute over a property's assessed value.

E. In advance of any hearing, both the veteran~~, or surviving spouse,~~ and the Commissioner of the Revenue, or other assessing official, shall be provided (i) reasonable notice of the time, date, and location of the hearing; (ii) the right to appear in person or by counsel, or other qualified representative, before the agency or its subordinates for the presentation of factual data, argument, or proof in connection with any case; and (iii) notice of all facts or information in the possession of the department that could be relied upon in making a decision.

F. The commissioner shall render a decision within 90 days from the date of the hearing, or from a later date agreed to by the veteran~~, or surviving spouse,~~ and the commissioner. If the commissioner does not render a decision within 90 days, the veteran may provide written notice to the commissioner that a decision is due. If no decision is made within 30 days from the commissioner's receipt of the notice, the decision shall be deemed to be in favor of the veteran.

G. The final decision by the commissioner shall be mailed to all named parties.

H. A decision of the commissioner may be appealed by either party to the circuit court in the locality in which the veteran ~~or surviving spouse~~ resides.

I. The burden shall be upon the party complaining of the commissioner's decision to designate and demonstrate an error of law subject to review by the circuit court. Such issues of law include~~:~~ (i) accordance with constitutional right, power,

privilege, or immunity; (ii) compliance with statutory authority, jurisdiction limitations, or right as provided in the basic laws as to subject matter and the factual showing respecting entitlement in connection with case decisions; (iii) observance of required procedure where any failure therein is not mere harmless error; and (iv) the substantiality of the evidentiary support for findings of fact. Any necessary facts in controversy shall be determined by the court upon the basis of the agency file, minutes, and records of its proceedings, augmented, if need be, by the agency pursuant to order of the court or supplemented by any allowable and necessary proofs adduced in court, except that the function of the court shall be to determine only whether the result reached by the agency could reasonably be said, on all such proofs, to be within the scope of the legal authority of the agency. The court shall take due account of the presumption of official regularity, the experience and specialized competence of the agency, and the purposes of the basic law under which the agency has acted.

VA.R. Doc. No. R23-7554; Filed June 28, 2023, 3:22 p.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: On December 19, 2022, the Joint Commission on Administrative Rules (JCAR) voted to object to the regulatory action repealing Part VII (9VAC5-140-1060 et seq.) of Regulations for Emissions Trading (9VAC5-140).

Title of Regulation: **9VAC5-140. Regulation for Emissions Trading Programs (adding 9VAC5-140-6445; repealing 9VAC5-140-6010 through 9VAC5-140-6440).**

Statutory Authority: §§ 10.1-1308 and 10.1-1322.3 of the Code of Virginia; §§ 108, 109, 110, and 302 of the Clean Air Act; 40 CFR Part 51.

Effective Date: August 30, 2023.

Agency Contact: Karen G. Sabasteanski, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1973, FAX (804) 698-4510, or email karen.sabasteanski@deq.virginia.gov.

Summary:

As directed by Executive Order 9 (2022), the amendments begin Virginia's withdrawal from participation in the Regional Greenhouse Gas Initiative (RGGI) by (i) repealing Part VII (9VAC5-140-6010 et seq.) of Regulation for Emissions Trading Programs (9VAC5-140) and (ii) adding a new section providing transition for affected facilities following the repeal.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Part VII

CO_2 Budget Trading Program and Transition to Repeal

~~Article 1~~

~~CO_2 Budget Trading Program General Provisions~~

9VAC5-140-6010. ~~Purpose.~~ (Repealed.)

~~This part establishes the Virginia component of the CO_2 Budget Trading Program, which is designed to reduce anthropogenic emissions of CO_2, a greenhouse gas, from CO_2 budget sources in a manner that is protective of human health and the environment and is economically efficient.~~

9VAC5-140-6020. ~~Definitions.~~ (Repealed.)

~~A. As used in this part, all words or terms not defined here shall have the meanings given them in 9VAC5-10 (General Definitions), unless otherwise required by the context.~~

~~B. For the purpose of this part and any related use, the words or terms shall have the meanings given them in this section.~~

~~C. Terms defined.~~

~~"Account number" means the identification number given by the department or its agent to each COATS account.~~

~~"Acid Rain emission limitation" means, as defined in 40 CFR 72.2, a limitation on emissions of sulfur dioxide (SO_2) or nitrogen oxides (NO_x) under the Acid Rain Program under Title IV of the CAA.~~

~~"Acid Rain Program" means a multistate SO_2 and NO_x air pollution control and emission reduction program established by the administrator under Title IV of the CAA and 40 CFR Parts 72 through 78.~~

~~"Adjustment for banked allowances" means an adjustment applied to the Virginia CO_2 Budget Trading Program base budget for allocation years 2021 through 2025 to address allowances held in general and compliance accounts, including compliance accounts established pursuant to the CO_2 Budget Trading Program, but not including accounts opened by participating states.~~

~~"Administrator" means the administrator of the U.S. Environmental Protection Agency or the administrator's authorized representative.~~

~~"Allocate" or "allocation" means the determination by the department of the number of CO_2 allowances recorded in the CO_2 allowance account of a CO_2 budget unit.~~

~~"Allocation year" means a calendar year for which the department allocates CO_2 allowances pursuant to Article 5 (9VAC5-140-6190 et seq.) of this part. The allocation year of each CO_2 allowance is reflected in the unique~~

identification number given to the allowance pursuant to 9VAC5-140-6250 C.

"Allowance auction" or "auction" means an auction in which the department or its agent offers CO_2 allowances for sale.

"Attribute" means a characteristic associated with electricity generated using a particular renewable fuel, such as its generation date, facility geographic location, unit vintage, emissions output, fuel, state program eligibility, or other characteristic that can be identified, accounted for, and tracked.

"Attribute credit" means a credit that represents the attributes related to one megawatt-hour of electricity generation.

"Automated Data Acquisition and Handling System" or "DAHS" means that component of the Continuous Emissions Monitoring System (CEMS), or other emissions monitoring system approved for use under Article 8 (9VAC5-140-6330 et seq.) of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by Article 8 (9VAC5-140-6330 et seq.) of this part.

"Billing meter" means a measurement device used to measure electric or thermal output for commercial billing under a contract. The facility selling the electric or thermal output shall have different owners from the owners of the party purchasing the electric or thermal output.

"Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

"CO_2 allowance" means a limited authorization by the department or participating state under the CO_2 Budget Trading Program to emit up to one ton of CO_2, subject to all applicable limitations contained in this part.

"CO_2 allowance deduction" or "deduct CO_2 allowances" means the permanent withdrawal of CO_2 allowances by the department or its agent from a COATS compliance account to account for the number of tons of CO_2 emitted from a CO_2 budget source for a control period or an interim control period determined in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part, or for the forfeit or retirement of CO_2 allowances as provided by this part.

"CO_2 Allowance Tracking System" or "COATS" means the system by which the department or its agent records allocations, deductions, and transfers of CO_2 allowances under the CO_2 Budget Trading Program. The tracking system may also be used to track CO_2 allowance prices and emissions from affected sources.

"CO_2 Allowance Tracking System account" means an account in COATS established by the department or its agent for purposes of recording the allocation, holding, transferring, or deducting of CO_2 allowances.

"CO_2 allowance transfer deadline" means midnight of March 1 occurring after the end of the relevant control period and each relevant interim control period, or if that March 1 is not a business day, midnight of the first business day thereafter and is the deadline by which CO_2 allowances shall be submitted for recordation in a CO_2 budget source's compliance account for the source to meet the CO_2 requirements of 9VAC5-140-6050 C for a control period and each interim control period immediately preceding such deadline.

"CO_2 allowances held" or "hold CO_2 allowances" means the CO_2 allowances recorded by the department or its agent, or submitted to the department or its agent for recordation, in accordance with Article 6 (9VAC5-140-6220 et seq.) and Article 7 (9VAC5-140-6300 et seq.) of this part, in a COATS account.

"CO_2 authorized account representative" means, for a CO_2 budget source and each CO_2 budget unit at the source, the natural person who is authorized by the owners and operators of the source and all CO_2 budget units at the source, in accordance with Article 2 (9VAC5-140-6080 et seq.) of this part, to represent and legally bind each owner and operator in matters pertaining to the CO_2 Budget Trading Program or, for a general account, the natural person who is authorized, under Article 6 (9VAC5-140-6220 et seq.) of this part, to transfer or otherwise dispose of CO_2 allowances held in the general account. If the CO_2 budget source is also subject to the Acid Rain Program, CSAPR NO_X Annual Trading Program, CSAPR NO_X Ozone Season Trading Program, CSAPR SO_2 Group 1 Trading Program, or CSAPR SO_2 Group 2 Trading Program, then for a CO_2 Budget Trading Program compliance account, this natural person shall be the same person as the designated representative as defined in the respective program.

"CO_2 authorized alternate account representative" means, for a CO_2 budget source and each CO_2 budget unit at the source, the alternate natural person who is authorized by the owners and operators of the source and all CO_2 budget units at the source, in accordance with Article 2 (9VAC5-140-6080 et seq.) of this part, to represent and legally bind each owner and operator in matters pertaining to the CO_2 Budget Trading Program or, for a general account, the alternate natural person who is authorized, under Article 6 (9VAC5-140-6220 et seq.) of this part, to transfer or otherwise dispose of CO_2 allowances held in the general account. If the CO_2 budget source is also subject to the Acid Rain Program, CSAPR NO_X Annual Trading Program, CSAPR NO_X Ozone Season Trading Program, CSAPR SO_2 Group 1 Trading Program, or CSAPR SO_2 Group 2 Trading Program then, for

~~a CO_2 Budget Trading Program compliance account, this alternate natural person shall be the same person as the alternate designated representative as defined in the respective program.~~

~~"CO_2 budget emissions limitation" means, for a CO_2 budget source, the tonnage equivalent, in CO_2 emissions in a control period or an interim control period of the CO_2 allowances available for compliance deduction for the source for a control period or an interim control period.~~

~~"CO_2 budget permit" means the portion of the legally binding permit issued by the department pursuant to 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation) to a CO_2 budget source or CO_2 budget unit that specifies the CO_2 Budget Trading Program requirements applicable to the CO_2 budget source, to each CO_2 budget unit at the CO_2 budget source, and to the owners and operators and the CO_2 authorized account representative of the CO_2 budget source and each CO_2 budget unit.~~

~~"CO_2 budget source" means a source that includes one or more CO_2 budget units.~~

~~"CO_2 Budget Trading Program" means a multistate CO_2 air pollution control and emissions reduction program established according to this part and corresponding regulations in other states as a means of reducing emissions of CO_2 from CO_2 budget sources.~~

~~"CO_2 budget unit" means a unit that is subject to the CO_2 Budget Trading Program requirements under 9VAC5-140-6040.~~

~~"CO_2 cost containment reserve allowance" or "CO_2 CCR allowance" means an allowance that has been sold at an auction for the purpose of containing the cost of CO_2 allowances. CO_2 CCR allowances offered for sale at an auction are separate from and additional to CO_2 allowances allocated from the Virginia CO_2 Budget Trading Program base and adjusted budgets. CO_2 CCR allowances are subject to all applicable limitations contained in this part.~~

~~"CO_2 cost containment reserve trigger price" or "CCR trigger price" means the minimum price at which CO_2 CCR allowances are offered for sale by the department or its agent at an auction. The CCR trigger price in calendar year 2021 shall be $13. The CCR trigger price in calendar year 2022 shall be $13.91. Each calendar year thereafter, the CCR trigger price shall be 1.07 multiplied by the CCR trigger price from the previous calendar year, rounded to the nearest whole cent, as shown in Table 140-1A.~~

~~Table 140-1A~~
~~CO_2 CCR Trigger Price~~

~~2021~~	~~$13.00~~
~~2022~~	~~$13.91~~
~~2023~~	~~$14.88~~
~~2024~~	~~$15.92~~
~~2025~~	~~$17.03~~
~~2026~~	~~$18.22~~
~~2027~~	~~$19.50~~
~~2028~~	~~$20.87~~
~~2029~~	~~$22.33~~
~~2030~~	~~$23.89~~

~~"CO_2 emissions containment reserve allowance" or "CO_2 ECR allowance" means a CO_2 allowance that is withheld from sale at an auction by the department for the purpose of additional emission reduction in the event of lower than anticipated emission reduction costs.~~

~~"CO_2 emissions containment reserve trigger price" or "ECR trigger price" means the price below which CO_2 allowances will be withheld from sale by the department or its agent at an auction. The ECR trigger price in calendar year 2021 shall be $6.00. Each calendar year thereafter, the ECR trigger price shall be 1.07 multiplied by the ECR trigger price from the previous calendar year, rounded to the nearest whole cent, as shown in Table 140-1B.~~

~~Table 140-1B~~
~~CO_2 ECR Trigger Price~~

~~2021~~	~~$ 6.00~~
~~2022~~	~~$ 6.42~~
~~2023~~	~~$ 6.87~~
~~2024~~	~~$ 7.35~~
~~2025~~	~~$ 7.86~~
~~2026~~	~~$8.41~~
~~2027~~	~~$ 9.00~~
~~2028~~	~~$ 9.63~~
~~2029~~	~~$10.30~~
~~2030~~	~~$11.02~~

~~"CO_2 offset allowance" means a CO_2 allowance that is awarded to the sponsor of a CO_2 emissions offset project by a participating state and is subject to the relevant compliance deduction limitations of the participating state's corresponding offset regulations as a means of reducing CO_2 from CO_2 budget sources.~~

~~"Combined cycle system" means a system comprised of one or more combustion turbines, heat recovery steam~~

generators, and steam turbines configured to improve overall efficiency of electricity generation or steam production.

"Combustion turbine" means an enclosed fossil or other fuel-fired device that is comprised of a compressor (if applicable), a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.

"Commence commercial operation" means, with regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. For a unit that is a CO_2 budget unit under 9VAC5-140-6040 on the date the unit commences commercial operation, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered. For a unit that is not a CO_2 budget unit under 9VAC5-140-6040 on the date the unit commences commercial operation, the date the unit becomes a CO_2 budget unit under 9VAC5-140-6040 shall be the unit's date of commencement of commercial operation.

"Commence operation" means to begin any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber. For a unit that is a CO_2 budget unit under 9VAC5-140-6040 on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered. For a unit that is not a CO_2 budget unit under 9VAC5-140-6040 on the date of commencement of operation, the date the unit becomes a CO_2 budget unit under 9VAC5-140-6040 shall be the unit's date of commencement of operation.

"Compliance account" means a COATS account, established by the department or its agent for a CO_2 budget source under Article 6 (9VAC5-140-6220 et seq.) of this part, in which CO_2 allowances available for use by the source for a control period and each interim control period are held for the purpose of meeting the CO_2 requirements of 9VAC5-140-6050 C.

"Continuous Emissions Monitoring System" or "CEMS" means the equipment required under Article 8 (9VAC5-140-6330 et seq.) of this part to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated DAHS), a permanent record of stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with 40 CFR Part 75 and Article 8 (9VAC5-140-6330 et seq.) of this part. The following systems are types of CEMS required under Article 8 (9VAC5-140-6330 et seq.) of this part:

a. A flow monitoring system, consisting of a stack flow rate monitor and an automated DAHS and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour;

b. A NO_X emissions rate (or NO_X-diluent) monitoring system, consisting of a NO_X pollutant concentration monitor, a diluent gas (CO_2 or O_2) monitor, and an automated DAHS and providing a permanent, continuous record of NO_X concentration, in parts per million (ppm), diluent gas concentration, in percent CO_2 or O_2, and NO_X emissions rate, in pounds per million British thermal units (lb/MMBtu);

c. A moisture monitoring system, as defined in 40 CFR 75.11(b)(2) and providing a permanent, continuous record of the stack gas moisture content, in percent H_2O;

d. A CO_2 monitoring system, consisting of a CO_2 pollutant concentration monitor (or an O_2 monitor plus suitable mathematical equations from which the CO_2 concentration is derived) and an automated DAHS and providing a permanent, continuous record of CO_2 emissions, in percent CO_2; and

e. An O_2 monitoring system, consisting of an O_2 concentration monitor and an automated DAHS and providing a permanent, continuous record of O_2, in percent O_2.

"Control period" means a three calendar year time period. The fifth control period is from January 1, 2021, to December 31, 2023, inclusive, which is the first control period of Virginia's participation in the CO_2 Budget Trading Program. The first two calendar years of each control period are each defined as an interim control period, beginning on January 1, 2021.

"Cross State Air Pollution Rule (CSAPR) NO_X Annual Trading Program" means a multistate NO_X air pollution control and emission reduction program established in accordance with Subpart AAAAA of 40 CFR Part 97 and 40 CFR 52.38(a), including such a program that is revised in a SIP revision approved by the administrator under 40 CFR 52.38(a)(3) or (4) or that is established in a SIP revision approved by the administrator under 40 CFR 52.38(a)(5), as a means of mitigating interstate transport of fine particulates and NO_X.

"Cross State Air Pollution Rule (CSAPR) NO_X Ozone Season Trading Program" means a multistate NO_X air pollution control and emission reduction program established in accordance with Subpart BBBBB of 40 CFR Part 97 and 40 CFR 52.38(b), including such a program that is revised in a SIP revision approved by the administrator under 40 CFR 52.38(b)(3) or (4) or that is established in a SIP revision approved by the administrator under 40 CFR 52.38(b)(5), as a means of mitigating interstate transport of ozone and NO_X.

"Cross State Air Pollution Rule (CSAPR) SO_2 Group 1 Trading Program" means a multistate SO_2 air pollution control and emission reduction program established in accordance with Subpart CCCCC of 40 CFR Part 97 and 40 CFR 52.39(a), (b), (d) through (f), (j), and (k), including

such a program that is revised in a SIP revision approved by the administrator under 40 CFR 52.39(d) or (e) or that is established in a SIP revision approved by the administrator under 40 CFR 52.39(f), as a means of mitigating interstate transport of fine particulates and SO_2.

"Cross State Air Pollution Rule (CSAPR) SO_2 Group 2 Trading Program" means a multistate SO_2 air pollution control and emission reduction program established in accordance with Subpart DDDDD of 40 CFR Part 97 and 40 CFR 52.39(a), (c), and (g) through (k), including such a program that is revised in a SIP revision approved by the administrator under 40 CFR 52.39(g) or (h) or that is established in a SIP revision approved by the administrator under 40 CFR 52.39(i), as a means of mitigating interstate transport of fine particulates and SO_2.

"Department" means the Virginia Department of Environmental Quality.

"Excess emissions" means any tonnage of CO_2 emitted by a CO_2 budget source during an interim control period or a control period that exceeds the CO_2 budget emissions limitation for the source.

"Excess interim emissions" means any tonnage of CO_2 emitted by a CO_2 budget source during an interim control period multiplied by 0.50 that exceeds the CO_2 budget emissions limitation for the source.

"Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

"Fossil fuel-fired" means the combustion of fossil fuel, alone or in combination with any other fuel, where the fossil fuel combusted comprises, or is projected to comprise, more than 5.0% of the annual heat input on a Btu basis during any year.

"General account" means a COATS account established under Article 6 (9VAC5-140-6220 et seq.) of this part that is not a compliance account.

"Gross generation" means the electrical output in MWe at the terminals of the generator.

"Interim control period" means a one calendar year time period during each of the first and second calendar years of each three year control period. The first interim control period starts January 1, 2021, and ends December 31, 2021, inclusive. The second interim control period starts January 1, 2022, and ends December 31, 2022, inclusive. Each successive three year control period will have two interim control periods, comprised of each of the first two calendar years of that control period.

"Life of the unit contractual arrangement" means either:

a. A unit participation power sales agreement under which a customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity or associated energy from any specified unit pursuant to a contract:

(1) For the life of the unit;

(2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

(3) For a period equal to or greater than 25 years or 70% of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period; or

b. Any energy conversion or energy tolling agreement that has a primary term of 20 years or more and pursuant to which the purchaser is required to deliver fuel to the CO_2 budget source or CO_2 budget unit and is entitled to receive all of the nameplate capacity and associated energy generated by such source or unit for the entire contractual period. Such agreements shall be subject to 9VAC5-140-6325. Such purchaser shall not be considered an "owner" as defined under this section.

"Maximum potential hourly heat input" means an hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use Appendix D of 40 CFR Part 75 to report heat input, this value shall be calculated, in accordance with 40 CFR Part 75, using the maximum fuel flow rate and the maximum gross calorific value. If the unit intends to use a flow monitor and a diluent gas monitor, this value shall be reported, in accordance with 40 CFR Part 75, using the maximum potential flow rate and either the maximum CO_2 concentration in percent CO_2 or the minimum O_2 concentration in percent O_2.

"Minimum reserve price" means, in calendar year 2021, $2.38. Each calendar year thereafter, the minimum reserve price shall be 1.025 multiplied by the minimum reserve price from the previous calendar year, rounded to the nearest whole cent.

"Monitoring system" means any monitoring system that meets the requirements of Article 8 (9VAC5-140-6330 et seq.) of this part, including a CEMS, an excepted monitoring system, or an alternative monitoring system.

"Nameplate capacity" means the maximum electrical output in MWe that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings as measured in accordance with the U.S. Department of Energy standards.

"Net electric output" means the amount of gross generation in MWh the generators produce, including output from steam turbines, combustion turbines, and gas expanders, as measured at the generator terminals, less the electricity used to operate the plant (i.e., auxiliary loads); such uses include fuel handling equipment, pumps, fans, pollution control equipment, other electricity needs, and transformer losses as

measured at the transmission side of the step-up transformer (e.g., the point of sale).

"Non-CO_2 budget unit" means a unit that does not meet the applicability criteria of 9VAC5-140-6040.

"Operator" means any person who operates, controls, or supervises a CO_2 budget unit or a CO_2 budget source and shall include any holding company, utility system, or plant manager of such a unit or source.

"Owner" means any of the following persons:

a. Any holder of any portion of the legal or equitable title in a CO_2 budget unit;

b. Any holder of a leasehold interest in a CO_2 budget unit, other than a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the CO_2 budget unit;

c. Any purchaser of power from a CO_2 budget unit under a life of the unit contractual arrangement in which the purchaser controls the dispatch of the unit; or

d. With respect to any general account, any person who has an ownership interest with respect to the CO_2 allowances held in the general account and who is subject to the binding agreement for the CO_2 authorized account representative to represent that person's ownership interest with respect to the CO_2 allowances.

"Participating state" means a state that has established a corresponding regulation as part of the CO_2 Budget Trading Program.

"Receive" or "receipt of" means, when referring to the department or its agent, to come into possession of a document, information, or correspondence (whether sent in writing or by authorized electronic transmission) as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence by the department or its agent in the regular course of business.

"Recordation," "record," or "recorded" means, with regard to CO_2 allowances, the movement of CO_2 allowances by the department or its agent from one COATS account to another for purposes of allocation, transfer, or deduction.

"Reserve price" means the minimum acceptable price for each CO_2 allowance in a specific auction. The reserve price at an auction is either the minimum reserve price or the CCR trigger price, as specified in Article 9 (9VAC5-140-6410 et seq.) of this part.

"Serial number" means, when referring to CO_2 allowances, the unique identification number assigned to each CO_2 allowance by the department or its agent under 9VAC5-140-6250 C.

"Source" means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any air pollutant. A source, including a source with multiple units, shall be considered a single facility.

"Submit" or "serve" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

a. In person;

b. By United States Postal Service; or

c. By other means of dispatch or transmission and delivery.

Compliance with any "submission," "service," or "mailing" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

"Ton" or "tonnage" means any short ton, or 2,000 pounds. For the purpose of determining compliance with the CO_2 requirements of 9VAC5-140-6050 C, total tons for an interim control period or a control period shall be calculated as the sum of all recorded hourly emissions, or the tonnage equivalent of the recorded hourly emissions rates, in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons. A short ton is equal to 0.9072 metric tons.

"Total useful energy" means the sum of gross electrical generation and useful net thermal energy.

"Undistributed CO_2 allowances" means CO_2 allowances originally allocated to a set aside account as pursuant to 9VAC5-140-6210 that were not distributed.

"Unit" means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.

"Unit operating day" means a calendar day in which a unit combusts any fuel.

"Unsold CO_2 allowances" means CO_2 allowances that have been made available for sale in an auction conducted by the department or its agent, but not sold.

"Useful net thermal energy" means energy:

a. In the form of direct heat, steam, hot water, or other thermal form that is used in the production and beneficial measures for heating, cooling, humidity control, process use, or other thermal end use energy requirements, excluding thermal energy used in the power production process (e.g., house loads and parasitic loads); and

b. For which fuel or electricity would otherwise be consumed.

"Virginia CO_2 Budget Trading Program adjusted budget" means an adjusted budget determined in accordance with 9VAC5-140-6210 and is the annual amount of CO_2 tons available in Virginia for allocation in a given allocation year,

in accordance with the CO_2 Budget Trading Program. CO_2 CCR allowances offered for sale at an auction are separate from and additional to CO_2 allowances allocated from the Virginia CO_2 Budget Trading Program adjusted budget.

"Virginia CO_2 Budget Trading Program base budget" means the budget specified in 9VAC5-140-6190. CO_2 CCR allowances offered for sale at an auction are separate from and additional to CO_2 allowances allocated from the Virginia CO_2 Budget Trading Program base budget.

9VAC5-140-6030. ~~Measurements, abbreviations, and acronyms.~~ (Repealed.)

~~Measurements, abbreviations, and acronyms used in this part are defined as follows:~~

~~Btu - British thermal unit.~~

~~CAA - federal Clean Air Act.~~

~~CCR - cost containment reserve.~~

~~CEMS - Continuous Emissions Monitoring System.~~

~~COATS - CO_2 Allowance Tracking System.~~

~~CO_2 - carbon dioxide.~~

~~DAHS - Data Acquisition and Handling System.~~

~~H_2O - water.~~

~~lb - pound.~~

~~LME - low mass emissions.~~

~~MMBtu - million British thermal units.~~

~~MW - megawatt.~~

~~MWe - megawatt electrical.~~

~~MWh - megawatt hour.~~

~~NO_X - nitrogen oxides.~~

~~O_2 - oxygen.~~

~~ORIS - Office of Regulatory Information Systems.~~

~~QA/QC - quality assurance/quality control.~~

~~ppm - parts per million.~~

~~SO_2 - sulfur dioxide.~~

9VAC5-140-6040. ~~Applicability.~~ (Repealed.)

~~A. Any fossil fuel fired unit that serves an electricity generator with a nameplate capacity equal to or greater than 25 MWe shall be a CO_2 budget unit, and any source that includes one or more such units shall be a CO_2 budget source, subject to the requirements of this part.~~

~~B. Exempt from the requirements of this part is any fossil fuel CO_2 budget source located at or adjacent to and physically interconnected with a manufacturing facility that, prior to January 1, 2020, and in every subsequent calendar year, met either of the following requirements:~~

~~1. Supplies less than or equal to 10% of its annual net electrical generation to the electric grid; or~~

~~2. Supplies less than or equal to 15% of its annual total useful energy to any entity other than the manufacturing facility to which the CO_2 budget source is interconnected.~~

~~For the purpose of subdivision 1 of this subsection, annual net electrical generation shall be determined as follows:~~

~~(ES - EP) / EG x 100~~

~~Where:~~

~~ES = electricity sales to the grid from the CO_2 budget source~~

~~EP = electricity purchases from the grid by the CO_2 budget source and the manufacturing facility to which the CO_2 budget source is interconnected~~

~~EG = electricity generation~~

~~Such exempt CO_2 budget source shall have an operating permit containing the applicable restrictions under this subsection. An application for such operating permit shall be submitted to the department no later than January 1, 2022.~~

9VAC5-140-6050. ~~Standard requirements.~~ (Repealed.)

~~A. Permit requirements shall be as follows.~~

~~1. The CO_2 authorized account representative of each CO_2 budget source required to have an operating permit pursuant to 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation) and each CO_2 budget unit required to have an operating permit pursuant to 9VAC5-85 shall:~~

~~a. Submit to the department a complete CO_2 budget permit application under 9VAC5-140-6160 in accordance with the deadlines specified in 9VAC5-140-6150; and~~

~~b. Submit in a timely manner any supplemental information that the department determines is necessary in order to review the CO_2 budget permit application and issue or deny a CO_2 budget permit.~~

~~2. The owners and operators of each CO_2 budget source required to have an operating permit pursuant to 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation) and each CO_2 budget unit required to have an operating permit pursuant to 9VAC5-85 for the source shall have a CO_2 budget permit and operate the CO_2 budget source and the CO_2 budget unit at the source in compliance with such CO_2 budget permit.~~

~~B. Monitoring requirements shall be as follows.~~

~~1. The owners and operators and, to the extent applicable, the CO_2 authorized account representative of each CO_2 budget source and each CO_2 budget unit at the source shall comply with the monitoring requirements of Article 8 (9VAC5-140-6330 et seq.) of this part.~~

~~2. The emissions measurements recorded and reported in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part shall be used to determine compliance by the unit with the CO_2 requirements under subsection C of this section.~~

C. CO_2 requirements shall be as follows.

1. The owners and operators of each CO_2 budget source and each CO_2 budget unit at the source shall hold CO_2 allowances available for compliance deductions under 9VAC5-140-6260, as of the CO_2 allowance transfer deadline, in the source's compliance account in an amount not less than the total CO_2 emissions that have been generated as a result of combusting fossil fuel for an interim control period or control period from all CO_2 budget units at the source, less the CO_2 allowances deducted to meet the requirements of subdivision 2 of this subsection, with respect to the previous two interim control periods as determined in accordance with Article 6 (9VAC5-140-6220 et seq.) and Article 8 (9VAC5-140-6330 et seq.) of this part.

2. The owners and operators of each CO_2 budget source and each CO_2 budget unit at the source shall hold CO_2 allowances available for compliance deductions under 9VAC5-140-6260, as of the CO_2 allowance transfer deadline, in the source's compliance account in an amount not less than the total CO_2 emissions that have been generated as a result of combusting fossil fuel for the interim control period from all CO_2 budget units at the source multiplied by 0.50, as determined in accordance with Article 6 (9VAC5-140-6220 et seq.) and Article 8 (9VAC5-140-6330 et seq.) of this part.

3. Each ton of CO_2 emitted in excess of the CO_2 budget emissions limitation for a control period shall constitute a separate violation of this part and applicable state law.

4. Each ton of excess interim emissions shall constitute a separate violation of this part and applicable state law.

5. A CO_2 budget unit shall be subject to the requirements under subdivision 1 of this subsection starting on the later of January 1, 2021, or the date on which the unit commences operation.

6. CO_2 allowances shall be held in, deducted from, or transferred among COATS accounts in accordance with Article 5 (9VAC5-140-6190 et seq.), Article 6 (9VAC5-140-6220 et seq.), and Article 7 (9VAC5-140-6300 et seq.) of this part.

7. A CO_2 allowance shall not be deducted, to comply with the requirements under subdivision 1 or 2 of this subsection, for a control period that ends prior to the year for which the CO_2 allowance was allocated.

8. A CO_2 allowance under the CO_2 Budget Trading Program is a limited authorization by the department to emit one ton of CO_2 in accordance with the CO_2 Budget Trading Program. No provision of the CO_2 Budget Trading Program, the CO_2 budget permit application, or the CO_2 budget permit or any provision of law shall be construed to limit the authority of the department or a participating state to terminate or limit such authorization.

9. A CO_2 allowance under the CO_2 Budget Trading Program does not constitute a property right.

D. The owners and operators of a CO_2 budget source that has excess emissions in a control period shall:

1. Forfeit the CO_2 allowances required for deduction under 9VAC5-140-6260 D 1; and

2. Pay any fine, penalty, or assessment or comply with any other remedy imposed under 9VAC5-140-6260 D 2.

E. Recordkeeping and reporting requirements shall be as follows:

1. Unless otherwise provided, the owners and operators of the CO_2 budget source and each CO_2 budget unit at the source shall keep on site at the source each of the following documents for a period of 10 years from the date the document is created. This period may be extended for cause, at any time prior to the end of 10 years, in writing by the department.

a. The account certificate of representation for the CO_2 authorized account representative for the source and each CO_2 budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with 9VAC5-140-6110, provided that the certificate and documents shall be retained on site at the source beyond such 10-year period until such documents are superseded because of the submission of a new account certificate of representation changing the CO_2 authorized account representative.

b. All emissions monitoring information, in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part and 40 CFR 75.57.

c. Copies of all reports, compliance certifications, and other submissions and all records made or required under the CO_2 Budget Trading Program.

d. Copies of all documents used to complete a CO_2 budget permit application and any other submission under the CO_2 Budget Trading Program or to demonstrate compliance with the requirements of the CO_2 Budget Trading Program.

2. The CO_2 authorized account representative of a CO_2 budget source and each CO_2 budget unit at the source shall submit the reports and compliance certifications required under the CO_2 Budget Trading Program, including those under Article 4 (9VAC5-140-6170 et seq.) of this part.

F. Liability requirements shall be as follows.

1. No permit revision shall excuse any violation of the requirements of the CO_2 Budget Trading Program that occurs prior to the date that the revision takes effect.

2. Any provision of the CO_2 Budget Trading Program that applies to a CO_2 budget source, including a provision applicable to the CO_2 authorized account representative of a

~~CO_2 budget source, shall also apply to the owners and operators of such source and of the CO_2 budget units at the source.~~

~~3. Any provision of the CO_2 Budget Trading Program that applies to a CO_2 budget unit, including a provision applicable to the CO_2 authorized account representative of a CO_2 budget unit, shall also apply to the owners and operators of such unit.~~

~~C. No provision of the CO_2 Budget Trading Program, a CO_2 budget permit application, or a CO_2 budget permit shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the CO_2 authorized account representative of the CO_2 budget source or CO_2 budget unit from compliance with any other provisions of applicable state and federal law or regulations.~~

9VAC5-140-6060. ~~Computation of time.~~ (Repealed.)

~~A. Unless otherwise stated, any time period scheduled, under the CO_2 Budget Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.~~

~~B. Unless otherwise stated, any time period scheduled, under the CO_2 Budget Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.~~

~~C. Unless otherwise stated, if the final day of any time period, under the CO_2 Budget Trading Program, falls on a weekend or a state or federal holiday, the time period shall be extended to the next business day.~~

9VAC5-140-6070. ~~Severability.~~ (Repealed.)

~~If any provision of this part, or its application to any particular person or circumstances, is held invalid, the remainder of this part, and the application thereof to other persons or circumstances, shall not be affected thereby.~~

~~Article 2~~
~~CO_2 Authorized Account Representative for CO_2 Budget Sources~~

9VAC5-140-6080. ~~Authorization and responsibilities of the CO2 authorized account representative.~~ (Repealed.)

~~A. Except as provided under 9VAC5-140-6090, each CO_2 budget source, including all CO_2 budget units at the source, shall have one and only one CO_2 authorized account representative, with regard to all matters under the CO_2 Budget Trading Program concerning the source or any CO_2 budget unit at the source.~~

~~B. The CO_2 authorized account representative of the CO_2 budget source shall be selected by an agreement binding on the owners and operators of the source and all CO_2 budget units at the source and must act in accordance with the account certificate of representation under 9VAC5-140-6110.~~

~~C. Upon receipt by the department or its agent of a complete account certificate of representation under 9VAC5-140-6110, the CO_2 authorized account representative of the source shall represent and, by his representations, actions, inactions, or submissions, legally bind each owner and operator of the CO_2 budget source represented and each CO_2 budget unit at the source in all matters pertaining to the CO_2 Budget Trading Program, notwithstanding any agreement between the CO_2 authorized account representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CO_2 authorized account representative by the department or a court regarding the source or unit.~~

~~D. No CO_2 budget permit shall be issued, and no COATS account shall be established for a CO_2 budget source, until the department or its agent has received a complete account certificate of representation under 9VAC5-140-6110 for a CO_2 authorized account representative of the source and the CO_2 budget units at the source.~~

~~E. Each submission under the CO_2 Budget Trading Program shall be submitted, signed, and certified by the CO_2 authorized account representative for each CO_2 budget source on behalf of which the submission is made. Each such submission shall include the following certification statement by the CO_2 authorized account representative: "I am authorized to make this submission on behalf of the owners and operators of the CO_2 budget sources or CO_2 budget units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."~~

~~F. The department or its agent will accept or act on a submission made on behalf of owners or operators of a CO_2 budget source or a CO_2 budget unit only if the submission has been made, signed, and certified in accordance with subsection E of this section.~~

9VAC5-140-6090. ~~CO2 authorized alternate account representative.~~ (Repealed.)

~~A. An account certificate of representation may designate one and only one CO_2 authorized alternate account representative who may act on behalf of the CO_2 authorized account representative. The agreement by which the CO_2 authorized alternate account representative is selected shall include a procedure for authorizing the CO_2 authorized alternate account representative to act in lieu of the CO_2 authorized account representative.~~

B. Upon receipt by the department or its agent of a complete account certificate of representation under 9VAC5-140-6110, any representation, action, inaction, or submission by the CO_2 authorized alternate account representative shall be deemed to be a representation, action, inaction, or submission by the CO_2 authorized account representative.

C. Except in this section and 9VAC5-140-6080-A, 9VAC5-140-6100, 9VAC5-140-6110, and 9VAC5-140-6230, whenever the term "CO_2 authorized account representative" is used in this part, the term shall be construed to include the CO_2 authorized alternate account representative.

9VAC5-140-6100. Changing the CO2 authorized account representatives and the CO2 authorized alternate account representative; changes in the owners and operators. (Repealed.)

A. The CO_2 authorized account representative may be changed at any time upon receipt by the department or its agent of a superseding complete account certificate of representation under 9VAC5-140-6110. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CO_2 authorized account representative or CO_2 authorized alternate account representative prior to the time and date when the department or its agent receives the superseding account certificate of representation shall be binding on the new CO_2 authorized account representative and the owners and operators of the CO_2 budget source and the CO_2 budget units at the source.

B. The CO_2 authorized alternate account representative may be changed at any time upon receipt by the department or its agent of a superseding complete account certificate of representation under 9VAC5-140-6110. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CO_2 authorized alternate account representative or CO_2 authorized alternate account representative prior to the time and date when the department or its agent receives the superseding account certificate of representation shall be binding on the new CO_2 authorized alternate account representative and the owners and operators of the CO_2 budget source and the CO_2 budget units at the source.

C. Changes in the owners and operators shall be addressed as follows.

1. In the event a new owner or operator of a CO_2 budget source or a CO_2 budget unit is not included in the list of owners and operators submitted in the account certificate of representation, such new owner or operator shall be deemed to be subject to and bound by the account certificate of representation, the representations, actions, inactions, and submissions of the CO_2 authorized account representative and any CO_2 authorized alternate account representative of the source or unit, and the decisions, orders, actions, and inactions of the department, as if the new owner or operator were included in such list.

2. Within 30 days following any change in the owners and operators of a CO_2 budget source or a CO_2 budget unit, including the addition of a new owner or operator, the CO_2 authorized account representative or CO_2 authorized alternate account representative shall submit a revision to the account certificate of representation amending the list of owners and operators to include the change.

9VAC5-140-6110. Account certificate of representation. (Repealed.)

A. A complete account certificate of representation for a CO_2 authorized account representative or a CO_2 authorized alternate account representative shall include the following elements in a format prescribed by the department or its agent:

1. Identification of the CO_2 budget source and each CO_2 budget unit at the source for which the account certificate of representation is submitted;

2. The name, address, email address, telephone number, and facsimile transmission number of the CO_2 authorized account representative and any CO_2 authorized alternate account representative;

3. A list of the owners and operators of the CO_2 budget source and of each CO_2 budget unit at the source;

4. The following certification statement by the CO_2 authorized account representative and any CO_2 authorized alternate account representative: "I certify that I was selected as the CO_2 authorized account representative or CO_2 authorized alternate account representative, as applicable, by an agreement binding on the owners and operators of the CO_2 budget source and each CO_2 budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CO_2 Budget Trading Program on behalf of the owners and operators of the CO_2 budget source and of each CO_2 budget unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the department or a court regarding the source or unit."; and

5. The signature of the CO_2 authorized account representative and any CO_2 authorized alternate account representative and the dates signed.

B. Unless otherwise required by the department or its agent, documents of agreement referred to in the account certificate of representation shall not be submitted to the department or its agent. Neither the department nor its agent shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

9VAC5-140-6120. ~~Objections concerning the CO2 authorized account representative.~~ (Repealed.)

~~A. Once a complete account certificate of representation under 9VAC5-140-6110 has been submitted and received, the department and its agent will rely on the account certificate of representation unless and until the department or its agent receives a superseding complete account certificate of representation under 9VAC5-140-6110.~~

~~B. Except as provided in 9VAC5-140-6100 A or B, no objection or other communication submitted to the department or its agent concerning the authorization, or any representation, action, inaction, or submission of the CO_2 authorized account representative shall affect any representation, action, inaction, or submission of the CO_2 authorized account representative or the finality of any decision or order by the department or its agent under the CO_2 Budget Trading Program.~~

~~C. Neither the department nor its agent will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any CO_2 authorized account representative, including private legal disputes concerning the proceeds of CO_2 allowance transfers.~~

9VAC5-140-6130. ~~Delegation by CO2 authorized account representative and CO2 authorized alternate account representative.~~ (Repealed.)

~~A. A CO_2 authorized account representative may delegate, to one or more natural persons, his authority to make an electronic submission to the department or its agent under this part.~~

~~B. A CO_2 authorized alternate account representative may delegate, to one or more natural persons, his authority to make an electronic submission to the department or its agent under this part.~~

~~C. To delegate authority to make an electronic submission to the department or its agent in accordance with subsections A and B of this section, the CO_2 authorized account representative or CO_2 authorized alternate account representative, as appropriate, shall submit to the department or its agent a notice of delegation, in a format prescribed by the department that includes the following elements:~~

~~1. The name, address, email address, telephone number, and facsimile transmission number of such CO_2 authorized account representative or CO_2 authorized alternate account representative;~~

~~2. The name, address, email address, telephone number, and facsimile transmission number of each such natural person, referred to as the "electronic submission agent";~~

~~3. For each such natural person, a list of the type of electronic submissions under subsection A or B of this section for which authority is delegated to him; and~~

~~4. The following certification statement by such CO_2 authorized account representative or CO_2 authorized alternate account representative: "I agree that any electronic submission to the department or its agent that is by a natural person identified in this notice of delegation and of a type listed for such electronic submission agent in this notice of delegation and that is made when I am a CO_2 authorized account representative or CO_2 authorized alternate account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 9VAC5-140-6130 D shall be deemed to be an electronic submission by me. Until this notice of delegation is superseded by another notice of delegation under 9VAC5-140-6130 D, I agree to maintain an email account and to notify the department or its agent immediately of any change in my email address unless all delegation authority by me under 9VAC5-140-6130 is terminated."~~

~~D. A notice of delegation submitted under subsection C of this section shall be effective, with regard to the CO_2 authorized account representative or CO_2 authorized alternate account representative identified in such notice, upon receipt of such notice by the department or its agent and until receipt by the department or its agent of a superseding notice of delegation by such CO_2 authorized account representative or CO_2 authorized alternate account representative as appropriate. The superseding notice of delegation may replace any previously identified electronic submission agent, add a new electronic submission agent, or eliminate entirely any delegation of authority.~~

~~E. Any electronic submission covered by the certification in subdivision C 4 of this section and made in accordance with a notice of delegation effective under subsection D of this section shall be deemed to be an electronic submission by the CO_2 authorized account representative or CO_2 authorized alternate account representative submitting such notice of delegation.~~

~~F. A CO_2 authorized account representative may delegate, to one or more natural persons, his authority to review information in the CO_2 allowance tracking system under this part.~~

~~G. A CO_2 authorized alternate account representative may delegate, to one or more natural persons, his authority to review information in the CO_2 allowance tracking system under this part.~~

~~H. To delegate authority to review information in the CO_2 allowance tracking system in accordance with subsections F and G of this section, the CO_2 authorized account representative or CO_2 authorized alternate account representative, as appropriate, shall submit to the department or its agent a notice of delegation, in a format prescribed by the department that includes the following elements:~~

~~1. The name, address, email address, telephone number, and facsimile transmission number of such CO_2 authorized~~

account representative or CO_2 authorized alternate account representative;

2. The name, address, email address, telephone number, and facsimile transmission number of each such natural person, referred to as the "reviewer";

3. For each such natural person, a list of the type of information under subsection F or G of this section for which authority is delegated to him; and

4. The following certification statement by such CO_2 authorized account representative or CO_2 authorized alternate account representative: "I agree that any information that is reviewed by a natural person identified in this notice of delegation and of a type listed for such information accessible by the reviewer in this notice of delegation and that is made when I am a CO_2 authorized account representative or CO_2 authorized alternate account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under subsection I of this section shall be deemed to be a reviewer by me. Until this notice of delegation is superseded by another notice of delegation under subsection I of this section, I agree to maintain an email account and to notify the department or its agent immediately of any change in my email address unless all delegation authority by me under this section is terminated."

I. A notice of delegation submitted under subsection H of this section shall be effective, with regard to the CO_2 authorized account representative or CO_2 authorized alternate account representative identified in such notice, upon receipt of such notice by the department or its agent and until receipt by the department or its agent of a superseding notice of delegation by such CO_2 authorized account representative or CO_2 authorized alternate account representative as appropriate. The superseding notice of delegation may replace any previously identified reviewer, add a new reviewer, or eliminate entirely any delegation of authority.

Article 3
Permits

9VAC5-140-6140. ~~CO2 budget permit requirements.~~ (Repealed.)

A. Each CO_2 budget source shall have a permit issued by the department pursuant to 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation).

B. Each CO_2 budget permit shall contain all applicable CO_2 Budget Trading Program requirements and shall be a complete and distinguishable portion of the permit under subsection A of this section.

9VAC5-140-6150. ~~Submission of CO2 budget permit applications.~~ (Repealed.)

For any CO_2 budget source, the CO_2 authorized account representative shall submit a complete CO_2 budget permit application under 9VAC5-140-6160 covering such CO_2 budget source to the department by the later of January 1, 2021, or 12 months before the date on which the CO_2 budget source, or a new unit at the source, commences operation.

9VAC5-140-6160. ~~Information requirements for CO2 budget permit applications.~~ (Repealed.)

A complete CO_2 budget permit application shall include the following elements concerning the CO_2 budget source for which the application is submitted, in a format prescribed by the department:

1. Identification of the CO_2 budget source, including plant name and the ORIS (Office of Regulatory Information Systems) or facility code assigned to the source by the Energy Information Administration of the U.S. Department of Energy if applicable;

2. Identification of each CO_2 budget unit at the CO_2 budget source; and

3. The standard requirements under 9VAC5-140-6050.

Article 4
Compliance Certification

9VAC5-140-6170. ~~Compliance certification report.~~ (Repealed.)

A. For each control period in which a CO_2 budget source is subject to the CO_2 requirements of 9VAC5-140-6050 C, the CO_2 authorized account representative of the source shall submit to the department by March 1 following the relevant control period, a compliance certification report. A compliance certification report is not required as part of the compliance obligation during an interim control period.

B. The CO_2 authorized account representative shall include in the compliance certification report under subsection A of this section the following elements, in a format prescribed by the department:

1. Identification of the source and each CO_2 budget unit at the source;

2. At the CO_2 authorized account representative's option, the serial numbers of the CO_2 allowances that are to be deducted from the source's compliance account under 9VAC5-140-6260 for the control period; and

3. The compliance certification under subsection C of this section.

C. In the compliance certification report under subsection A of this section, the CO_2 authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the CO_2 budget units at the source in compliance with the CO_2 Budget Trading Program, whether the source and each CO_2 budget unit at the source for which the compliance certification is submitted was operated during the calendar years covered by

the report in compliance with the requirements of the CO_2 Budget Trading Program, including:

1. Whether the source was operated in compliance with the CO_2 requirements of 9VAC5-140-6050 C;

2. Whether the monitoring plan applicable to each unit at the source has been maintained to reflect the actual operation and monitoring of the unit, and contains all information necessary to attribute CO_2 emissions to the unit, in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part;

3. Whether all the CO_2 emissions from the units at the source were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports, including whether conditional data were reported in the quarterly reports in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part. If conditional data were reported, the owner or operator shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report resubmissions have been made;

4. Whether the facts that form the basis for certification under Article 8 (9VAC5-140-6330 et seq.) of this part of each monitor at each unit at the source, or for using an excepted monitoring method or alternative monitoring method approved under Article 8 (9VAC5-140-6330 et seq.) of this part, if any, have changed; and

5. If a change is required to be reported under subdivision 4 of this subsection, specify the nature of the change, the reason for the change, when the change occurred, and how the unit's compliance status was determined subsequent to the change, including what method was used to determine emissions when a change mandated the need for monitor recertification.

9VAC5-140-6180. Action on compliance certifications. (Repealed.)

A. The department or its agent may review and conduct independent audits concerning any compliance certification or any other submission under the CO_2 Budget Trading Program and make appropriate adjustments of the information in the compliance certifications or other submissions.

B. The department or its agent may deduct CO_2 allowances from or transfer CO_2 allowances to a source's compliance account based on the information in the compliance certifications or other submissions, as adjusted under subsection A of this section.

Article 5
CO_2 Allowance Allocations

9VAC5-140-6190. Base budgets. (Repealed.)

A. The Virginia CO_2 Budget Trading Program base budget shall be as follows:

1. For 2021, the Virginia CO_2 Budget Trading Program base budget is 27.16 million tons.

2. For 2022, the Virginia CO_2 Budget Trading Program base budget is 26.32 million tons.

3. For 2023, the Virginia CO_2 Budget Trading Program base budget is 25.48 million tons.

4. For 2024, the Virginia CO_2 Budget Trading Program base budget is 24.64 million tons.

5. For 2025, the Virginia CO_2 Budget Trading Program base budget is 23.80 million tons.

6. For 2026, the Virginia CO_2 Budget Trading Program base budget is 22.96 million tons.

7. For 2027, the Virginia CO_2 Budget Trading Program base budget is 22.12 million tons.

8. For 2028, the Virginia CO_2 Budget Trading Program base budget is 21.28 million tons.

9. For 2029, the Virginia CO_2 Budget Trading Program base budget is 20.44 million tons.

10. For 2030, the Virginia CO_2 Budget Trading Program base budget is 19.60 million tons.

B. For 2031 and each succeeding calendar year, the Virginia CO_2 Budget Trading Program base budget is 19.60 million tons unless modified as a result of a program review and future regulatory action.

9VAC5-140-6200. Undistributed and unsold conditional CO2 allowances. (Repealed.)

A. The department will retire undistributed CO_2 allowances at the end of each control period.

B. The department will retire unsold CO_2 allowances at the end of each control period.

9VAC5-140-6210. CO2 allowance allocations. (Repealed.)

A. The department will allocate the Virginia CO_2 Budget Trading Program base budget CO_2 allowances to the Virginia Auction Account.

B. For allocation years 2021 through 2030, the Virginia CO_2 Budget Trading Program adjusted budget shall be the maximum number of allowances available for allocation in a given allocation year, except for CO_2 CCR allowances.

C. In the event that the CCR is triggered during an auction, the department will allocate CO_2 CCR allowances, separate from and additional to the Virginia CO_2 Budget Trading Program base budget set forth in 9VAC5-140-6190 to the Virginia Auction Account. The CCR allocation is for the purpose of containing the cost of CO_2 allowances. The department will allocate CO_2 CCR allowances as follows:

1. On or before January 1, 2021, and each year thereafter, the department will allocate CO_2 CCR allowances equal to the quantity in Table 140-5A.

Table 140-5A CO_2 CCR Allowances from 2021 Forward	
2021	2.716 million tons
2022	2.632 million tons
2023	2.548 million tons
2024	2.464 million tons
2025	2.380 million tons
2026	2.296 million tons
2027	2.212 million tons
2028	2.128 million tons
2029	2.044 million tons
2030 and each year thereafter	1.960 million tons

2. CCR allowances allocated for a calendar year will be automatically transferred to the Virginia Auction Account to be auctioned. Following each auction, all CO_2 CCR allowances sold at auction will be transferred to winning bidders' accounts as CO_2 CCR allowances.

3. Unsold CO_2 CCR allowances will remain in the Virginia Auction Account to be re-offered for sale at auction within the same calendar year. CO_2 CCR allowances remaining unsold at the end of the calendar year in which they were originated will be made unavailable for sale at future auctions.

D. In the event that the ECR is triggered during an auction, the department will authorize its agent to withhold CO_2 allowances as needed. The department will further authorize its agent to convert and transfer any CO_2 allowances that have been withheld from any auction into the Virginia ECR account. The ECR withholding is for the purpose of additional emission reduction in the event of lower than anticipated emission reduction costs. The department's agent will withhold CO_2 ECR allowances as follows:

1. If the condition in 9VAC5-140-6420-C-1 is met at an auction, then the maximum number of CO_2 ECR allowances that will be withheld from that auction will be equal to the quantity shown in Table 140-5B minus the total quantity of CO_2 ECR allowances that have been withheld from any prior auction in that calendar year. Any CO_2 ECR allowances withheld from an auction will be transferred into the Virginia ECR account.

Table 140-5B ECR Allowances from 2021 Forward	
2021	2.716 million tons
2022	2.632 million tons
2023	2.548 million tons
2024	2.464 million tons
2025	2.380 million tons
2026	2.296 million tons
2027	2.212 million tons
2028	2.128 million tons
2029	2.044 million tons
2030 and each year thereafter	1.960 million tons

2. Allowances that have been transferred into the Virginia ECR account shall not be withdrawn.

E. The adjustment for banked allowances will be as follows. On March 15, 2021, the department may determine the adjustment for banked allowances quantity for allocation years 2021 through 2025 through the application of the following formula:

$$TABA = ((TA - TAE)/5) \times RS\%$$

Where:

TABA is the adjustment for banked allowances quantity in tons.

TA, adjustment, is the total quantity of allowances of vintage years prior to 2021 held in general and compliance accounts, including compliance accounts established pursuant to the CO_2 Budget Trading Program but not including accounts opened by participating states, as reflected in the CO_2 Allowance Tracking System on March 15, 2021.

TAE, adjustment emissions, is the total quantity of 2018, 2019, and 2020 emissions from all CO_2 budget sources in all participating states, reported pursuant to CO_2 Budget Trading Program as reflected in the CO_2 Allowance Tracking System on March 15, 2021.

RS% is Virginia budget divided by the regional budget.

F. CO_2 Budget Trading Program adjusted budgets for 2021 through 2025 shall be determined as follows: on April 15, 2021, the department will determine the Virginia CO_2 Budget Trading Program adjusted budgets for the 2021 through 2025 allocation years by the following formula:

~~AB = BB - TABA~~

~~Where:~~

~~AB is the Virginia CO_2 Budget Trading Program adjusted budget.~~

~~BB is the Virginia CO_2 Budget Trading Program base budget.~~

~~TABA is the adjustment for banked allowances quantity in tons.~~

~~C. The department or its agent will publish the CO_2 trading program adjusted budgets for the 2021 through 2025 allocation years.~~

~~Article 6~~
~~CO_2 Allowance Tracking System~~

9VAC5-140-6220. ~~CO2 Allowance Tracking System accounts.~~ (Repealed.)

~~A. Consistent with 9VAC5-140-6230 A, the department or its agent will establish one compliance account for each CO_2 budget source. Allocations of CO_2 allowances pursuant to Article 5 (9VAC5-140-6190 et seq.) of this part and deductions or transfers of CO_2 allowances pursuant to 9VAC5-140-6180, 9VAC5-140-6260, 9VAC5-140-6280, or Article 7 (9VAC5-140-6300 et seq.) of this part will be recorded in the compliance accounts in accordance with this section.~~

~~B. Consistent with 9VAC5-140-6230 B, the department or its agent will establish, upon request, a general account for any person. Transfers of CO_2 allowances pursuant to Article 7 (9VAC5-140-6300 et seq.) of this part will be recorded in the general account in accordance with this article.~~

9VAC5-140-6230. ~~Establishment of accounts.~~ (Repealed.)

~~A. Upon receipt of a complete account certificate of representation under 9VAC5-140-6110, the department or its agent will establish an allowance account and a compliance account for each CO_2 budget source for which an account certificate of representation was submitted.~~

~~B. General accounts shall operate as follows.~~

~~1. Any person may apply to open a general account for the purpose of holding and transferring CO_2 allowances. An application for a general account may designate one and only one CO_2 authorized account representative and one and only one CO_2 authorized alternate account representative who may act on behalf of the CO_2 authorized account representative. The agreement by which the CO_2 authorized alternate account representative is selected shall include a procedure for authorizing the CO_2 authorized alternate account representative to act in lieu of the CO_2 authorized account representative. A complete application for a general account shall be submitted to the department or its agent and shall include the following elements in a format prescribed by the department or its agent:~~

~~a. Name, address, email address, telephone number, and facsimile transmission number of the CO_2 authorized account representative and any CO_2 authorized alternate account representative;~~

~~b. At the option of the CO_2 authorized account representative, organization name and type of organization;~~

~~c. A list of all persons subject to a binding agreement for the CO_2 authorized account representative or any CO_2 authorized alternate account representative to represent their ownership interest with respect to the CO_2 allowances held in the general account;~~

~~d. The following certification statement by the CO_2 authorized account representative and any CO_2 authorized alternate account representative: "I certify that I was selected as the CO_2 authorized account representative or the CO_2 authorized alternate account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CO_2 allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CO_2 Budget Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the department or its agent or a court regarding the general account.";~~

~~e. The signature of the CO_2 authorized account representative and any CO_2 authorized alternate account representative and the dates signed; and~~

~~f. Unless otherwise required by the department or its agent, documents of agreement referred to in the application for a general account shall not be submitted to the department or its agent. Neither the department nor its agent shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.~~

~~2. Authorization of the CO_2 authorized account representative shall be as follows:~~

~~a. Upon receipt by the department or its agent of a complete application for a general account under subdivision 1 of this subsection:~~

~~(1) The department or its agent will establish a general account for the person for whom the application is submitted.~~

~~(2) The CO_2 authorized account representative and any CO_2 authorized alternate account representative for the general account shall represent and, by his representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CO_2 allowances held in the general account in all matters pertaining to the CO_2 Budget Trading Program, notwithstanding any agreement between the CO_2 authorized account representative or any CO_2 authorized~~

alternate account representative and such person. Any such person shall be bound by any order or decision issued to the CO_2 authorized account representative or any CO_2 authorized alternate account representative by the department or its agent or a court regarding the general account.

(3) Any representation, action, inaction, or submission by any CO_2 authorized alternate account representative shall be deemed to be a representation, action, inaction, or submission by the CO_2 authorized account representative.

b. Each submission concerning the general account shall be submitted, signed, and certified by the CO_2 authorized account representative or any CO_2 authorized alternate account representative for the persons having an ownership interest with respect to CO_2 allowances held in the general account. Each such submission shall include the following certification statement by the CO_2 authorized account representative or any CO_2 authorized alternate account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CO_2 allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

c. The department or its agent will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with subdivision 2 b of this subsection.

3. Changing CO_2 authorized account representative and CO_2 authorized alternate account representative, and changes in persons with ownership interest, shall be accomplished as follows:

a. The CO_2 authorized account representative for a general account may be changed at any time upon receipt by the department or its agent of a superseding complete application for a general account under subdivision 1 of this subsection. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CO_2 authorized account representative, or the previous CO_2 authorized alternate account representative, prior to the time and date when the department or its agent receives the superseding application for a general account shall be binding on the new CO_2 authorized account representative and the persons with an ownership interest with respect to the CO_2 allowances in the general account.

b. The CO_2 authorized alternate account representative for a general account may be changed at any time upon receipt by the department or its agent of a superseding complete application for a general account under subdivision 1 of this subsection. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CO_2 authorized account representative, or the previous CO_2 authorized alternate account representative, prior to the time and date when the department or its agent receives the superseding application for a general account shall be binding on the new alternate CO_2 authorized account representative and the persons with an ownership interest with respect to the CO_2 allowances in the general account.

c. In the event a new person having an ownership interest with respect to CO_2 allowances in the general account is not included in the list of such persons in the application for a general account, such new person shall be deemed to be subject to and bound by the application for a general account, the representations, actions, inactions, and submissions of the CO_2 authorized account representative and any CO_2 authorized alternate account representative, and the decisions, orders, actions, and inactions of the department or its agent, as if the new person were included in such list.

d. Within 30 days following any change in the persons having an ownership interest with respect to CO_2 allowances in the general account, including the addition or deletion of persons, the CO_2 authorized account representative or any CO_2 authorized alternate account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CO_2 allowances in the general account to include the change.

4. Objections concerning CO_2 authorized account representative shall be governed as follows:

a. Once a complete application for a general account under subdivision 1 of this subsection has been submitted and received, the department or its agent will rely on the application unless and until a superseding complete application for a general account under subdivision 1 of this subsection is received by the department or its agent.

b. Except as provided in subdivisions 3 a and 3 b of this subsection, no objection or other communication submitted to the department or its agent concerning the authorization, or any representation, action, inaction, or submission of the CO_2 authorized account representative or any CO_2 authorized alternate account representative for a general account shall affect any representation, action, inaction, or submission of the CO_2 authorized account representative or any CO_2 authorized alternate account representative or the finality of any decision or order by the department or its agent under the CO_2 Budget Trading Program.

c. Neither the department nor its agent will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CO_2 authorized account representative or any CO_2 authorized alternate account representative for a general account, including private legal disputes concerning the proceeds of CO_2 allowance transfers.

5. Delegation by CO_2 authorized account representative and CO_2 authorized alternate account representative shall be accomplished as follows:

a. A CO_2 authorized account representative may delegate, to one or more natural persons, his authority to make an electronic submission to the department or its agent provided for under this article and Article 7 (9VAC5-140-6300 et seq.) of this part.

b. A CO_2 authorized alternate account representative may delegate, to one or more natural persons, his authority to make an electronic submission to the department or its agent provided for under this article and Article 7 (9VAC5-140-6300 et seq.) of this part.

c. To delegate authority to make an electronic submission to the department or its agent in accordance with subdivisions 5 a and 5 b of this subsection, the CO_2 authorized account representative or CO_2 authorized alternate account representative, as appropriate, shall submit to the department or its agent a notice of delegation, in a format prescribed by the department that includes the following elements:

(1) The name, address, email address, telephone number, and facsimile transmission number of such CO_2 authorized account representative or CO_2 authorized alternate account representative;

(2) The name, address, email address, telephone number, and facsimile transmission number of each such natural person, referred to as "electronic submission agent";

(3) For each such natural person, a list of the type of electronic submissions under subdivision 5 c (1) or 5 c (2) of this subsection for which authority is delegated to him; and

(4) The following certification statement by such CO_2 authorized account representative or CO_2 authorized alternate account representative: "I agree that any electronic submission to the department or its agent that is by a natural person identified in this notice of delegation and of a type listed for such electronic submission agent in this notice of delegation and that is made when I am a CO_2 authorized account representative or CO_2 authorized alternate account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 9VAC5-140-6230 B 5 d shall be deemed to be an electronic submission by me. Until this notice of delegation is superseded by another notice of delegation under 9VAC5-140-6230 B 5 d, I agree to maintain an email account and to notify the department or its agent immediately of any change in my email address unless all delegation authority by me under 9VAC5-140-6230 B 5 is terminated."

d. A notice of delegation submitted under subdivision 5 c of this subsection shall be effective, with regard to the CO_2 authorized account representative or CO_2 authorized alternate account representative identified in such notice, upon receipt of such notice by the department or its agent and until receipt by the department or its agent of a superseding notice of delegation by such CO_2 authorized account representative or CO_2 authorized alternate account representative as appropriate. The superseding notice of delegation may replace any previously identified electronic submission agent, add a new electronic submission agent, or eliminate entirely any delegation of authority.

e. Any electronic submission covered by the certification in subdivision 5 c (4) of this subsection and made in accordance with a notice of delegation effective under subdivision 5 d of this subsection shall be deemed to be an electronic submission by the CO_2 authorized account representative or CO_2 authorized alternate account representative submitting such notice of delegation.

C. The department or its agent will assign a unique identifying number to each account established under subsection A or B of this section.

9VAC5-140-6240. ~~CO2 Allowance Tracking System responsibilities of CO2 authorized account representative.~~ (Repealed.)

Following the establishment of a COATS account, all submissions to the department or its agent pertaining to the account, including submissions concerning the deduction or transfer of CO_2 allowances in the account, shall be made only by the CO_2 authorized account representative for the account.

9VAC5-140-6250. ~~Recordation of CO2 allowance allocations.~~ (Repealed.)

A. By January 1 of each calendar year, the department or its agent will record in the following accounts:

1. In each CO_2 budget source's allowance account, the CO_2 allowances allocated to those sources by the department prior to being auctioned; and

2. In each CO_2 budget source's compliance account, the allowances purchased at auction by CO_2 budget units at the source under 9VAC5-140-6210 A.

B. Each year the department or its agent will record CO_2 allowances, as allocated to the unit under Article 5 (9VAC5-140-6190 et seq.) of this part, in the compliance account for the year after the last year for which CO_2 allowances were previously allocated to the compliance account. Each year, the department or its agent will also record CO_2 allowances, as

allocated under Article 5 (9VAC5-140-6190 et seq.) of this part, in an allocation set-aside for the year after the last year for which CO_2 allowances were previously allocated to an allocation set-aside.

C. Serial numbers for allocated CO_2 allowances shall be managed as follows. When allocating CO_2 allowances to and recording them in an account, the department or its agent will assign each CO_2 allowance a unique identification number that will include digits identifying the year for which the CO_2 allowance is allocated.

9VAC5-140-6260. ~~Compliance.~~ (Repealed.)

A. CO_2 allowances that meet the following criteria are available to be deducted for a CO_2 budget source to comply with the CO_2 requirements of 9VAC5-140-6050 C for a control period or an interim control period.

1. The CO_2 allowances are of allocation years that fall within a prior control period, the same control period, or the same interim control period for which the allowances will be deducted.

2. The CO_2 allowances are held in the CO_2 budget source's compliance account as of the CO_2 allowance transfer deadline for that control period or interim control period or are transferred into the compliance account by a CO_2 allowance transfer correctly submitted for recordation under 9VAC5-140-6300 by the CO_2 allowance transfer deadline for that control period or interim control period.

3. For CO_2 offset allowances generated by other participating states, the number of CO_2 offset allowances that are available to be deducted in order for a CO_2 budget source to comply with the CO_2 requirements of 9VAC5-140-6050 C for a control period or an interim control period shall not exceed 3.3% of the CO_2 budget source's CO_2 emissions for that control period, or may not exceed 3.3% of 0.50 times the CO_2 budget source's CO_2 emissions for an interim control period, as determined in accordance with this article and Article 8 (9VAC5-140-6330 et seq.) of this part.

4. The CO_2 allowances are not necessary for deductions for excess emissions for a prior control period under subsection D of this section.

B. Following the recordation, in accordance with 9VAC5-140-6310, of CO_2 allowance transfers submitted for recordation in the CO_2 budget source's compliance account by the CO_2 allowance transfer deadline for a control period or an interim control period, the department or its agent will deduct CO_2 allowances available under subsection A of this section to cover the source's CO_2 emissions, as determined in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part, for the control period or interim control period, as follows:

1. Until the amount of CO_2 allowances deducted equals the number of tons of total CO_2 emissions, or 0.50 times the number of tons of total CO_2 emissions for an interim control period, determined in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part, from all CO_2 budget units at the CO_2 budget source for the control period or interim control period; or

2. If there are insufficient CO_2 allowances to complete the deductions in subdivision 1 of this subsection, until no more CO_2 allowances available under subsection A of this section remain in the compliance account.

C. Identification of available CO_2 allowances by serial number and default compliance deductions shall be managed as follows:

1. The CO_2 authorized account representative for a source's compliance account may request that specific CO_2 allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period or interim control period in accordance with subsection B or D of this section. Such identification shall be made in the compliance certification report submitted in accordance with 9VAC5-140-6170.

2. The department or its agent will deduct CO_2 allowances for an interim control period or a control period from the CO_2 budget source's compliance account, in the absence of an identification or in the case of a partial identification of available CO_2 allowances by serial number under subdivision 1 of this subsection, as follows: Any CO_2 allowances that are available for deduction under subdivision 1 of this subsection. CO_2 allowances shall be deducted in chronological order (i.e., CO_2 allowances from earlier allocation years shall be deducted before CO_2 allowances from later allocation years). In the event that some, but not all, CO_2 allowances from a particular allocation year are to be deducted, CO_2 allowances shall be deducted by serial number, with lower serial number allowances deducted before higher serial number allowances.

D. Deductions for excess emissions shall be managed as follows.

1. After making the deductions for compliance under subsection B of this section, the department or its agent will deduct from the CO_2 budget source's compliance account a number of CO_2 allowances equal to three times the number of the source's excess emissions. In the event that a source has insufficient CO_2 allowances to cover three times the number of the source's excess emissions, the source shall be required to immediately transfer sufficient allowances into its compliance account.

2. Any CO_2 allowance deduction required under subdivision 1 of this subsection shall not affect the liability of the owners and operators of the CO_2 budget source or the CO_2 budget units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under applicable state law. The

following guidelines will be followed in assessing fines, penalties, or other obligations:

a. For purposes of determining the number of days of violation, if a CO_2 budget source has excess emissions for a control period, each day in the control period constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.

b. Each ton of excess emissions is a separate violation.

c. For purposes of determining the number of days of violation, if a CO_2 budget source has excess interim emissions for an interim control period, each day in the interim control period constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.

d. Each ton of excess interim emissions is a separate violation.

3. The propriety of the department's determination that a CO_2 budget source had excess emissions and the concomitant deduction of CO_2 allowances from that CO_2 budget source's account may be later challenged in the context of the initial administrative enforcement, or any civil or criminal judicial action arising from or encompassing that excess emissions violation. The commencement or pendency of any administrative enforcement, or civil or criminal judicial action arising from or encompassing that excess emissions violation will not act to prevent the department or its agent from initially deducting the CO_2 allowances resulting from the department's original determination that the relevant CO_2 budget source has had excess emissions. Should the department's determination of the existence or extent of the CO_2 budget source's excess emissions be revised either by a settlement or final conclusion of any administrative or judicial action, the department will act as follows:

a. In any instance where the department's determination of the extent of excess emissions was too low, the department will take further action under subdivisions 1 and 2 of this subsection to address the expanded violation.

b. In any instance where the department's determination of the extent of excess emissions was too high, the department will distribute to the relevant CO_2 budget source a number of CO_2 allowances equaling the number of CO_2 allowances deducted which are attributable to the difference between the original and final quantity of excess emissions. Should such CO_2 budget source's compliance account no longer exist, the CO_2 allowances will be provided to a general account selected by the owner or operator of the CO_2 budget source from which they were originally deducted.

E. The department or its agent will record in the appropriate compliance account all deductions from such an account pursuant to subsections B and D of this section.

F. Action by the department on submissions shall be as follows:

1. The department may review and conduct independent audits concerning any submission under the CO_2 Budget Trading Program and make appropriate adjustments of the information in the submissions.

2. The department may deduct CO_2 allowances from or transfer CO_2 allowances to a source's compliance account based on information in the submissions, as adjusted under subdivision 1 of this subsection.

9VAC5-140-6270. ~~Banking.~~ (Repealed.)

Each CO_2 allowance that is held in a compliance account or a general account will remain in such account unless and until the CO_2 allowance is deducted or transferred under 9VAC5-140-6180, 9VAC5-140-6260, 9VAC5-140-6280, or Article 7 (9VAC5-140-6300 et seq.) of this part.

9VAC5-140-6280. ~~Account error.~~ (Repealed.)

The department or its agent may, at its sole discretion and on its own motion, correct any error in any COATS account. Within 10 business days of making such correction, the department or its agent will notify the CO_2 authorized account representative for the account.

9VAC5-140-6290. ~~Closing of general accounts.~~ (Repealed.)

A. A CO_2 authorized account representative of a general account may instruct the department or its agent to close the account by submitting a statement requesting deletion of the account from the COATS and by correctly submitting for recordation under 9VAC5-140-6300 a CO_2 allowance transfer of all CO_2 allowances in the account to one or more other COATS accounts.

B. If a general account shows no activity for a period of one year or more and does not contain any CO_2 allowances, the department or its agent may notify the CO_2 authorized account representative for the account that the account will be closed in the COATS 30 business days after the notice is sent. The account will be closed after the 30-day period unless before the end of the 30-day period the department or its agent receives a correctly submitted transfer of CO_2 allowances into the account under 9VAC5-140-6300 or a statement submitted by the CO_2 authorized account representative demonstrating to the satisfaction of the department or its agent good cause as to why the account should not be closed. The department or its agent will have sole discretion to determine if the owner or operator of the unit demonstrated that the account should not be closed.

~~Article 7~~
~~CO_2 Allowance Transfers~~

9VAC5-140-6300. ~~Submission of CO2 allowance transfers.~~ (Repealed.)

The CO_2 authorized account representatives seeking recordation of a CO_2 allowance transfer shall submit the

transfer to the department or its agent. To be considered correctly submitted, the CO_2 allowance transfer shall include the following elements in a format specified by the department or its agent:

1. The numbers identifying both the transferor and transferee accounts;

2. A specification by serial number of each CO_2 allowance to be transferred;

3. The printed name and signature of the CO_2 authorized account representative of the transferor account and the date signed;

4. The date of the completion of the last sale or purchase transaction for the allowance, if any; and

5. The purchase or sale price of the allowance that is the subject of a sale or purchase transaction under subdivision 4 of this section.

9VAC5-140-6310. Recordation. (Repealed.)

A. Within five business days of receiving a CO_2 allowance transfer, except as provided in subsection B of this section, the department or its agent will record a CO_2 allowance transfer by moving each CO_2 allowance from the transferor account to the transferee account as specified by the request, provided that:

1. The transfer is correctly submitted under 9VAC5-140-6300; and

2. The transferor account includes each CO_2 allowance identified by serial number in the transfer.

B. A CO_2 allowance transfer into or out of a compliance account that is submitted for recordation following the CO_2 allowance transfer deadline and that includes any CO_2 allowances that are of allocation years that fall within a control period prior to or the same as the control period to which the CO_2 allowance transfer deadline applies will not be recorded until after completion of the process pursuant to 9VAC5-140-6260 B.

C. Where a CO_2 allowance transfer submitted for recordation fails to meet the requirements of subsection A of this section, the department or its agent will not record such transfer.

9VAC5-140-6320. Notification. (Repealed.)

A. Within five business days of recordation of a CO_2 allowance transfer under 9VAC5-140-6310, the department or its agent will notify each party to the transfer. Notice will be given to the CO_2 authorized account representatives of both the transferor and transferee accounts.

B. Within 10 business days of receipt of a CO_2 allowance transfer that fails to meet the requirements of 9VAC5-140-6310 A, the department or its agent will notify the CO_2 authorized account representatives of both accounts subject to the transfer of (i) a decision not to record the transfer and (ii) the reasons for such nonrecordation.

C. Nothing in this section shall preclude the submission of a CO_2 allowance transfer for recordation following notification of nonrecordation.

9VAC5-140-6325. Life-of-the-unit contractual arrangements. (Repealed.)

A. A power purchaser entered into a life of the unit contractual arrangement as described in subdivision b of the definition of "life of the unit contractual arrangement" with a CO_2 budget source or unit shall be responsible for acquiring and transferring all allowances to the CO_2 budget source or unit that are necessary for demonstrating compliance with the CO_2 budget trading program.

B. The CO_2 budget source or unit shall provide a copy of the energy conversion or energy tolling agreement to the department within six months of July 10, 2020. If such agreement is subject to third-party disclosure restrictions, the CO_2 budget source or unit shall provide purchaser within 10 days prior written notice of its intention to disclose the agreement to the department and request confidential treatment from the public disclosure of such agreement. The department will grant a request for confidential treatment pursuant to applicable statutory and regulatory requirements addressing confidential information.

C. The CO_2 budget source or unit shall be responsible for compliance with and otherwise be subject to all other requirements of this part and the CO_2 budget trading program.

Article 8
Monitoring, Reporting, and Recordkeeping

9VAC5-140-6330. General requirements. (Repealed.)

A. The owners and operators, and to the extent applicable, the CO_2 authorized account representative of a CO_2 budget unit shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this section and all applicable sections of 40 CFR Part 75. Where referenced in this article, the monitoring requirements of 40 CFR Part 75 shall be adhered to in a manner consistent with the purpose of monitoring and reporting CO_2 mass emissions pursuant to this part. For purposes of complying with such requirements, the definitions in 9VAC5-140-6020 and in 40 CFR 72.2 shall apply, and the terms "affected unit," "designated representative," and "CEMS" in 40 CFR Part 75 shall be replaced by the terms "CO_2 budget unit," "CO_2 authorized account representative," and "CEMS," respectively, as defined in 9VAC5-140-6020. For units not subject to an Acid Rain emissions limitation, the term "administrator" in 40 CFR Part 75 shall be replaced with "the department or its agent." Owners or operators of a CO_2 budget unit who monitor a non-CO_2 budget unit pursuant to the common, multiple, or bypass stack procedures in 40 CFR 75.72(b)(2)(ii), or 40 CFR 75.16(b)(2)(ii)(B) pursuant to 40 CFR 75.13, for purposes of

complying with this part, shall monitor and report CO_2 mass emissions from such non CO_2 budget units according to the procedures for CO_2 budget units established in this article.

B. The owner or operator of each CO_2 budget unit shall meet the following general requirements for installation, certification, and data accounting.

1. Install all monitoring systems necessary to monitor CO_2 mass emissions in accordance with 40 CFR Part 75, except for equation G-1. Equation G-1 in Appendix G shall not be used to determine CO_2 emissions under this part. This may require systems to monitor CO_2 concentration, stack gas flow rate, O_2 concentration, heat input, and fuel flow rate.

2. Successfully complete all certification tests required under 9VAC5-140-6340 and meet all other requirements of this section and 40 CFR Part 75 applicable to the monitoring systems under subdivision 1 of this subsection.

3. Record, report, and quality-assure the data from the monitoring systems under subdivision 1 of this subsection.

C. The owner or operator shall meet the monitoring system certification and other requirements of subsection B of this section on or before the following dates. The owner or operator shall record, report, and quality-assure the data from the monitoring systems under subdivision B 1 of this section on and after the following dates:

1. The owner or operator of a CO_2 budget unit, except for a CO_2 budget unit under subdivision 2 of this subsection, shall comply with the requirements of this section by January 1, 2021.

2. The owner or operator of a CO_2 budget unit that commences commercial operation July 1, 2021, shall comply with the requirements of this section by (i) January 1, 2022, or (ii) the earlier of 90 unit operating days after the date on which the unit commences commercial operation or 180 calendar days after the date on which the unit commences commercial operation.

3. For the owner or operator of a CO_2 budget unit for which construction of a new stack or flue installation is completed after the applicable deadline under subdivision 1 or 2 of this subsection by the earlier of (i) 90 unit operating days after the date on which emissions first exit to the atmosphere through the new stack or flue or (ii) 180 calendar days after the date on which emissions first exit to the atmosphere through the new stack or flue.

D. Data shall be reported as follows:

1. Except as provided in subdivision 2 of this subsection, the owner or operator of a CO_2 budget unit that does not meet the applicable compliance date set forth in subsection C of this section for any monitoring system under subdivision B 1 of this section shall, for each such monitoring system, determine, record, and report maximum potential, or as appropriate minimum potential, values for CO_2 concentration, CO_2 emissions rate, stack gas moisture content, fuel flow rate, heat input, and any other parameter required to determine CO_2 mass emissions in accordance with 40 CFR 75.31(b)(2) or (c)(3) or Section 2.4 of Appendix D of 40 CFR Part 75 as applicable.

2. The owner or operator of a CO_2 budget unit that does not meet the applicable compliance date set forth in subdivision C 3 of this section for any monitoring system under subdivision B 1 of this section shall, for each such monitoring system, determine, record, and report substitute data using the applicable missing data procedures in Subpart D, or Appendix D of 40 CFR Part 75, in lieu of the maximum potential, or as appropriate minimum potential, values for a parameter if the owner or operator demonstrates that there is continuity between the data streams for that parameter before and after the construction or installation under subdivision C 3 of this section.

a. CO_2 budget units subject to an Acid Rain emissions limitation or CSAPR NO_X Ozone Season Trading Program that qualify for the optional SO_2, NO_X, and CO_2 (for Acid Rain) or NO_X (for CSAPR NO_X Ozone Season Trading Program) emissions calculations for low mass emissions (LME) units under 40 CFR 75.19 and report emissions for such programs using the calculations under 40 CFR 75.19, shall also use the CO_2 emissions calculations for LME units under 40 CFR 75.19 for purposes of compliance with these regulations.

b. CO_2 budget units subject to an Acid Rain emissions limitation that do not qualify for the optional SO_2, NO_X, and CO_2 (for Acid Rain) or NO_X (for CSAPR NO_X Ozone Season Trading Program) emissions calculations for LME units under 40 CFR 75.19 shall not use the CO_2 emissions calculations for LME units under 40 CFR 75.19 for purposes of compliance with these regulations.

c. CO_2 budget units not subject to an Acid Rain emissions limitation shall qualify for the optional CO_2 emissions calculation for LME units under 40 CFR 75.19, provided that they emit less than 100 tons of NO_X annually and no more than 25 tons of SO_2 annually.

3. The owner or operator of a CO_2 budget unit shall report net electric output data to the department as required by Article 5 (9VAC5-140-6190 et seq.) of this part.

E. Prohibitions shall be as follows.

1. No owner or operator of a CO_2 budget unit shall use any alternative monitoring system, alternative reference method, or any other alternative for the required CEMS without having obtained prior written approval in accordance with 9VAC5-140-6380.

2. No owner or operator of a CO_2 budget unit shall operate the unit so as to discharge, or allow to be discharged, CO_2 emissions to the atmosphere without accounting for all such

emissions in accordance with the applicable provisions of this article and 40 CFR Part 75.

3. No owner or operator of a CO_2 budget unit shall disrupt the CEMS, any portion thereof, or any other approved emissions monitoring method, and thereby avoid monitoring and recording CO_2 mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this article and 40 CFR Part 75.

4. No owner or operator of a CO_2 budget unit shall retire or permanently discontinue use of the CEMS, any component thereof, or any other approved emissions monitoring system under this article, except under any one of the following circumstances:

a. The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this article and 40 CFR Part 75, by the department for use at that unit that provides emissions data for the same pollutant or parameter as the retired or discontinued monitoring system; or

b. The CO_2 authorized account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with 9VAC5-140-6340 D 3 a.

9VAC5-140-6340. ~~Initial certification and recertification procedures.~~ (Repealed.)

A. The owner or operator of a CO_2 budget unit shall be exempt from the initial certification requirements of this section for a monitoring system under 9VAC5-140-6330 B 1 if the following conditions are met:

1. The monitoring system has been previously certified in accordance with 40 CFR Part 75; and

2. The applicable quality assurance and quality control requirements of 40 CFR 75.21 and Appendix B and Appendix D of 40 CFR Part 75 are fully met for the certified monitoring system described in subdivision 1 of this subsection.

B. The recertification provisions of this section shall apply to a monitoring system under 9VAC5-140-6330 B 1 exempt from initial certification requirements under subsection A of this section.

C. Notwithstanding subsection A of this section, if the administrator has previously approved a petition under 40 CFR 75.72(b)(2)(ii), or 40 CFR 75.16(b)(2)(ii)(B) as pursuant to 40 CFR 75.13 for apportioning the CO_2 emissions rate measured in a common stack or a petition under 40 CFR 75.66 for an alternative requirement in 40 CFR Part 75, the CO_2 authorized account representative shall submit the petition to the department under 9VAC5-140-6380 A to determine whether the approval applies under this program.

D. Except as provided in subsection A of this section, the owner or operator of a CO_2 budget unit shall comply with the following initial certification and recertification procedures for a CEMS and an excepted monitoring system under Appendix D of 40 CFR Part 75 and under 9VAC5-140-6330 B 1. The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology in 40 CFR 75.19 or that qualifies to use an alternative monitoring system under Subpart E of 40 CFR Part 75 shall comply with the procedures in subsection E or F of this section, respectively.

1. For initial certification, the owner or operator shall ensure that each CEMS required under 9VAC5-140-6330 B 1, which includes the automated DAHS, successfully completes all of the initial certification testing required under 40 CFR 75.20 by the applicable deadlines specified in 9VAC5-140-6330 C. In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this article in a location where no such monitoring system was previously installed, initial certification in accordance with 40 CFR 75.20 is required.

2. For recertification, the following requirements shall apply.

a. Whenever the owner or operator makes a replacement, modification, or change in a certified CEMS under 9VAC5-140-6330 B 1 that the administrator or the department determines significantly affects the ability of the system to accurately measure or record CO_2 mass emissions or to meet the quality assurance and quality control requirements of 40 CFR 75.21 or Appendix B to 40 CFR Part 75, the owner or operator shall recertify the monitoring system according to 40 CFR 75.20(b).

b. For systems using stack measurements such as stack flow, stack moisture content, CO_2 or O_2 monitors, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that the administrator or the department determines to significantly change the flow or concentration profile, the owner or operator shall recertify the CEMS according to 40 CFR 75.20(b). Examples of changes that require recertification include replacement of the analyzer, change in location or orientation of the sampling probe or site, or change of flow rate monitor polynomial coefficients.

3. The approval process for initial certifications and recertification shall be as follows: subdivisions 3 a through 3 d of this subsection apply to both initial certification and recertification of a monitoring system under 9VAC5-140-6330 B 1. For recertifications, replace the words "certification" and "initial certification" with the word "recertification," replace the word "certified" with "recertified," and proceed in the manner prescribed in

40 CFR 75.20(b)(5) and (g)(7) in lieu of subdivision 3 e of this subsection.

a. The CO_2 authorized account representative shall submit to the department or its agent, the appropriate EPA Regional Office and the administrator a written notice of the dates of certification in accordance with 9VAC5-140-6360.

b. The CO_2 authorized account representative shall submit to the department or its agent a certification application for each monitoring system. A complete certification application shall include the information specified in 40 CFR 75.63.

c. The provisional certification date for a monitor shall be determined in accordance with 40 CFR 75.20(a)(3). A provisionally certified monitor may be used under the CO_2 Budget Trading Program for a period not to exceed 120 days after receipt by the department of the complete certification application for the monitoring system or component thereof under subdivision 3 b of this subsection. Data measured and recorded by the provisionally certified monitoring system or component thereof, in accordance with the requirements of 40 CFR Part 75, will be considered valid quality assured data, retroactive to the date and time of provisional certification, provided that the department does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of receipt of the complete certification application by the department.

d. The department will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under subdivision 3 b of this subsection. In the event the department does not issue such a notice within such 120 day period, each monitoring system that meets the applicable performance requirements of 40 CFR Part 75 and is included in the certification application will be deemed certified for use under the CO_2 Budget Trading Program.

(1) If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR Part 75, then the department will issue a written notice of approval of the certification application within 120 days of receipt.

(2) If the certification application is incomplete, then the department will issue a written notice of incompleteness that sets a reasonable date by which the CO_2 authorized account representative shall submit the additional information required to complete the certification application. If the CO_2 authorized account representative does not comply with the notice of incompleteness by the specified date, then the department may issue a notice of disapproval under subdivision 3 d (3) of this subsection. The 120-day review period shall not begin before receipt of a complete certification application.

(3) If the certification application shows that any monitoring system or component thereof does not meet the performance requirements of 40 CFR Part 75, or if the certification application is incomplete and the requirement for disapproval under subdivision 3 d (2) of this subsection is met, then the department will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the department and the data measured and recorded by each uncertified monitoring system or component thereof shall not be considered valid quality assured data beginning with the date and hour of provisional certification. The owner or operator shall follow the procedures for loss of certification in subdivision 3 e of this subsection for each monitoring system or component thereof, which is disapproved for initial certification.

(4) The department may issue a notice of disapproval of the certification status of a monitor in accordance with 9VAC5-140-6350 B.

e. If the department issues a notice of disapproval of a certification application under subdivision 3 d (3) of this subsection or a notice of disapproval of certification status under subdivision 3 d (3) of this subsection, then:

(1) The owner or operator shall substitute the following values for each disapproved monitoring system, for each hour of unit operation during the period of invalid data beginning with the date and hour of provisional certification and continuing until the time, date, and hour specified under 40 CFR 75.20(a)(5)(i) or 40 CFR 75.20(g)(7): (i) for units using or intending to monitor for CO_2 mass emissions using heat input or for units using the low mass emissions excepted methodology under 40 CFR 75.19, the maximum potential hourly heat input of the unit; or (ii) for units intending to monitor for CO_2 mass emissions using a CO_2 pollutant concentration monitor and a flow monitor, the maximum potential concentration of CO_2 and the maximum potential flow rate of the unit under Section 2.1 of Appendix A of 40 CFR Part 75;

(2) The CO_2 authorized account representative shall submit a notification of certification retest dates and a new certification application in accordance with subdivisions 3 a and 3 b of this subsection; and

(3) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the department's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

E. The owner or operator of a unit qualified to use the low mass emissions excepted methodology under 9VAC5-140-6330 D 3 shall meet the applicable certification and recertification requirements of 40 CFR 75.19(a)(2), 40 CFR 75.20(h), and this section. If the owner or operator of such a unit elects to certify a fuel flow meter system for heat input

determinations, the owner or operator shall also meet the certification and recertification requirements in 40 CFR 75.20(g).

F. The CO_2 authorized account of each unit for which the owner or operator intends to use an alternative monitoring system approved by the administrator and, if applicable, the department under Subpart E of 40 CFR Part 75 shall comply with the applicable notification and application procedures of 40 CFR 75.20(f).

9VAC5-140-6350. Out of control periods. (Repealed.)

A. Whenever any monitoring system fails to meet the quality assurance/quality control (QA/QC) requirements or data validation requirements of 40 CFR Part 75, data shall be substituted using the applicable procedures in Subpart D or Appendix D of 40 CFR Part 75.

B. Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under 9VAC5-140-6340 or the applicable provisions of 40 CFR Part 75, both at the time of the initial certification or recertification application submission and at the time of the audit, the department or administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this subsection, an audit shall be either a field audit or an audit of any information submitted to the department or the administrator. By issuing the notice of disapproval, the department or administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the initial certification or recertification procedures in 9VAC5-140-6340 for each disapproved monitoring system.

9VAC5-140-6360. Notifications. (Repealed.)

The CO_2 authorized account representative for a CO_2 budget unit shall submit written notice to the department and the administrator in accordance with 40 CFR 75.61.

9VAC5-140-6370. Recordkeeping and reporting. (Repealed.)

A. The CO_2 authorized account representative shall comply with all recordkeeping and reporting requirements in this section, the applicable recordkeeping and reporting requirements under 40 CFR 75.73, and the requirements of 9VAC5-140-6080 E.

B. The owner or operator of a CO_2 budget unit shall submit a monitoring plan in the manner prescribed in 40 CFR 75.62.

C. The CO_2 authorized account representative shall submit an application to the department within 45 days after completing all CO_2 monitoring system initial certification or recertification tests required under 9VAC5-140-6340, including the information required under 40 CFR 75.63 and 40 CFR 75.53(e) and (f).

D. The CO_2 authorized account representative shall submit quarterly reports, as follows:

1. The CO_2 authorized account representative shall report the CO_2 mass emissions data for the CO_2 budget unit, in an electronic format prescribed by the department unless otherwise prescribed by the department for each calendar quarter.

2. The CO_2 authorized account representative shall submit each quarterly report to the department or its agent within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in Subpart H of 40 CFR Part 75 and 40 CFR 75.64. Quarterly reports shall be submitted for each CO_2 budget unit, or group of units using a common stack, and shall include all of the data and information required in Subpart G of 40 CFR Part 75, except for opacity, heat input, NO_x, and SO_2 provisions.

3. The CO_2 authorized account representative shall submit to the department or its agent a compliance certification in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

a. The monitoring data submitted were recorded in accordance with the applicable requirements of this article and 40 CFR Part 75, including the quality assurance procedures and specifications;

b. For a unit with add-on CO_2 emissions controls and for all hours where data are substituted in accordance with 40 CFR 75.34(a)(1), the add-on emissions controls were operating within the range of parameters listed in the QA/QC program under Appendix B of 40 CFR Part 75 and the substitute values do not systematically underestimate CO_2 emissions; and

c. The CO_2 concentration values substituted for missing data under Subpart D of 40 CFR Part 75 do not systematically underestimate CO_2 emissions.

9VAC5-140-6380. Petitions. (Repealed.)

A. Except as provided in subsection C of this section, the CO_2 authorized account representative of a CO_2 budget unit that is subject to an Acid Rain emissions limitation may submit a petition to the administrator under 40 CFR 75.66 and to the department requesting approval to apply an alternative to any requirement of 40 CFR Part 75. Application of an alternative to any requirement of 40 CFR Part 75 is in accordance with this article only to the extent that the petition is approved in

writing by the administrator, and subsequently approved in writing by the department.

B. Petitions for a CO_2 budget unit that is not subject to an Acid Rain emissions limitation shall meet the following requirements.

1. The CO_2 authorized account representative of a CO_2 budget unit that is not subject to an Acid Rain emissions limitation may submit a petition to the administrator under 40 CFR 75.66 and to the department requesting approval to apply an alternative to any requirement of 40 CFR Part 75. Application of an alternative to any requirement of 40 CFR Part 75 is in accordance with this article only to the extent that the petition is approved in writing by the administrator and subsequently approved in writing by the department.

2. In the event that the administrator declines to review a petition under subdivision 1 of this subsection, the CO_2 authorized account representative of a CO_2 budget unit that is not subject to an Acid Rain emissions limitation may submit a petition to the department requesting approval to apply an alternative to any requirement of this article. That petition shall contain all of the relevant information specified in 40 CFR 75.66. Application of an alternative to any requirement of this article is in accordance with this article only to the extent that the petition is approved in writing by the department.

C. The CO_2 authorized account representative of a CO_2 budget unit that is subject to an Acid Rain emissions limitation may submit a petition to the administrator under 40 CFR 75.66 and to the department requesting approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR 75.72 or a CO_2 concentration CEMS used under 40 CFR 75.71(a)(2). Application of an alternative to any such requirement is in accordance with this article only to the extent the petition is approved in writing by the administrator and subsequently approved in writing by the department.

9VAC5-140-6390. [Reserved]. (Repealed.)

9VAC5-140-6400. [Reserved]. (Repealed.)

Article 9

Auction of CO_2 CCR and ECR Allowances

9VAC5-140-6410. Purpose. (Repealed.)

The following requirements shall apply to each allowance auction. The department or its agent may specify additional information in the auction notice for each auction. Such additional information may include the time and location of the auction, auction rules, registration deadlines, and any additional information deemed necessary or useful.

9VAC5-140-6420. General requirements. (Repealed.)

A. The department's agent will include the following information in the auction notice for each auction:

1. The number of CO_2 allowances offered for sale at the auction, not including any CO_2 CCR allowances;

2. The number of CO_2 CCR allowances that will be offered for sale at the auction if the condition of subdivision B 1 of this section is met;

3. The minimum reserve price for the auction;

4. The CCR trigger price for the auction;

5. The maximum number of CO_2 allowances that may be withheld from sale at the auction if the condition of subdivision D 1 of this section is met; and

6. The ECR trigger price for the auction.

B. The department's agent will follow these rules for the sale of CO_2 CCR allowances.

1. CO_2 CCR allowances shall only be sold at an auction in which total demand for allowances, above the CCR trigger price, exceeds the number of CO_2 allowances available for purchase at the auction, not including any CO_2 CCR allowances.

2. If the condition of subdivision 1 of this subsection is met at an auction, then the number of CO_2 CCR allowances offered for sale by the department or its agent at the auction shall be equal to the number of CO_2 CCR allowances in the Virginia Auction Account at the time of the auction.

3. After all of the CO_2 CCR allowances in the Virginia Auction Account have been sold in a given calendar year, no additional CO_2 CCR allowances will be sold at any auction for the remainder of that calendar year, even if the condition of subdivision 1 of this subsection is met at an auction.

4. At an auction in which CO_2 CCR allowances are sold, the reserve price for the auction shall be the CCR trigger price.

5. If the condition of subdivision 1 of this subsection is not satisfied, no CO_2 CCR allowances shall be offered for sale at the auction, and the reserve price for the auction shall be equal to the minimum reserve price.

C. The department's agent shall implement the reserve price as follows: (i) no allowances shall be sold at any auction for a price below the reserve price for that auction and (ii) if the total demand for allowances at an auction is less than or equal to the total number of allowances made available for sale in that auction, then the auction clearing price for the auction shall be the reserve price.

D. The department's agent will meet the following rules for the withholding of CO_2 ECR allowances from an auction.

1. CO_2 ECR allowances shall only be withheld from an auction if the demand for allowances would result in an auction clearing price that is less than the ECR trigger price prior to the withholding from the auction of any ECR allowances.

~~2. If the condition in subdivision 1 of this subsection is met at an auction, then the maximum number of CO_2 ECR allowances that may be withheld from that auction will be equal to the quantity shown in Table 140-5B of 9VAC5-140-6210 E minus the total quantity of CO_2 ECR allowances that have been withheld from any prior auction in that calendar year. Any CO_2 ECR allowances withheld from an auction will be transferred into the Virginia ECR Account.~~

Article 10
Program Monitoring and Review Transition

9VAC5-140-6440. ~~Program monitoring and review.~~ (Repealed.)

~~In conjunction with the CO_2 Budget Trading Program program monitoring and review process, the department will evaluate impacts of the program specific to Virginia, including economic, energy, and environmental impacts and impacts on vulnerable and environmental justice and underserved communities. The department will, in evaluating the impacts on environmental justice communities, including low income, minority, and tribal communities, develop and implement a plan to ensure increased participation of environmental justice communities in the review.~~

9VAC5-140-6445. Transition to repeal.

Notwithstanding this section, Part VII (9VAC5-140-6010 et seq.) shall be repealed effective December 31, 2023. Each affected facility shall place the allowances needed to meet its remaining compliance obligation into its compliance account in the CO_2 Allowance Tracking System (COATS) as soon as practicable but no later than March 1, 2024, in order that the allowances can be deducted from the account to meet the full control period obligation. The department shall repeal this section once every affected source has met its full compliance obligation.

VA.R. Doc. No. R23-7361; Filed July 10, 2023, 1:23 p.m.

VIRGINIA WASTE MANAGEMENT BOARD

Forms

REGISTRAR'S NOTICE: Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

Title of Regulation: **9VAC20-90. Solid Waste Management Permit Action Fees and Annual Fees.**

Agency Contact: Sanjay Thirunagari, Programs Manager, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1532, or email sanjay.thirunagari@deq.virginia.gov.

FORMS (9VAC20-90)

Solid Waste Information and Assessment Program Reporting Table, Form DEQ 50-25 with Statement of Economic Benefits Form and Instructions (rev. 12/2018)

~~Solid Waste Annual Permit Quarter Payment Form PF001 (rev. 7/2022)~~

Solid Waste Annual Permit Quarter Payment Form PF001 (rev. 6/2023)

VA.R. Doc. No. R23-7616; Filed June 30, 2023, 12:20 p.m.

GUIDANCE DOCUMENTS

PUBLIC COMMENT OPPORTUNITY

Pursuant to § 2.2-4002.1 of the Code of Virginia, a certified guidance document is subject to a 30-day public comment period after publication in the Virginia Register of Regulations and prior to the guidance document's effective date. During the public comment period, comments may be made through the Virginia Regulatory Town Hall website (http://www.townhall.virginia.gov) or sent to the agency contact. Under subsection C of § 2.2-4002.1, the effective date of the guidance document may be delayed for an additional period. The guidance document may also be withdrawn.

The following guidance documents have been submitted for publication by the listed agencies for a public comment period. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to access it. Guidance documents are also available on the Virginia Regulatory Town Hall (http://www.townhall.virginia.gov) or from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, Richmond, Virginia 23219.

BOARD OF JUVENILE JUSTICE

Title of Document: Virginia Juvenile Community Crime Control Act Manual.

Public Comment Deadline: August 30, 2023.

Effective Date: September 1, 2023.

Agency Contact: Ken Davis, Regulatory Affairs Coordinator, Department of Juvenile Justice, 600 East Main Street, 20th Floor, Richmond, VA 23219, telephone (804) 807-0486, or email kenneth.davis@djj.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Document: Electronic Home-Based Services and Assistive Technology.

Public Comment Deadline: August 30, 2023.

Effective Date: August 31, 2023.

Agency Contact: Meredith Lee, Policy, Regulations, and Manuals Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, or email meredith.lee@dmas.virginia.gov.

STATE AIR POLLUTION CONTROL BOARD

Opportunity for Public Comment on a Permit to Limit Air Pollution Emitted by a Facility in Alleghany County, Virginia

Purpose of notice: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a permit to limit air pollution emitted by a facility in Alleghany County, Virginia. The Commonwealth intends to submit the permit as a revision to the Commonwealth State Implementation Plan (SIP) in accordance with the requirements of § 110(a) of the federal Clean Air Act. The SIP is the plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA).

Public comment period: July 31, 2023, through August 30, 2023.

Public hearing: A public hearing will be conducted if a request is made in writing to the contact listed in this notice. In order to be considered, the request must include the full name, address, and telephone number of the person requesting the hearing and be received by DEQ by the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

Permit name: State operating permit issued by DEQ.

Name, address, and registration number: WestRock Virginia LLC - Covington, 104 East Riverside Street, Covington, VA 24426; Registration No. 20328.

Description of proposal: The proposed revision consists of a permit to control emissions of sulfur dioxide (SO_2) to the atmosphere from the listed facility.

The proposed revision will consist of a determination of reasonable progress for the control of emissions of SO_2 to the atmosphere from the WestRock Virginia LLC - Covington facility. The reasonable progress determination is being made pursuant to 40 CFR 51.208(d) and to Article 5 (9VAC5-80-800 et seq.) of 9VAC5-80, Permits for Stationary Sources. Reasonable progress for SO_2 emissions from the WestRock Virginia - LLC Covington facility has been determined to be a decrease in emission limit to 1,359 tons per year of SO_2 emissions from the WestRock Virginia LLC - Covington facility as a whole. No emissions increases are anticipated as a result of this project.

A state operating permit is to be issued as the administrative mechanism to ensure compliance with reasonable progress requirements. The permit is being issued pursuant to Article 5 (9VAC5-80-800 et seq.) of 9VAC5-80, Permits for Stationary Sources, and is federally enforceable upon issuance. The permit will establish emission limits for control of SO_2.

Federal information: This notice is also being given to satisfy the public participation requirements of 40 CFR 51.102. The permit will be submitted as a revision to the Commonwealth SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104.

Consultation with federal land managers (FLMs): As provided in 40 CFR 51.302(b)(2), the FLMs were given the opportunity to comment on this permit on January 5, 2023. Comments were received by March 6, 2023. DEQ's response to the FLM comments can be found in § XI.B of the engineering analysis for this state operating permit.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by the last day of the comment period. All faxes must have a cover page that lists the intended recipient. All materials received are part of the public record.

To review proposal: The proposal is available on the DEQ Air Public Notices website at https://www.deq.virginia.gov/permits/public-notices/air. The proposal may also be obtained by contacting the DEQ representative listed in this notice. The public may make an appointment to review the proposal between 8:30 a.m. and 4:30 p.m. of each business day until the close of the comment period at the following DEQ locations:

Main Street Office, Suite 1400, 1111 East Main Street, Richmond, VA, telephone (804) 698-4070; and

Blue Ridge Regional Office, 901 Russell Drive, Salem, VA 24153, telephone (540) 562-6700.

Contact the agency staff listed for public comments, document requests, and additional information.

Contact Information: Erin Rau, Department of Environmental Quality, Blue Ridge Regional Office, 901 Russell Drive, Salem, VA 24153, telephone (540) 759-9501, FAX (804) 698-4178, or email erin.rau@deq.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Prairie Solar LLC Notice of Intent for a Small Renewable Energy Project (Solar) - Isle of Wight County

Prairie Solar LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documents for a permit by rule for a small renewable energy project (solar) in Isle of Wight County, Virginia. The project name is Prairie Solar. The project number is RE0000291. The proposed project is located in Windsor, Virginia, west of Longview Drive (Route 602) on six adjoining parcels totaling approximately 432.87 acres. The centroid coordinates are 36.875105°, -76.618221°. The project will have up to a rated capacity of 20 megawatts alternating current

and use approximately 62,100 photovoltaic solar panels. The project developer is Energix Renewables.

Contact Information: Amber Foster, Small Renewable Energy Permit by Rule Coordinator, Department of Environmental Quality, 1111 East Main Street, Richmond, VA 23219, telephone (804) 774-8474.

Proposed Enforcement Action for Concept Developments Inc.

An enforcement action has been proposed for Concept Developments Inc. for violations of State Water Control Law and regulations at the Southpoint Business Park Lot 12 located in Prince George County, Virginia. The proposed order is available from the Department of Environment Quality contact or at https://www.deq.virginia.gov/permits/public-notices/enforcement-orders. The staff contact will accept written comments from July 31, 2023, to August 31, 2023.

Contact Information: Matt Richardson, Enforcement Specialist, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, or email matthew.richardson@deq.virginia.gov.

Proposed Action for Town of Edinburg

Department of Environment Quality (DEQ) proposes to issue an order amendment to the Town of Edinburg for the Edinburg sewage treatment plant, which includes injunctive relief for a proposed upgrade of the facility. The proposed order amendment is available from the DEQ contact or at https://www.deq.virginia.gov/permits/public-notices/enforcement-orders. The DEQ contact will accept written comments from July 31, 2023, through August 29, 2023.

Contact Information: Francesca Wright, Enforcement Specialist, Department of Environmental Quality, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, FAX (804) 698-4178, or email francesca.wright@deq.virginia.gov.

Proposed Enforcement Action for Hampton Roads Connector Partners

An enforcement action has been proposed for Hampton Roads Connector Partners for violations of State Water Control Law in Norfolk, Virginia. A description of the proposed action is available at the Department of Environment Quality office listed or online at www.deq.virginia.gov.

Contact Information: Russell Deppe, Enforcement Specialist, Department of Environment Quality, 5636 Southern Boulevard, Virginia Beach, VA 23462, FAX (804) 698-4178, or email russell.deppe@deq.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Intent to Amend the Virginia State Plan for Medical Assistance Pursuant to § 1902(a)(13) of the Social Security Act (USC § 1396a(a)(13)) - Nursing Facility Value-Based Purchasing Program

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Methods and Standards for Establishing Payment Rates for Long-Term Care (12VAC30-90).

This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). A copy of this notice is available for public review from Meredith Lee, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, or via email at meredith.lee@dmas.virginia.gov.

DMAS is specifically soliciting input from stakeholders, providers, and beneficiaries on the potential impact of the proposed changes discussed in this notice. Comments or inquiries may be submitted, in writing, within 30 days of this notice publication to Meredith Lee and such comments are available for review at the same address. Comments may also be submitted, in writing, on the Virginia Regulatory Town Hall public comment forum at https://townhall.virginia.gov/L/generalnotice.cfm.

In accordance with Item 304.OOO of Chapter 2 of the 2022 Acts of Assembly, Special Session I, DMAS revised the state plan in 2023 to establish a unified, value-based purchasing (VBP) program that includes enhanced funding for facilities that meet or exceed performance or improvement thresholds as developed, reported, and consistently measured by DMAS in cooperation with participating facilities. During the first year of this program, half of the available funding was distributed to participating nursing facilities to be invested in functions, staffing, and other efforts necessary to build the participating nursing facilities' capacity to enhance the quality of care furnished to Medicaid members. This funding was administered as a Medicaid rate add-on. The remaining funding was allocated based on performance criteria as designated under the nursing facility VBP program.

Pursuant to Item 304.OOO of Chapter 2 of the 2022 Acts of Assembly, Special Session I, the state plan is being revised again to reflect the second year of the nursing facility VBP program. The amount of funding devoted to nursing facility quality of care investments shall be 25% of available funding in the second year of the program before the program transitions to payments based solely on nursing facility performance criteria in the third year of the program.

The department shall convene the stakeholders no less than annually through at least the first two years of the program to review program progress and discuss potential modifications to components of the arrangement, including, but not limited

to, timing of enhanced payments, performance metrics, and threshold determinations.

Complete details, including technical information regarding program eligibility, performance measures, performance thresholds, and payments, are available on the DMAS website at https://www.dmas.virginia.gov/about-us/value-based-purchasing/ and will be effective beginning July 1, 2023.

The expected increase in annual aggregate expenditures is $162,558 in state general funds, $418 in special funds, and $188,179 in federal funds in federal fiscal year 2023, and $3,026,007 in state general funds, $1,671 in special funds, and $3,240,471 in federal funds in federal fiscal year 2024.

Contact Information: Meredith Lee, Supervisor, Policy, Regulation, and Member Engagement Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, FAX (804) 786-1680, or email meredith.lee@dmas.virginia.gov.

Intent to Amend the Virginia State Plan for Medical Assistance Pursuant to § 1902(a)(13) of the Social Security Act (USC § 1396a(a)(13)) - Targeted Case Management for Individuals with Traumatic Brain Injury

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Methods and Standards for Establishing Payment Rates; Other Types of Care (12VAC30-80).

This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). A copy of this notice is available for public review from Meredith Lee, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, or via email at meredith.lee@dmas.virginia.gov.

DMAS is specifically soliciting input from stakeholders, providers, and beneficiaries on the potential impact of the proposed changes discussed in this notice. Comments or inquiries may be submitted, in writing, within 30 days of this notice publication to Meredith Lee and such comments are available for review at the same address. Comments may also be submitted, in writing, on the Virginia Regulatory Town Hall public comment forum at https://townhall.virginia.gov/L/generalnotice.cfm.

In accordance with Chapter 11 of the 2022 Acts of Assembly and Chapter 2 of the 2022 Acts of Assembly, Special Session I, DMAS is revising the state plan to include a provision for the payment of targeted case management for individuals with severe brain injury.

The expected increase in annual aggregate expenditures is $1,964 in state general funds and $3,719 in federal funds in federal fiscal year 2023, and $170,657 in state general funds and $306,754 in federal funds in federal fiscal year 2024.

Contact Information: Meredith Lee, Policy, Supervisor, Policy, Regulation, and Member Engagement Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, FAX (804) 786-1680, or email meredith.lee@dmas.virginia.gov.

Draft Chapter III of All Provider Manuals Available for Review

The draft Chapter III of all Provider Manuals are now available on the Department of Medical Assistance Services website at https://www.dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts/.

Contact Information: Meredith Lee, Policy, Supervisor, Policy, Regulation, and Member Engagement Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, FAX (804) 786-1680, or email meredith.lee@dmas.virginia.gov.

Draft Transportation Provider Manual Chapter IV Available for Review

The draft Transportation Provider Manual Chapter IV is now available on the Department of Medical Assistance Services website at https://www.dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts/.

Contact Information: Meredith Lee, Policy, Supervisor, Policy, Regulation, and Member Engagement Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, FAX (804) 786-1680, or email meredith.lee@dmas.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at https://commonwealthcalendar.virginia.gov.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at http://register.dls.virginia.gov/documents/cumultab.pdf.

Filing Material for Publication in the *Virginia Register of Regulations:* Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall.

RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.