

**REVISED** TENTATIVE AGENDA AND MINIBOOK  
STATE AIR POLLUTION CONTROL BOARD MEETING

FRIDAY, SEPTEMBER 28, 2018  
HOUSE ROOM 3, STATE CAPITOL  
RICHMOND, VIRGINIA 23219

Convene – 10:30 a.m.

<b>AGENDA ITEM</b>	<b>DEPARTMENT PRESENTER</b>	<b>TAB</b>
<b>Introductions</b>		
<b>Review and Approve Agenda</b>		
<b>Minutes</b> (November 16, 2017)		A
<b>Final Regulations</b>		
Regulation for the Control of Motor Vehicle Emissions in Northern Virginia - 9VAC5-91 - (House Bill 1323 Amendments)	Karen Collins	B
Rocket Motor Test Facility Owner Name Change (9VAC5-220)	Gary Graham	C
<b>Reproposed Regulations</b>		
Regulations for Emissions Trading (Rev. C17 - 9VAC5-140) (no public comment on reproposal)	Michael Dowd	
<b>High Priority Violations Report</b>	Kerri Nicholas	D
<b>Public Forum</b> (note: no public comment on proposed Revision C17 - Amendments to the Regulations for Emissions Trading and no public comment on draft minor new source review permit for Buckingham Compressor Station as both items are pending Board Actions)		
<b>ADJOURN</b>		

NOTE: The Board reserves the right to revise this agenda without notice unless prohibited by law. Revisions to the agenda include, but are not limited to, scheduling changes, additions or deletions. Questions on the latest status of the agenda should be directed to Cindy M. Berndt at (804) 698-4378.

**PUBLIC COMMENTS AT STATE AIR POLLUTION CONTROL BOARD MEETINGS:** The Board encourages public participation in the performance of its duties and responsibilities. To this end, the Board has adopted public participation procedures for regulatory action and for case decisions. These procedures establish the times for the public to provide appropriate comment to the Board for its consideration.

For REGULATORY ACTIONS (adoption, amendment or repeal of regulations), public participation is governed by the Administrative Process Act and the Board's Public Participation Guidelines. Public comment is accepted during the Notice of Intended Regulatory Action phase (minimum 30-day comment period) and during the Notice of Public Comment Period on Proposed Regulatory Action (minimum 60-day comment period). Notice of these comment periods is announced in the Virginia Register, by posting to the Department of Environmental Quality and Virginia Regulatory Town Hall web sites and by mail to those on the Regulatory Development Mailing List. The comments received during the announced public comment periods are summarized for the Board and considered by the Board when making a decision on the regulatory action.

For CASE DECISIONS (issuance and amendment of permits), the Board adopts public participation procedures in the individual regulations which establish the permit programs. As a general rule, public comment is accepted on a draft permit for a period of 30 days. In some cases a public hearing is held at the conclusion of the public comment period on a draft permit. In other cases there may be an additional comment period during which a public hearing is held. In light of these established procedures, the Board accepts public comment on regulatory actions and case decisions, as well as general comments, at Board meetings in accordance with the following:

**REGULATORY ACTIONS:** Comments on regulatory actions are allowed only when the staff initially presents a regulatory action to the Board for final adoption. At that time, those persons who commented during the public comment period on the proposal are allowed up to 3 minutes to respond to the summary of the comments presented to the Board. Adoption of an emergency regulation is a final adoption for the purposes of this policy. Persons are allowed up to 3 minutes to address the Board on the emergency regulation under consideration.

**CASE DECISIONS:** Comments on pending case decisions at Board meetings are accepted only when the staff initially presents the pending case decision to the Board for final action. At that time the Board will allow up to 5 minutes for the applicant/owner to make his complete presentation on the pending decision, unless the applicant/owner objects to specific conditions of the decision. In that case, the applicant/owner will be allowed up to 15 minutes to make his complete presentation. The Board will then allow others who commented at the public hearing or during the public comment period up to 3 minutes to exercise their rights to respond to the summary of the prior public comment period presented to the Board. No public comment is allowed on case decisions when a FORMAL HEARING is being held.

**POOLING MINUTES:** Those persons who commented during the public hearing or public comment period and attend the Board meeting may pool their minutes to allow for a single presentation to the Board that does not exceed the time limitation of 3 minutes times the number of persons pooling minutes, or 15 minutes, whichever is less.

**NEW INFORMATION** will not be accepted at the meeting. The Board expects comments and information on a regulatory action or pending case decision to be submitted during the established public comment periods. However, the Board recognizes that in rare instances new information may become available after the close of the public comment period. To provide for consideration of and ensure the appropriate review of this new information, persons who commented during the prior public comment period shall submit the new information to the Department of Environmental Quality (Department) staff contact listed below at least 10 days prior to the Board meeting. The Board's decision will be based on the Department-developed official file and discussions at the Board meeting. In the case of a regulatory action, should the Board or Department decide that the new information was not reasonably available during the prior public comment period, is significant to the Board's decision and should be included in the official file, the Department may announce an additional public comment period in order for all interested persons to have an opportunity to participate.

**PUBLIC FORUM:** The Board schedules a public forum at each regular meeting to provide an opportunity for citizens to address the Board on matters other than those on the agenda, pending regulatory actions or pending case decisions. Those persons wishing to address the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentations to 3 minutes or less.

The Board reserves the right to alter the time limitations set forth in this policy without notice and to ensure comments presented at the meeting conform to this policy.

Department of Environmental Quality Staff Contact: Cindy M. Berndt, Director, Regulatory Affairs, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, Virginia 23218, phone (804) 698-4378; fax (804) 698-4346; e-mail: [cindy.berndt@deq.virginia.gov](mailto:cindy.berndt@deq.virginia.gov).

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**Regulation for the Control of Motor Vehicle Emissions in Northern Virginia, Military Surplus Motor Vehicle Exemption - Request for Board Action on Exempt Final Regulation (Revision MQ):** The Regulation for the Control of Motor Vehicle Emissions in Northern Virginia is being amended in response to the passing of House Bill 1323, which authorizes the Department of Motor Vehicles to issue a registration card and license plates for military surplus motor vehicles, as defined in the bill. The bill limits the use and travel distance of military surplus motor vehicles and provides that any law-enforcement officer may require any person operating a military surplus motor vehicle to provide the address at which the vehicle is stored for use and the destination of such operation. The bill

exempts military surplus motor vehicles from emissions standards. To meet this statutory requirement, the regulation's definition of "affected motor vehicle" will be amended so that it does not include military surplus motor vehicles.

Additionally, there is a Code of Federal Regulations citation update and numerous technical errors within the regulation being corrected as part of this amendment process. The department is requesting approval of draft final regulation amendments to meet state regulatory requirements and ensure that the citation update and technical errors are corrected in the regulation.

**Rocket Motor Test Facility Owner Name Change - Request for Board Action on Exempt Final Regulation:**

Aerojet Rocketdyne, Inc. operates an industrial facility located near the town of Culpeper in Orange County, Virginia ("Orange County facility"). The company manufactures and tests solid rocket motors, missile systems and similar products, as well as their associated propellants, for the United States Department of Defense. Aerojet Rocketdyne conducts research and development (R&D) activities for the aforementioned products on-site. The rocket test facility is operated for the static test firing of rocket motors and related items for quality control and R&D purposes.

State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution, specifically 9VAC5-50-80, requires that all new and modified sources meet a visible emissions standard of 20% opacity, except for one six-minute period in any one hour of not more than 30% opacity. The Board, acting upon a joint request from Atlantic Research Corporation (ARC), the original owner of the facility, and the Virginia Department of Environmental Quality (DEQ), approved an opacity variance for the facility as 9VAC5, Chapter 220 (9VAC5-220-10 et seq.) in September 2002 (9VAC5, Chapter 220). The rationale for the opacity variance was that the rocket test events conducted at the facility were of such short duration that the visible emissions couldn't be measured using EPA Method 9, which requires that the opacity be observed over a period of six minutes or longer.

Under the terms of the variance, the opacity standards of 9VAC5-50-80 are not applicable to the rocket motor test operations at the facility and the facility is not required to certify or demonstrate compliance with the opacity standards for the facility using either EPA Method 9 or the EPA-approved Alternate Method 1. In lieu of the opacity standards, the Orange County facility is required to demonstrate compliance with an hourly emission limit for particulate and PM<sub>10</sub> of 714 pounds per hour (lb/hr).

Aerojet-General Corporation acquired the Orange County facility from Atlantic Research Corporation in 2003 and subsequently changed its name to Aerojet Rocketdyne, Inc. in 2013. The new owner has requested that the Board amend the variance to correct the name of the owner to reflect the name of the current owner.

**High Priority Violations (HPV's) First Through Third Quarters 2018**

NOV's issued October 2017- June 2018

<b>BRRO</b>	<b>US Army/ Radford Army Ammunition Plant</b> Radford, Virginia Registration No. 20656	<b>Discovery Date:</b> 5/7/2018 <b>Alleged Violation:</b> Facility reported exceedances of NOx limits in 4th Quarter 2017 and 1st Quarter 2018 excess emissions reports.	<b>NOV:</b> 6/5/2018
<b>BRRO</b>	<b>Volvo Group North America LLC – NRV Plant</b> Dublin, Virginia Registration No. 20765	<b>Discovery Date:</b> 9/28/2017 <b>Alleged Violation:</b> Failed to meet 100% capture requirement per PSD permit, failed to meet hourly CO emission limit in PSD permit.	<b>NOV:</b> Issued 1/11/2018
<b>NRO</b>	<b>Digital Loudoun II, LLC</b> Ashburn, Virginia Registration No. 73670	<b>Discovery Date:</b> 11/28/20017 <b>Alleged Violation:</b> Failure to obtain Title V permit after commencing construction in January 2014.	<b>NOV:</b> Issued 12/1/2017
<b>PRO</b>	<b>AdvanSix Resins &amp; Chemicals LLC – Hopewell Plant</b>	<b>Discovery Date:</b> 8/11/2017 <b>Alleged Violation:</b> Failed stack test for particulate matter on centrifuge scrubber.	<b>NOV:</b> Issued 12/7/2017

	Hopewell, Virginia IT Infrastructure Partnership Registration No. 50232		
<b>PRO</b>	<b>AdvanSix Resins &amp; Chemicals LLC – Hopewell Plant</b> Hopewell, Virginia Registration No. 50232	<b>Discovery Date:</b> 2/26/2018 <b>Alleged Violation:</b> Exceeded annual VOC limits	<b>NOV:</b> Issued 4/26/2018
<b>PRO</b>	<b>Chaparral Virginia Incorporated</b> Petersburg, Virginia Registration No. 51264	<b>Discovery Date:</b> 4/25/2016 <b>Alleged Violation:</b> Failed to provide conduct visible emissions evaluations, substantially interfering with DEQ’s ability to determine compliance with TV permit.	<b>NOV:</b> Issued 1/30/2018
<b>SWRO</b>	<b>Dominion – Virginia City Hybrid Energy Center</b> St. Paul, Virginia Registration No. 11526	<b>Discovery Date:</b> 8/10/2017 <b>Alleged Violation:</b> Failed stack test for PM <sub>10</sub> , PM <sub>2.5</sub> , and hydrochloric acid.	<b>NOV:</b> Issued 11/2/2017
<b>SWRO</b>	<b>INGENCO Bristol Plant</b> Bristol, Virginia Registration No. 11733	<b>Discovery Date:</b> 12/27/2017 <b>Alleged Violations:</b> Failed to meet NOx emission limit during testing at 88% gas fraction; late sampling /analysis.	<b>NOV:</b> Issued 1/10/2018
<b>TRO</b>	<b>Huntington Ingalls Inc. – Newport News Shipbuilding Division</b> Newport News, Virginia Registration No. 60153	<b>Discovery Date:</b> 10/19/2017 <b>Alleged Violation:</b> Failed stack test for PM <sub>10</sub> , PM <sub>2.5</sub> , and hydrochloric acid.	<b>NOV:</b> Issued 1/25/2018

Consent Orders issued October 2017 - June 2018

<b>BRRO</b>	<b>Goodyear Tire and Rubber Company - Danville</b> Danville, Virginia Registration No. 30106	<b>Discovery Date:</b> 8/25/2017 <b>Alleged Violation:</b> Facility failed to document differential pressure readings on grinder.	<b>NOV:</b> Issued 8/29/2017  Consent Order effective 12/21/2017 with a civil charge of \$13,650 and
<b>BRRO</b>	<b>Ingevity Virginia Corporation</b>  Covington, Virginia  Registration No. 20329	<b>Discovery Date:</b> 7/8/2016  <b>Alleged Violations:</b>  Failed to meet required control efficiency for on valveless regenerative thermal oxidizers during stack test.	<b>NOV:</b> Issued 10/25/2016  Consent Order effective 5/8/2018 including \$43,398.00 civil charge.
<b>BRRO</b>	<b>Wolverine Advanced Materials - Blacksburg</b>  Blacksburg, Virginia  Registration No. 20763	<b>Discovery Date:</b> 10/6/2016  <b>Alleged Violations:</b>  Failure to provide temperature records for thermal oxidizers on Lines 2 and 4 for 174 days out of 182-day reporting period.	<b>NOV:</b> Issued 10/26/2016  Consent order effective 10/16/2017 with a civil charge of \$40,544.96; roughly \$30,000 of civil charge is offset with a Supplemental Environmental Project to improve interstitial piping for chemical feed lines at Cedar Run plant.
<b>BRRO</b>	<b>Wolverine Advanced Materials – Cedar Run</b>	<b>Discovery Date:</b> 10/6/2016	<b>NOV:</b> Issued 10/26/2016

	Blacksburg, Virginia Registration No. 21240	<b>Alleged Violations:</b> Failure to provide temperature records for 106 days for Line 5 catalytic oxidizer and for 151 days of the Line 6 catalytic oxidizer out of 182-day reporting period.	Consent order effective 10/16/2017 with a civil charge of \$40,544.96; roughly \$30,000 of civil charge is offset with a Supplemental Environmental Project to improve interstitial piping for chemical feed lines at Cedar Run plant.
<b>NRO</b>	<b>Digital Loudoun II, LLC</b> Ashburn, Virginia Registration No. 73670	<b>Discovery Date:</b> 11/28/2017 <b>Alleged Violation:</b> Failure to obtain Title V permit after commencing construction in January 2014.	<b>NOV:</b> Issued 5/19/2018, 7/26/2017, 12/1/2017  Consent Order effective 4/12/2018 including \$142,040.92 civil charge
<b>PRO</b>	<b>Kinder Morgan Richmond Terminal 1</b> Richmond, Virginia Registration No. 50258	<b>Discovery Date:</b> 12/7/2016 <b>Alleged Violation:</b> Excess VOC emissions due to failure to reset legs on tank after maintenance.	<b>NOV:</b> Issued 6/21/2017  Consent Order effective 2/1/2018 including a \$34,125.00 civil charge.
<b>SWRO</b>	<b>Dominion – Virginia City Hybrid Energy Center</b> St. Paul, Virginia Registration No. 11526	<b>Discovery Date:</b> 8/10/2017 <b>Alleged Violation:</b> Failed stack test for PM <sub>10</sub> , PM <sub>2.5</sub> , and hydrochloric acid.	<b>NOV:</b> Issued 11/2/2017  Consent Order effective 1/5/2018 including \$73,351.00 civil charge
<b>SWRO</b>	<b>INGENCO Bristol Plant</b> Bristol, Virginia Registration No. 11733	<b>Discovery Date:</b> 12/27/2017 <b>Alleged Violations:</b> Failed to meet NOx emission limit during testing at 88% gas fraction; late sampling /analysis.	<b>NOV:</b> Issued 1/10/2018  Consent Order effective 4/30/2018 including \$3,818.00 civil charge.
<b>TRO</b>	<b>Huntington Ingalls Inc. – Newport News Shipbuilding Division</b> Newport News, Virginia Registration No. 60153	<b>Discovery Date:</b> 10/19/2017 <b>Alleged Violation:</b> Failed stack test for PM <sub>10</sub> , PM <sub>2.5</sub> , and hydrochloric acid.	<b>NOV:</b> Issued 1/25/2018  Consent Order effective 6/11/2018 including \$14,266.00 civil charge.
<b>VRO</b>	<b>O-N Minerals (Chemstone) Co. – Winchester Lime Plant</b> Clear Brook, Virginia Registration No. 80504	<b>Discovery Date:</b> 9/15/2016, 3/30/2017 <b>Alleged Violation:</b> Failed stack test for PM <sub>10</sub> and PM <sub>2.5</sub> . Second NOV for exceeding annual limestone throughput limit.	<b>NOVs:</b> Issued 2/17/2017, 5/31/2017  Consent Order effective 4/30/2018 including \$168,699.50 civil charge.

Consent Orders Currently in Development

<b>BRRO</b>	<b>US Army/ Radford Army Ammunition Plant</b> Radford, Virginia Registration No. 20656	<b>Discovery Date:</b> 5/7/2018 <b>Alleged Violation:</b> Facility reported exceedances of NOx limits in 4th Quarter 2017 and 1st Quarter 2018 excess emissions reports.	<b>NOV:</b> 6/5/2018
<b>BRRO</b>	<b>Volvo Group North America LLC – NRV Plant</b> Dublin, Virginia Registration No. 20765	<b>Discovery Date:</b> 2/23/2017 <b>Alleged Violation:</b> Failed to meet 100% capture requirement per PSD permit, failed to meet hourly CO emission limit in PSD permit.	<b>NOV:</b> Issued 4/19/2017
<b>PRO</b>	<b>AdvanSix Resins &amp; Chemicals LLC – Hopewell Plant</b> Hopewell, Virginia Registration No. 50232	<b>Discovery Date:</b> 8/11/2017 <b>Alleged Violation:</b> Failed stack test for particulate matter on centrifuge scrubber.	<b>NOV:</b> Issued 12/7/2017

<b>PRO</b>	<b>AdvanSix Resins &amp; Chemicals LLC – Hopewell Plant</b> Hopewell, Virginia Registration No. 50232	<b>Discovery Date:</b> 2/26/2018 <b>Alleged Violation:</b> Exceeded annual VOC limits	<b>NOV:</b> Issued 4/26/2018
<b>PRO</b>	<b>Chaparral Virginia Incorporated</b> Petersburg, Virginia Registration No. 51264	<b>Discovery Date:</b> 4/25/2016, 4/25/2016 <b>Alleged Violation:</b> Failed to provide operational, compliance (including emissions) and maintenance records, substantially interfering with DEQ's ability to determine compliance with TV permit.	<b>NOV:</b> Issued 6/29/2016, 1/30/2018

**Regulation for Emissions Trading (9VAC5 Chapter 140, Rev. C17) - Request for Board Action, Re-Proposal:**

Executive Directive 11 (ED 11), "Reducing Carbon Dioxide Emissions from the Electric Power Sector and Growing Virginia's Clean Energy Economy," directs the Director of the Department of Environmental Quality, in coordination with the Secretary of Natural Resources, to take the following actions in accordance with the provisions and requirements of Virginia Code § 10.1-1300 et seq., and Virginia Code § 2.2-4000, et seq.:

1. Develop a proposed regulation for the State Air Pollution Control Board's consideration to abate, control, or limit CO<sub>2</sub> from electric power facilities that:
  - a. Includes provisions to ensure that Virginia's regulation is "trading-ready" to allow for the use of market-based mechanisms and the trading of CO<sub>2</sub> allowances through a multi-state trading program; and
  - b. Establishes abatement mechanisms providing for a corresponding level of stringency to limits on CO<sub>2</sub> emissions imposed in other states with such limits.
2. By no later than December 31, 2017, present the proposed regulation to the State Air Pollution Control Board for consideration for approval for public comment in accordance with the Board's authority pursuant to Virginia Code § 10.1-1308.

Based on changes made to the proposal, the department is requesting approval of an additional 30-day comment period on the regulation in accordance with § 2.2-4007.03 B of the Administrative Process Act.

To solicit comment from the public on the proposed regulation amendments, the department previously issued a notice that provided for receiving comment during a comment period (January 8 through April 9, 2018) and at public hearings throughout the state.

Summary of Proposed Amendments:

1. The primary purpose of the regulation is to implement a declining cap on carbon emissions. The administrative means of accomplishing this will be effected by linking Virginia to RGGI, which is an established emissions trading program. An allowance will be issued for each ton of carbon emitted by an electricity generating facility. The company must then decide if it will reduce carbon emissions and sell the resulting additional allowances, or if it will not reduce carbon emissions and make up the difference with purchased allowances. The proposal includes a base budget of 28 million tons, which will determine, based on a 3% annual reduction, the annual budgets and allocations for future years.
2. The mechanism for determining the cost of allowances will be a consignment auction.
3. A cost containment reserve allowance will be offered for sale at an auction for the purpose of containing the cost of CO<sub>2</sub> allowances in the event of higher than anticipated emission reduction costs. An emission containment reserve allowance will be withheld from sale at an auction for the purpose of additional emission reduction in the event of lower than anticipated emission reduction costs.
4. Monitoring, recording, and recordkeeping requirements will be implemented to track compliance.

5. Conditional allowances will be allocated to the Department of Mines, Minerals and Energy (DMME) in order to assist the department for the abatement and control of air pollution, specifically, CO<sub>2</sub>.

### DETAIL OF RECOMMENDED CHANGES FROM THE PREVIOUS STAGE

<b>New chapter-section number</b>	<b>New requirement from previous stage</b>	<b>Updated new requirement since previous stage</b>	<b>Need</b>
Article 1	CO <sub>2</sub> Budget Trading Program General Provisions	--	--
9VAC5-140-6020 C	Definition of "allocate"	Amended to reflect relocation and renumbering of DMME provisions (see 9VAC5-140-6211).	Needed for clarity.
9VAC5-140-6020 C	Definition of "allowance"	Deleted.	Replaced with the new term "CO <sub>2</sub> allowance." Needed to ensure the proper functioning of the RGGI allowance market.
9VAC5-140-6020 C	Definition of "alternate CO <sub>2</sub> authorized account representative"	Deleted.	Needed in order to be consistent with new RGGI terminology.
9VAC5-140-6020 C	Definition of "CO <sub>2</sub> allowance"	Added.	Replacing "allowance." Needed to ensure the proper functioning of the RGGI allowance market
9VAC5-140-6020 C	Definition of "CO <sub>2</sub> authorized alternate account representative"	Added.	Needed in order to be consistent with new RGGI terminology.
9VAC5-140-6020 C	Definition of "CO <sub>2</sub> Budget Trading Program"	Amended.	Needed for consistency with the RGGI Model Rule and to ensure Virginia's ability to participate in the program.
9VAC5-140-6020 C	Definition of "CCR allowance"	Amended to indicate that the CCR allowance is conditional.	Needed for clarity.
9VAC5-140-6020 C	Definition of "CO <sub>2</sub> CCR trigger price"	Amended to include the correct prices.	Needed in order for the program to operate properly.
9VAC5-140-6020 C	Definition of "CO <sub>2</sub> ECR trigger price"	Amended to include the correct prices.	Needed in order for the program to operate properly.
9VAC5-140-6020 C	Definition of "CO <sub>2</sub> offset allowance"	Added.	Needed in order for offsets from other states to be recognized.
9VAC5-140-6020 C	Definition of "conditional allowance"	Amended to clarify the relationship between a conditional allowance and a CO <sub>2</sub> allowance.	Needed in order for the program to operate properly.
9VAC5-140-6020 C	Definition of "conditional CCR allowance"	Added.	Needed for clarity and in order for the program to operate properly.
9VAC5-140-6020 C	Definition of "consignment auction"	Amended to refer to the correct auction entity.	Needed for clarity.
9VAC5-140-6020 C	Definition of "fossil fuel-fired"	Amended to change the amount of fuel comprised of fossil fuel from 10% to 5%.	Needed for consistency with the RGGI Model Rule and to ensure Virginia's ability to participate in the program.
9VAC5-140-6020 C	Definition of "maximum design heat input"	Deleted.	This term is not used in the proposal and must be removed.

<b>New chapter-section number</b>	<b>New requirement from previous stage</b>	<b>Updated new requirement since previous stage</b>	<b>Need</b>
9VAC5-140-6020 C	Definition of "minimum reserve price"	Amended to change the price from \$2.00 to \$2.32.	Needed for consistency with the RGGI Model Rule and to ensure Virginia's ability to participate in the program.
9VAC5-140-6020 C	Definition of "receive"	Amended to be more specific.	Needed for consistency with the RGGI Model Rule and to ensure Virginia's ability to participate in the program.
9VAC5-140-6020 C	Definition of "RGGI, Inc."	Deleted.	Needed for consistency with the RGGI Model Rule and to ensure Virginia's ability to participate in the program.
9VAC5-140-6020 C	Definition of "state"	Deleted.	Needed in order for clarity. "Participating state" replaces this more general term.
9VAC5-140-6020 C	Definition of "total useful energy"	Added.	Needed in order for the industrial exemption (9VAC5-140-6040 B) to operate properly.
9VAC5-140-6020 C	Definition of "useful net thermal energy"	Added.	Needed in order for the industrial exemption (9VAC5-140-6040 B) to operate properly.
9VAC5-140-6030	Measurements, abbreviations and acronyms.	Unused terms removed.	Needed for clarity.
9VAC5-140-6040 B	Applicability.	Amended to clarify industrial facilities exempt from the rule.	Needed to cover third-party industrial suppliers while maintaining consistency with the RGGI Model Rule.
9VAC5-140-6050 C 1	CO <sub>2</sub> requirements, holding allowances for compliance	Amended to specify that the total CO <sub>2</sub> emissions related to CO <sub>2</sub> allowances only includes emissions resulting from the combustion of fossil fuel.	Needed for clarity and for consistency with EO 11.
Article 2	CO <sub>2</sub> Authorized Account Representative for CO <sub>2</sub> Budget Sources.	--	--
9VAC5-140-6090	Alternate CO <sub>2</sub> authorized account representative.	The term "alternate CO <sub>2</sub> authorized account representative" is amended to "CO <sub>2</sub> authorized alternate account representative."	Needed in order to be consistent with new RGGI terminology.
9VAC5-140-6100	Changing the CO <sub>2</sub> authorized account representatives and the alternate CO <sub>2</sub> authorized account representative; changes in the owners and operators.	The term "alternate CO <sub>2</sub> authorized account representative" is amended to "CO <sub>2</sub> authorized alternate account representative."	Needed in order to be consistent with new RGGI terminology.
9VAC5-140-6110	Account certificate of representation.	The term "alternate CO <sub>2</sub> authorized account representative" is amended to "CO <sub>2</sub> authorized alternate	Needed in order to be consistent with new RGGI terminology.

New chapter-section number	New requirement from previous stage	Updated new requirement since previous stage	Need
		account representative."	
9VAC5-140-6130	Delegation by CO <sub>2</sub> authorized account representative and alternate CO <sub>2</sub> authorized account representative.	The term "alternate CO <sub>2</sub> authorized account representative" is amended to "CO <sub>2</sub> authorized alternate account representative." In subsection H, "must" has been changed to "shall."	Needed in order to be consistent with new RGGI terminology, and to reflect correct regulatory style.
Article 5	CO <sub>2</sub> Allowance Allocations	--	--
9VAC5-140-6190 A	Base budgets. Board originally requested input on whether the cap should be 33 or 34 million tons.	The initial CO <sub>2</sub> base budget has been set at 28 million tons, declining by 3% per year through 2030.	Needed in order to realize the program goal of reducing carbon pollution at a certain rate through a specified time period.
9VAC5-140-6190 C	Base budgets.	Amended to clarify that the program will continue beyond 2031 and as established by a future program adjustment.	Needed for clarity and to ensure compliance.
9VAC5-140-6200	Undistributed and unsold CO <sub>2</sub> allowances.	Amended to correct the term "conditional allowance" and to replace "may" with "will."	Needed for clarity and in order for the program to operate properly.
9VAC5-140-6210 A	CO <sub>2</sub> allowance allocations.	Amended to clarify the allocation of allowances.	Needed for clarity.
9VAC5-140-6210 B	CO <sub>2</sub> allowance allocations.	DMME provisions have been moved to a separate new section (9VAC5-140-6211); succeeding sections renumbered accordingly.	Needed for clarity.
9VAC5-140-6210 <del>D</del> - <u>C</u>	CO <sub>2</sub> allowance allocations.	Amended to more clearly explain how the CCR allowances will be allocated, including a new equation for calculating the pro rata distribution of CCR allowances.	Needed for clarity and in order for the program to operate properly.
9VAC5-140-6210 <del>E</del> <u>D</u>	CO <sub>2</sub> allowance allocations.	Amended to more clearly explain how the ECR allowances will be allocated.	Needed for clarity and in order for the program to operate properly.
9VAC5-140-6210 <del>F</del> <u>E</u>	CO <sub>2</sub> allowance allocations.	Minor corrections.	Needed for clarity.
9VAC5-140-6210 <del>H</del> <u>I</u>	CO <sub>2</sub> allowance allocations.	Timing requirements amended in order to provide more detail as to how and when	Needed for clarity.

New chapter-section number	New requirement from previous stage	Updated new requirement since previous stage	Need
		conditional allowances will be allocated.	
9VAC5-140-6210 I	None.	New subsection added to clarify that implementation of the CCR, ECR and banking adjustment will depend on the extent of the CO <sub>2</sub> trading program.	Needed for clarity.
9VAC5-140-6211	None.	Section added for DMME provisions moved from 9VAC5-140-6040 A 2.	Needed for clarity.
Article 6	CO <sub>2</sub> Allowance Tracking System	--	--
9VAC5-140-6230	Establishment of accounts.	The term "alternate CO <sub>2</sub> authorized account representative" is amended to "CO <sub>2</sub> authorized alternate account representative."	Needed in order to be consistent with new RGGI terminology.
9VAC5-140-6260 A 3	Compliance.	Amended in order for Virginia to recognize offsets generated by other RGGI states.	Needed in order to participate in the RGGI program.
Article 8	Monitoring, Reporting and Recordkeeping	--	--
9VAC5-140-6330 A	General requirements.	Minor correction.	Needed for clarity.
Article 9	Auction of CO <sub>2</sub> CCR and ECR allowances	--	--
9VAC5-140-6430	Consignment auction.	Amended to indicate that one quarter of the annual conditional allowance allocation will be consigned by the CO <sub>2</sub> budget source or the holder of a public contract with DMME to each auction. At the completion of the consignment auction, a conditional allowance sold at auction becomes a CO <sub>2</sub> allowance.	Needed for clarity and in order for the program to operate properly.
9VAC5-140-6435	None.	New section added to enable the use of a direct auction without consignment in accordance with requirements established by the Virginia General Assembly.	Needed in order for the program to operate properly in the event of a legislative requirement.

New chapter-section number	New requirement from previous stage	Updated new requirement since previous stage	Need
Article 10	Program Monitoring and Review	--	--
9VAC5-140-6440	None.	Article added.	Specifies that in conjunction with program monitoring and review, impacts specific to Virginia will be evaluated, including economic, energy and environmental impacts, and impacts on vulnerable and environmental justice communities. Needed in order to clarify that these specific impacts will be monitored and evaluated.

9VAC5 CHAPTER 140.  
REGULATION FOR EMISSIONS TRADING.

Part VII  
CO<sub>2</sub> Budget Trading Program

Article 1  
CO<sub>2</sub> Budget Trading Program General Provisions.

9VAC5-140-6010. Purpose.

This part establishes the Virginia component of the CO<sub>2</sub> Budget Trading Program, which is designed to reduce anthropogenic emissions of CO<sub>2</sub>, a greenhouse gas, from CO<sub>2</sub> budget sources in an economically efficient manner.

9VAC5-140-6020. Definitions.

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 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<sub>2</sub>) or nitrogen oxides (NO<sub>x</sub>) under the Acid Rain Program under Title IV of the CAA.

"Acid Rain Program" means a multi-state SO<sub>2</sub> and NO<sub>x</sub> 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<sub>2</sub> 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<sub>2</sub> Budget Trading Program, but not including accounts opened by participating states, that are in addition to the aggregate quantity of emissions from all CO<sub>2</sub> budget sources in all of the participating states at the end of the control period in 2020 and as reflected in the CO<sub>2</sub> Allowance Tracking System on March 17, 2021.

"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<sub>2</sub> conditional allowances allocated to a CO<sub>2</sub> budget unit [or , or to] the Department of Mines, Minerals and Energy (DMME) [pursuant to 9VAC5-140-6211].

"Allocation year" means a calendar year for which the department allocates CO<sub>2</sub> conditional allowances pursuant to Article 5 (9VAC5-140-6190 et seq.) of this part. The allocation year of each CO<sub>2</sub> conditional allowance is reflected in the unique identification number given to the allowance pursuant to 9VAC5-140-6250 C.

["Allowance" means an allowance up to one ton of CO<sub>2</sub> purchased from the consignment auction in accordance with Article 9 (9VAC5-140-6410 et seq.) of this part and may be deposited in the compliance account of a CO<sub>2</sub> budget source.]

"Allowance auction" or "auction" means an auction in which the department or its agent offers CO<sub>2</sub> allowances for sale.

["Alternate CO<sub>2</sub> authorized account representative" means, for a CO<sub>2</sub> budget source and each CO<sub>2</sub> budget unit at the source, the alternate natural person who is authorized by the owners and operators of the source and all CO<sub>2</sub> 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<sub>2</sub> 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<sub>2</sub> allowances held in the general account. If the CO<sub>2</sub> budget source is also subject to the Acid Rain Program, CSAPR NO<sub>x</sub> Annual Trading Program, CSAPR NO<sub>x</sub> Ozone Season Trading Program, CSAPR SO<sub>2</sub> Group 1 Trading Program or CSAPR SO<sub>2</sub> Group 2 Trading Program then, for a CO<sub>2</sub> 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.]

"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<sub>2</sub> allowance" means a limited authorization by the department or another participating state under the CO<sub>2</sub> Budget Trading Program to emit up to one ton of CO<sub>2</sub> that has been generated as a result of combusting fossil fuel, subject to all applicable limitations contained in this part. CO<sub>2</sub> offset allowances generated by other participating states will be recognized by the department.]

"CO<sub>2</sub> allowance deduction" or "deduct CO<sub>2</sub> allowances" means the permanent withdrawal of CO<sub>2</sub> allowances by the department or its agent from a COATS compliance account to account for the number of tons of CO<sub>2</sub> emitted from a CO<sub>2</sub> 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<sub>2</sub> allowances as provided by this part.

"CO<sub>2</sub> Allowance Tracking System" or "COATS" means the system by which the department or its agent records allocations, deductions, and transfers of CO<sub>2</sub> allowances under the CO<sub>2</sub> Budget Trading Program. The tracking system may also be used to track CO<sub>2</sub> allowance prices and emissions from affected sources.

"CO<sub>2</sub> 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<sub>2</sub> allowances.

"CO<sub>2</sub> allowance transfer deadline" means midnight of the 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<sub>2</sub> allowances shall be submitted for recordation in a CO<sub>2</sub> budget source's compliance account for the source to meet the CO<sub>2</sub> requirements of 9VAC5-140-6050 C for the control period and each interim control period immediately preceding such deadline.

"CO<sub>2</sub> allowances held" or "hold CO<sub>2</sub> allowances" means the CO<sub>2</sub> 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<sub>2</sub> authorized account representative" means, for a CO<sub>2</sub> budget source and each CO<sub>2</sub> budget unit at the source, the natural person who is authorized by the owners and operators of the source and all CO<sub>2</sub> 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<sub>2</sub> 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<sub>2</sub> allowances held in the general account. If the CO<sub>2</sub> budget source is also subject to the Acid Rain Program, CSAPR NO<sub>x</sub> Annual Trading Program, CSAPR NO<sub>x</sub> Ozone Season Trading Program, CSAPR SO<sub>2</sub> Group 1 Trading Program or CSAPR SO<sub>2</sub> Group 2 Trading Program, then for a CO<sub>2</sub> Budget Trading Program compliance account, this natural person shall be the same person as the designated representative as defined in the respective program.

["CO<sub>2</sub> authorized alternate account representative" means, for a CO<sub>2</sub> budget source and each CO<sub>2</sub> budget unit at the source, the alternate natural person who is authorized by the owners and

operators of the source and all CO<sub>2</sub> 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<sub>2</sub> 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<sub>2</sub> allowances held in the general account. If the CO<sub>2</sub> budget source is also subject to the Acid Rain Program, CSAPR NO<sub>x</sub> Annual Trading Program, CSAPR NO<sub>x</sub> Ozone Season Trading Program, CSAPR SO<sub>2</sub> Group 1 Trading Program or CSAPR SO<sub>2</sub> Group 2 Trading Program then, for a CO<sub>2</sub> 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<sub>2</sub> budget emissions limitation" means, for a CO<sub>2</sub> budget source, the tonnage equivalent, in CO<sub>2</sub> emissions in a control period or an interim control period, of the CO<sub>2</sub> allowances available for compliance deduction for the source for a control period or an interim control period.

"CO<sub>2</sub> 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<sub>2</sub> budget source or CO<sub>2</sub> budget unit that specifies the CO<sub>2</sub> Budget Trading Program requirements applicable to the CO<sub>2</sub> budget source, to each CO<sub>2</sub> budget unit at the CO<sub>2</sub> budget source, and to the owners and operators and the CO<sub>2</sub> authorized account representative of the CO<sub>2</sub> budget source and each CO<sub>2</sub> budget unit.

"CO<sub>2</sub> budget source" means a source that includes one or more CO<sub>2</sub> budget units.

"CO<sub>2</sub> Budget Trading Program" means [~~the Regional Greenhouse Gas Initiative (RGGI),~~] a multi-state CO<sub>2</sub> 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<sub>2</sub> from CO<sub>2</sub> budget sources.

"CO<sub>2</sub> budget unit" means a unit that is subject to the CO<sub>2</sub> Budget Trading Program requirements under 9VAC5-140-6040.

"CO<sub>2</sub> cost containment reserve allowance" or "CO<sub>2</sub> CCR allowance" means a [conditional] CO<sub>2</sub> allowance that is offered for sale at an auction for the purpose of containing the cost of CO<sub>2</sub> allowances. CO<sub>2</sub> CCR allowances offered for sale at an auction are separate from and additional to CO<sub>2</sub> allowances allocated from the Virginia CO<sub>2</sub> Budget Trading Program base and adjusted budgets. CO<sub>2</sub> CCR allowances are subject to all applicable limitations contained in this part.

"CO<sub>2</sub> cost containment reserve trigger price" or "CCR trigger price" means the minimum price at which CO<sub>2</sub> CCR allowances are offered for sale at an auction. [~~Beginning in 2020 and each calendar year thereafter, the CCR trigger price shall be 1.025 multiplied by the CCR trigger price from the previous calendar year, rounded to the nearest whole cent. The CCR trigger price in calendar year 2020 shall be \$13 \$10.77. The CCR trigger price in calendar year 2021 shall be \$13.00.] 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<sub>2</sub> CCR Trigger Price

<u>2020</u>	<u>\$ 10.77</u>
<u>2021</u>	<u>\$ 13.00</u>
<u>2022</u>	<u>\$ 13.91</u>
<u>2023</u>	<u>\$ 14.88</u>

<u>2024</u>	<del>[\$ 15.93]</del> \$15.92]
<u>2025</u>	<del>[\$ 17.04]</del> \$17.03]
<u>2026</u>	<del>[\$ 18.23]</del> \$18.22]
<u>2027</u>	<del>[\$ 19.51]</del> \$19.50]
<u>2028</u>	<del>[\$ 20.88]</del> \$20.87]
<u>2029</u>	<del>[\$ 22.34]</del> \$22.33]
<u>2030</u>	<del>[\$ 23.90]</del> \$23.89]

"CO<sub>2</sub> emission containment reserve allowance" or "CO<sub>2</sub> ECR allowance" means a CO<sub>2</sub> 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<sub>2</sub> emission containment reserve trigger price" or "ECR trigger price" means the price below which CO<sub>2</sub> 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<sub>2</sub> ECR Trigger Price

<u>2021</u>	\$ 6.00
<u>2022</u>	\$ 6.42
<u>2023</u>	\$ 6.87
<u>2024</u>	\$ 7.35
<u>2025</u>	\$ 7.86
<u>2026</u>	<del>[\$ 8.42]</del> \$8.41]
<u>2027</u>	\$ 9.00
<u>2028</u>	\$ 9.63
<u>2029</u>	<del>[\$ 10.31]</del> \$10.30]
<u>2030</u>	<del>[\$ 11.03]</del> \$11.02]

"CO<sub>2</sub> offset allowance" means a CO<sub>2</sub> allowance that is awarded to the sponsor of a CO<sub>2</sub> 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<sub>2</sub> from CO<sub>2</sub> 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<sub>2</sub> 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<sub>2</sub> budget unit under 9VAC5-140-6040 on the date the unit commences commercial operation, the date the unit becomes a CO<sub>2</sub> 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<sub>2</sub> 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<sub>2</sub> budget unit under 9VAC5-140-6040 on the date of commencement of operation, the date the unit becomes a CO<sub>2</sub> 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<sub>2</sub> budget source under Article 6 (9VAC5-140-6220 et seq.) of this part, in which are held CO<sub>2</sub> allowances available for use by the source for a control period and each interim control period for the purpose of meeting the CO<sub>2</sub> requirements of 9VAC5-140-6050 C.

"Conditional allowance" means an allowance allocated by the department to CO<sub>2</sub> budget sources [and or] to DMME. Such conditional allowance shall be consigned by the entity to whom it is allocated to the consignment auction as specified under Article 9 (9VAC5-140-6410 et seq.) of this part, after which the conditional allowance becomes [an allowance to be used for compliance purposes a CO<sub>2</sub> allowance once it is sold to an auction participant. A conditional allowance may also be contained in the CCR and may be auctioned.]

"Conditional CCR allowance" means a CCR allowance that may be offered for sale when the CCR is triggered. If any CCR allowances are unsold, they shall be returned to the CCR account and may be offered for sale in future auctions during the same year.]

"Consignment auction" or "auction" means the CO<sub>2</sub> auction conducted on a quarterly basis by [RGGI, Inc. the CO<sub>2</sub> Budget Trading Program], in which CO<sub>2</sub> budget sources and DMME are allocated a share of allowances by the department that CO<sub>2</sub> budget sources and the holder of a public contract with DMME consign into the auction, and auction revenue is returned to CO<sub>2</sub> budget sources and the holder of a public contract with DMME in accordance with procedures established by the department.

"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 [(scfh)];

b. A NO<sub>x</sub> emissions rate (or NO<sub>x</sub>-diluent) monitoring system, consisting of a NO<sub>x</sub> pollutant concentration monitor, a diluent gas (CO<sub>2</sub> or O<sub>2</sub>) monitor, and an automated DAHS and providing a permanent, continuous record of NO<sub>x</sub> concentration, in parts per million (ppm), diluent gas concentration, in percent CO<sub>2</sub> or O<sub>2</sub>; and NO<sub>x</sub> 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<sub>2</sub>O;

d. A CO<sub>2</sub> monitoring system, consisting of a CO<sub>2</sub> pollutant concentration monitor (or an O<sub>2</sub> monitor plus suitable mathematical equations from which the CO<sub>2</sub> concentration is derived) and an automated DAHS and providing a permanent, continuous record of CO<sub>2</sub> emissions, in percent CO<sub>2</sub>; and

e. An O<sub>2</sub> monitoring system, consisting of an O<sub>2</sub> concentration monitor and an automated DAHS and providing a permanent, continuous record of O<sub>2</sub>, in percent O<sub>2</sub>.

"Control period" means a three-calendar-year time period. The first control period is from January 1, 2021 to December 31, 2023, inclusive. Each subsequent compliance control period shall be a sequential three-calendar-year period. The first two compliance years of each control period are each defined as an interim control period, beginning on January 1, 2022.

"Cross State Air Pollution Rule (CSAPR) NO<sub>x</sub> Annual Trading Program" means a multi-state NO<sub>x</sub> 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<sub>x</sub>.

"Cross State Air Pollution Rule (CSAPR) NO<sub>x</sub> Ozone Season Trading Program" means a multi-state NO<sub>x</sub> air pollution control and emission reduction program established in accordance with subpart BBBB 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<sub>x</sub>.

"Cross State Air Pollution Rule (CSAPR) SO<sub>2</sub> Group 1 Trading Program" means a multi-state SO<sub>2</sub> 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<sub>2</sub>.

"Cross State Air Pollution Rule (CSAPR) SO<sub>2</sub> Group 2 Trading Program" means a multi-state SO<sub>2</sub> 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<sub>2</sub>.

"Department" means the Virginia Department of Environmental Quality.

"DMME" means the Virginia Department of Mines, Minerals and Energy.

"Excess emissions" means any tonnage of CO<sub>2</sub> emitted by a CO<sub>2</sub> budget source during a control period that exceeds the CO<sub>2</sub> budget emissions limitation for the source.

"Excess interim emissions" means any tonnage of CO<sub>2</sub> emitted by a CO<sub>2</sub> budget source during an interim control period multiplied by 0.50 that exceeds the CO<sub>2</sub> 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 [40% 5%] 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.

"Initial control period" means the period beginning on January 1, 2020 and ending on December 31, 2020.

"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 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:

a. For the life of the unit;

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

c. 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.

~~["Maximum design heat input" means the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.]~~

"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<sub>2</sub> concentration in percent CO<sub>2</sub> or the minimum O<sub>2</sub> concentration in percent O<sub>2</sub>.

"Minimum reserve price" means, in calendar year 2020, [~~\$2.00~~ \$2.32]. 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<sub>2</sub> 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<sub>2</sub> budget unit or a CO<sub>2</sub> 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<sub>2</sub> budget unit;

b. Any holder of a leasehold interest in a CO<sub>2</sub> 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<sub>2</sub> budget unit;

c. Any purchaser of power from a CO<sub>2</sub> 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<sub>2</sub> allowances held in the general account and who is subject to the binding agreement for the CO<sub>2</sub> authorized account representative to represent that person's ownership interest with respect to the CO<sub>2</sub> allowances.

["Participating state" means a state that state that participates in the CO<sub>2</sub> Budget Trading Program.]

"Receive" or "receipt of" means, [~~with regard to CO<sub>2</sub> allowances, the movement of CO<sub>2</sub> allowances by the department or its agent from one COATS account to another, for purposes of allocation, transfer, or deduction 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<sub>2</sub> allowances, the movement of CO<sub>2</sub> allowances by the department or its agent from one COATS account to another, for purposes of allocation, transfer, or deduction.

["RGGI, Inc." means the 501(c)(3) non-profit corporation created to support development and implementation of the Regional Greenhouse Gas Initiative (RGGI). Participating RGGI states use RGGI, Inc., as their agent to conduct the consignment auction, and operate and manage COATS.]

"Reserve price" means the minimum acceptable price for each CO<sub>2</sub> 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<sub>2</sub> allowances, the unique identification number assigned to each CO<sub>2</sub> 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.

["State" means the Commonwealth of Virginia. The term "state" shall have its conventional meaning where such meaning is clear from the context.]

"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 U.S. 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<sub>2</sub> requirements of 9VAC5-140-6050 C, total tons for 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<sub>2</sub> allowances" means CO<sub>2</sub> 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<sub>2</sub> allowances" means CO<sub>2</sub> 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<sub>2</sub> Budget Trading Program adjusted budget" means an adjusted budget determined in accordance with 9VAC5-140-6210 and is the annual amount of CO<sub>2</sub> tons available in Virginia for allocation in a given allocation year, in accordance with the CO<sub>2</sub> Budget Trading Program. CO<sub>2</sub> CCR allowances offered for sale at an auction are separate from and additional to CO<sub>2</sub> allowances allocated from the Virginia CO<sub>2</sub> Budget Trading Program adjusted budget.

"Virginia CO<sub>2</sub> Budget Trading Program base budget" means the budget specified in 9VAC5-140-6190. CO<sub>2</sub> CCR allowances offered for sale at an auction are separate from and additional to CO<sub>2</sub> allowances allocated from the Virginia CO<sub>2</sub> Budget Trading Program Base Budget.

9VAC5-140-6030. Measurements, abbreviations and acronyms.

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<sub>2</sub> Allowance Tracking System.

CO<sub>2</sub> - carbon dioxide.

DAHS - Data Acquisition and Handling System.

[EEM – efficiency measure.]

H<sub>2</sub>O - water.

lb - pound.

LME - low mass emissions.

MMBtu - million British thermal units.

MW - megawatt.

MWe - megawatt electrical.

MWh - megawatt hour.

NO<sub>x</sub> - nitrogen oxides.

O<sub>2</sub> - oxygen.

ORIS - Office of Regulatory Information Systems.

QA/QC - quality assurance/quality control.

ppm - parts per million.

[scf – standard cubic feet per hour.]

SO<sub>2</sub> - sulfur dioxide.

9VAC5-140-6040. Applicability.

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<sub>2</sub> budget unit, and any source that includes one or more such units shall be a CO<sub>2</sub> budget source, subject to the requirements of this part.

B. Exempt from the requirements of this part is any fossil fuel [power generating unit located at individual facility that generates electricity and heat from fossil fuel for the primary use of operation of the facility CO<sub>2</sub> budget source located at or adjacent to and physically interconnected with a manufacturing facility that: (i) supplies less than or equal to 10% of its annual gross electrical generation to the electric grid, or (ii) supplies less than or equal to 15% of its annual total useful energy to an entity other than a manufacturing facility in the Commonwealth, provided that the CO<sub>2</sub> budget source had, prior to January 1, 2019, supplied both non-electric thermal energy to a manufacturing facility and 15% or less of its annual total useful energy to an entity other than a manufacturing facility. Such unit shall have a permit containing the applicable restriction under subdivision (i) or (ii) of this subsection.]

9VAC5-140-6050. Standard requirements.

A. Permit requirements shall be as follows.

1. The CO<sub>2</sub> authorized account representative of each CO<sub>2</sub> budget source required to have an operating permit pursuant to 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation) and each CO<sub>2</sub> budget unit required to have an operating permit pursuant to 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation) shall:

a. Submit to the department a complete CO<sub>2</sub> 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<sub>2</sub> budget permit application and issue or deny a CO<sub>2</sub> budget permit.

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

B. Monitoring requirements shall be as follows.

1. The owners and operators and, to the extent applicable, the CO<sub>2</sub> authorized account representative of each CO<sub>2</sub> budget source and each CO<sub>2</sub> 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<sub>2</sub> requirements under subsection C of this section.

C. CO<sub>2</sub> requirements shall be as follows.

1. The owners and operators of each CO<sub>2</sub> budget source and each CO<sub>2</sub> budget unit at the source shall hold CO<sub>2</sub> allowances available for compliance deductions under 9VAC5-140-6260, as of the CO<sub>2</sub> allowance transfer deadline, in the source's compliance account in an amount not less than the total CO<sub>2</sub> emissions [that have been generated as a result of combusting fossil fuel] for the control period from all CO<sub>2</sub> budget units at the source, less the CO<sub>2</sub> 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<sub>2</sub> budget source and each CO<sub>2</sub> budget unit at the source shall hold CO<sub>2</sub> allowances available for compliance deductions under 9VAC5-140-6260, as of the CO<sub>2</sub> allowance transfer deadline, in the source's compliance account in an amount not less than the total CO<sub>2</sub> emissions for the interim control period from all CO<sub>2</sub> 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<sub>2</sub> emitted in excess of the CO<sub>2</sub> 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<sub>2</sub> budget unit shall be subject to the requirements under subdivision 1 of this subsection starting on the later, of January 1, 2020 or the date on which the unit commences operation.

6. CO<sub>2</sub> 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<sub>2</sub> allowance shall not be deducted, in order 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<sub>2</sub> allowance was allocated.

8. A CO<sub>2</sub> allowance under the CO<sub>2</sub> Budget Trading Program is a limited authorization by the department to emit one ton of CO<sub>2</sub> in accordance with the CO<sub>2</sub> Budget Trading Program. No provision of the CO<sub>2</sub> Budget Trading Program, the CO<sub>2</sub> budget permit application, or the CO<sub>2</sub> 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<sub>2</sub> allowance under the CO<sub>2</sub> Budget Trading Program does not constitute a property right.

D. The owners and operators of a CO<sub>2</sub> budget source that has excess emissions in any control period shall:

1. Forfeit the CO<sub>2</sub> 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<sub>2</sub> budget source and each CO<sub>2</sub> 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<sub>2</sub> authorized account representative for the source and each CO<sub>2</sub> 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<sub>2</sub> 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<sub>2</sub> Budget Trading Program.

d. Copies of all documents used to complete a CO<sub>2</sub> budget permit application and any other submission under the CO<sub>2</sub> Budget Trading Program or to demonstrate compliance with the requirements of the CO<sub>2</sub> Budget Trading Program.

2. The CO<sub>2</sub> authorized account representative of a CO<sub>2</sub> budget source and each CO<sub>2</sub> budget unit at the source shall submit the reports and compliance certifications required under the CO<sub>2</sub> 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<sub>2</sub> Budget Trading Program that occurs prior to the date that the revision takes effect.

2. Any provision of the CO<sub>2</sub> Budget Trading Program that applies to a CO<sub>2</sub> budget source, including a provision applicable to the CO<sub>2</sub> authorized account representative of a CO<sub>2</sub> budget source, shall also apply to the owners and operators of such source and of the CO<sub>2</sub> budget units at the source.

3. Any provision of the CO<sub>2</sub> Budget Trading Program that applies to a CO<sub>2</sub> budget unit, including a provision applicable to the CO<sub>2</sub> authorized account representative of a CO<sub>2</sub> budget unit, shall also apply to the owners and operators of such unit.

G. No provision of the CO<sub>2</sub> Budget Trading Program, a CO<sub>2</sub> budget permit application, or a CO<sub>2</sub> budget permit, shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the CO<sub>2</sub> authorized account representative of the CO<sub>2</sub> budget source or CO<sub>2</sub> budget unit from compliance with any other provisions of applicable state and federal law or regulations.

9VAC5-140-6060. Computation of time.

A. Unless otherwise stated, any time period scheduled, under the CO<sub>2</sub> 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<sub>2</sub> 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<sub>2</sub> 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.

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<sub>2</sub> Authorized Account Representative for CO<sub>2</sub> Budget Sources

9VAC5-140-6080. Authorization and responsibilities of the CO<sub>2</sub> authorized account representative.

A. Except as provided under 9VAC5-140-6090, each CO<sub>2</sub> budget source, including all CO<sub>2</sub> budget units at the source, shall have one and only one CO<sub>2</sub> authorized account representative, with regard to all matters under the CO<sub>2</sub> Budget Trading Program concerning the source or any CO<sub>2</sub> budget unit at the source.

B. The CO<sub>2</sub> authorized account representative of the CO<sub>2</sub> budget source shall be selected by an agreement binding on the owners and operators of the source and all CO<sub>2</sub> budget units at the source and must act in accordance with the 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<sub>2</sub> 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<sub>2</sub> budget source represented and each CO<sub>2</sub> budget unit at the source in all matters pertaining to the CO<sub>2</sub> Budget Trading Program, notwithstanding any agreement between the CO<sub>2</sub> authorized account representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CO<sub>2</sub> authorized account representative by the department or a court regarding the source or unit.

D. No CO<sub>2</sub> budget permit shall be issued, and no COATS account shall be established for a CO<sub>2</sub> budget source, until the department or its agent has received a complete account certificate of representation under 9VAC5-140-6110 for a CO<sub>2</sub> authorized account representative of the source and the CO<sub>2</sub> budget units at the source.

E. Each submission under the CO<sub>2</sub> Budget Trading Program shall be submitted, signed, and certified by the CO<sub>2</sub> authorized account representative for each CO<sub>2</sub> budget source on behalf of which the submission is made. Each such submission shall include the following certification statement by the CO<sub>2</sub> authorized account representative: "I am authorized to make this submission on behalf of the owners and operators of the CO<sub>2</sub> budget sources or CO<sub>2</sub> 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<sub>2</sub> budget source or a CO<sub>2</sub> budget unit only if the submission has been made, signed, and certified in accordance with subsection E of this section.

9VAC5-140-6090. [Alternate] CO<sub>2</sub> authorized [alternate] account representative.

A. An account certificate of representation may designate one and only one [alternate] CO<sub>2</sub> authorized [alternate] account representative who may act on behalf of the CO<sub>2</sub> authorized account

representative. The agreement by which the [alternate] CO<sub>2</sub> authorized [alternate] account representative is selected shall include a procedure for authorizing the [alternate] CO<sub>2</sub> authorized [alternate] account representative to act in lieu of the CO<sub>2</sub> 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 [alternate] CO<sub>2</sub> authorized [alternate] account representative shall be deemed to be a representation, action, inaction, or submission by the CO<sub>2</sub> 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<sub>2</sub> authorized account representative" is used in this part, the term shall be construed to include the [alternate] CO<sub>2</sub> authorized [alternate] account representative.

9VAC5-140-6100. Changing the CO<sub>2</sub> authorized account representatives and the [alternate] CO<sub>2</sub> authorized [alternate] account representative; changes in the owners and operators.

A. The CO<sub>2</sub> 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<sub>2</sub> authorized account representative or [alternate] CO<sub>2</sub> 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<sub>2</sub> authorized account representative and the owners and operators of the CO<sub>2</sub> budget source and the CO<sub>2</sub> budget units at the source.

B. The [alternate] CO<sub>2</sub> 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 or [alternate] CO<sub>2</sub> authorized [alternate] account representative or [alternate] CO<sub>2</sub> 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 [alternate] CO<sub>2</sub> authorized [alternate] account representative and the owners and operators of the CO<sub>2</sub> budget source and the CO<sub>2</sub> 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<sub>2</sub> budget source or a CO<sub>2</sub> 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<sub>2</sub> authorized account representative and any [alternate] CO<sub>2</sub> 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<sub>2</sub> budget source or a CO<sub>2</sub> budget unit, including the addition of a new owner or operator, the CO<sub>2</sub> authorized account representative or [alternate] CO<sub>2</sub> 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.

A. A complete account certificate of representation for a CO<sub>2</sub> authorized account representative or an [alternate] CO<sub>2</sub> authorized [alternate] account representative shall include the following elements in a format prescribed by the department or its agent:

1. Identification of the CO<sub>2</sub> budget source and each CO<sub>2</sub> 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<sub>2</sub> authorized account representative and any [alternate] CO<sub>2</sub> authorized [alternate] account representative;

3. A list of the owners and operators of the CO<sub>2</sub> budget source and of each CO<sub>2</sub> budget unit at the source;

4. The following certification statement by the CO<sub>2</sub> authorized account representative and any [alternate] CO<sub>2</sub> authorized [alternate] account representative: "I certify that I was selected as the CO<sub>2</sub> authorized account representative or [alternate] CO<sub>2</sub> authorized [alternate] account representative, as applicable, by an agreement binding on the owners and operators of the CO<sub>2</sub> budget source and each CO<sub>2</sub> budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CO<sub>2</sub> Budget Trading Program on behalf of the owners and operators of the CO<sub>2</sub> budget source and of each CO<sub>2</sub> 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<sub>2</sub> authorized account representative and any [alternate] CO<sub>2</sub> 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 CO<sub>2</sub> authorized account representative.

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<sub>2</sub> authorized account representative shall affect any representation, action, inaction, or submission of the CO<sub>2</sub> authorized account representative or the finality of any decision or order by the department or its agent under the CO<sub>2</sub> 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<sub>2</sub> authorized account representative, including private legal disputes concerning the proceeds of CO<sub>2</sub> allowance transfers.

9VAC5-140-6130. Delegation by CO<sub>2</sub> authorized account representative and [alternate] CO<sub>2</sub> authorized [alternate] account representative.

A. A CO<sub>2</sub> 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. An [alternate] CO<sub>2</sub> 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. In order 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<sub>2</sub> authorized account representative or [alternate] CO<sub>2</sub> 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<sub>2</sub> authorized account representative or [alternate] CO<sub>2</sub> authorized [alternate] account representative;

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

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

4. The following certification statement by such CO<sub>2</sub> authorized account representative or [alternate] CO<sub>2</sub> 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<sub>2</sub> authorized account representative or [alternate] CO<sub>2</sub> 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<sub>2</sub> authorized account representative or [alternate] CO<sub>2</sub> 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<sub>2</sub> authorized account representative or [alternate] CO<sub>2</sub> 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<sub>2</sub> authorized account representative or [alternate] CO<sub>2</sub> authorized [alternate] account representative submitting such notice of delegation.

F. A CO<sub>2</sub> authorized account representative may delegate, to one or more natural persons, his authority to review information in the CO<sub>2</sub> allowance tracking system under this part.

G. [An alternate A] CO<sub>2</sub> authorized [alternate] account representative may delegate, to one or more natural persons, his authority to review information in the CO<sub>2</sub> allowance tracking system under this part.

H. In order to delegate authority to review information in the CO<sub>2</sub> allowance tracking system in accordance with subsections F and G of this section, the CO<sub>2</sub> authorized account representative or [alternate] CO<sub>2</sub> authorized [alternate] account representative, as appropriate, [must 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<sub>2</sub> authorized account representative or [alternate] CO<sub>2</sub> authorized [alternate] account representative;

2. The name, address, email address, telephone number and facsimile transmission number of each such natural person, herein 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<sub>2</sub> authorized account representative or alternate CO<sub>2</sub> authorized 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<sub>2</sub> authorized account representative or [alternate] CO<sub>2</sub> 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<sub>2</sub> authorized account representative or alternate CO<sub>2</sub> authorized 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<sub>2</sub> authorized account representative or [alternate] CO<sub>2</sub> 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. CO<sub>2</sub> budget permit requirements.

A. Each CO<sub>2</sub> 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<sub>2</sub> budget permit shall contain all applicable CO<sub>2</sub> 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 CO<sub>2</sub> budget permit applications.

For any CO<sub>2</sub> budget source, the CO<sub>2</sub> authorized account representative shall submit a complete CO<sub>2</sub> budget permit application under 9VAC5-140-6160 covering such CO<sub>2</sub> budget source to the department by the later of January 1, 2020 or 12 months before the date on which the CO<sub>2</sub> budget source, or a new unit at the source, commences operation.

9VAC5-140-6160. Information requirements for CO<sub>2</sub> budget permit applications.

A complete CO<sub>2</sub> budget permit application shall include the following elements concerning the CO<sub>2</sub> budget source for which the application is submitted, in a format prescribed by the department:

1. Identification of the CO<sub>2</sub> 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<sub>2</sub> budget unit at the CO<sub>2</sub> budget source; and
3. The standard requirements under 9VAC5-140-6050.

Article 4  
Compliance Certification

9VAC5-140-6170. Compliance certification report.

A. For each control period in which a CO<sub>2</sub> budget source is subject to the CO<sub>2</sub> requirements of 9VAC5-140-6050 C, the CO<sub>2</sub> authorized account representative of the source shall submit to the department by the 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<sub>2</sub> 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<sub>2</sub> budget unit at the source;
2. At the CO<sub>2</sub> authorized account representative's option, the serial numbers of the CO<sub>2</sub> 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<sub>2</sub> authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the CO<sub>2</sub> budget units at the source in compliance with the CO<sub>2</sub> Budget Trading Program, whether the source and each CO<sub>2</sub> 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<sub>2</sub> Budget Trading Program, including:

1. Whether the source was operated in compliance with the CO<sub>2</sub> 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<sub>2</sub> emissions to the unit, in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part;

3. Whether all the CO<sub>2</sub> 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.

A. The department or its agent may review and conduct independent audits concerning any compliance certification or any other submission under the CO<sub>2</sub> 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<sub>2</sub> allowances from or transfer CO<sub>2</sub> 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<sub>2</sub> Allowance Allocations

[EDITOR'S NOTE: Two versions of 9VAC5-140-6190 are provided for comment. The board seeks comment on whether the base budget should be 33 million tons or 34 million tons, with corresponding 3% per year reductions. The first version represents a 33 million ton base budget, and the second version represents a 34 million ton base budget.]

[(Version 1, 33 million ton base budget):]

9VAC5-140-6190. Base budgets.

A. The Virginia CO<sub>2</sub> Budget Trading Program base budget shall be as follows.

1. For 2020, the Virginia CO<sub>2</sub> Budget Trading Program base budget is [~~33~~ 28] million tons.

2. For 2021, the Virginia CO<sub>2</sub> Budget Trading Program base budget is [~~32.01~~ 27.16] million tons.

3. For 2022, the Virginia CO<sub>2</sub> Budget Trading Program base budget is [~~31.02~~ 26.32] million tons.

4. For 2023, the Virginia CO<sub>2</sub> Budget Trading Program base budget is [30.03 25.48] million tons.
5. For 2024, the Virginia CO<sub>2</sub> Budget Trading Program base budget is [29.04 24.64] million tons.
6. For 2025, the Virginia CO<sub>2</sub> Budget Trading Program base budget is [28.05 23.80] million tons.
7. For 2026, the Virginia CO<sub>2</sub> Budget Trading Program base budget is [27.06 22.96] million tons.
8. For 2027, the Virginia CO<sub>2</sub> Budget Trading Program base budget is [26.07 22.12 ] million tons.
9. For 2028, the Virginia CO<sub>2</sub> Budget Trading Program base budget is [25.08 21.28] million tons.
10. For 2029, the Virginia CO<sub>2</sub> Budget Trading Program base budget is [24.09 20.44] million tons.
11. For 2030, the Virginia CO<sub>2</sub> Budget Trading Program base budget is [23.10 19.60] million tons.

B. The department will allocate conditional allowances to CO<sub>2</sub> budget units and to DMME. After a conditional allowance has been consigned in an auction by a CO<sub>2</sub> budget unit and the holder of a public contract with DMME as specified under Article 9 (9VAC5-140-6410 et seq.) of this part, the conditional allowance becomes an allowance to be used for compliance purposes.

C. For 2031 and each succeeding calendar year, the Virginia CO<sub>2</sub> Budget Trading Program base budget is [23.10 19.60] million tons [or as established in a future program adjustment].

[(Version 2, 34 million ton base budget):

9VAC5-140-6190. Base budgets.

A. The Virginia CO<sub>2</sub> Budget Trading Program base budget shall be as follows.

1. For 2020, the Virginia CO<sub>2</sub> Budget Trading Program base budget is 34 million tons.
2. For 2021, the Virginia CO<sub>2</sub> Budget Trading Program base budget is 32.98 million tons.
3. For 2022, the Virginia CO<sub>2</sub> Budget Trading Program base budget is 31.96 million tons.
4. For 2023, the Virginia CO<sub>2</sub> Budget Trading Program base budget is 30.94 million tons.
5. For 2024, the Virginia CO<sub>2</sub> Budget Trading Program base budget is 29.92 million tons.
6. For 2025, the Virginia CO<sub>2</sub> Budget Trading Program base budget is 28.90 million tons.
7. For 2026, the Virginia CO<sub>2</sub> Budget Trading Program base budget is 27.88 million tons.
8. For 2027, the Virginia CO<sub>2</sub> Budget Trading Program base budget is 26.86 million tons.
9. For 2028, the Virginia CO<sub>2</sub> Budget Trading Program base budget is 25.84 million tons.
10. For 2029, the Virginia CO<sub>2</sub> Budget Trading Program base budget is 24.82 million tons.
11. For 2030, the Virginia CO<sub>2</sub> Budget Trading Program base budget is 23.80 million tons.

~~B. The department will allocate conditional allowances to CO<sub>2</sub> budget units and to DMME. After a conditional allowance has been consigned in an auction by a CO<sub>2</sub> budget unit and the holder of a public contract with DMME as specified under Article 9 (9VAC5-140-6410 et seq.) of this part, the conditional allowance becomes an allowance to be used for compliance purposes.~~

~~C. For 2031 and each succeeding calendar year, the Virginia CO<sub>2</sub> Budget Trading Program base budget is 23.80 million tons.]~~

9VAC5-140-6200. Undistributed and unsold [CO<sub>2</sub> conditional] allowances.

A. The department [may will] retire undistributed [CO<sub>2</sub> conditional] allowances at the end of each control period.

B. The department [may will] retire unsold [CO<sub>2</sub> conditional] allowances at the end of each control period.

[EDITOR'S NOTE: Two versions of 9VAC5-140-6210 are provided for comment. The board seeks comment on whether the base budget should be 33 million tons or 34 million tons, with corresponding 3% per year reductions. The first version represents a 33 million ton base budget, and the second version represents a 34 million ton base budget.]

A. The department will allocate [95% of] the Virginia CO<sub>2</sub> Budget Trading Program base budget [allowances] to CO<sub>2</sub> budget sources to be consigned to auction to the Virginia Consignment Auction Account.

~~B. [The department will allocate 5% of the Virginia CO<sub>2</sub> Budget Trading Program base budget to DMME to be consigned to auction by the holder of a public contract with DMME to assist the department for the abatement and control of air pollution, specifically, CO<sub>2</sub>.~~

~~C.] For allocation years 2020 through 2031, the Virginia CO<sub>2</sub> Budget Trading Program adjusted budget shall be the maximum number of allowances available for allocation in a given allocation year, except for CO<sub>2</sub> CCR allowances.~~

~~[D. C.] The cost containment reserve (CCR) allocation shall be managed as follows. The department will allocate CO<sub>2</sub> CCR allowances, separate from and additional to the Virginia CO<sub>2</sub> 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<sub>2</sub> allowances. The department will allocate CO<sub>2</sub> CCR allowances as follows.~~

~~1. [The Beginning in calendar year 2020, the] department will initially allocate [3.3 million , on a pro rata basis to CO<sub>2</sub> budget sources, 2.8 million] CO<sub>2</sub> CCR allowances [for calendar year 2020].~~

~~2. On or before January 1, 2021 and each year thereafter, the department will allocate [, on a pro rata basis to CO<sub>2</sub> budget sources,] current vintage year CCR allowances equal to the quantity in Table 140-5A, and withdraw the number of CO<sub>2</sub> CCR allowances that remain in the Virginia Auction Account at the end of the prior calendar year.~~

Table 140-5A  
CCR Allowances from 2021 Forward

<u>2021</u>	<u>[3.204 2.716] million tons</u>
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<u>2022</u>	<u>[3.102 2.632] million tons</u>
<u>2023</u>	<u>[3.003 2.548] million tons</u>
<u>2024</u>	<u>[2.904 2.464] million tons</u>
<u>2025</u>	<u>[2.805 2.380] million tons</u>
<u>2026</u>	<u>[2.706 2.296] million tons</u>
<u>2027</u>	<u>[2.607 2.212] million tons</u>
<u>2028</u>	<u>[2.508 2.128] million tons</u>
<u>2029</u>	<u>[2.409 2.044] million tons</u>
<u>2030 and each year thereafter</u>	<u>[2.310 1.960] million tons</u>

[3. The pro rata calculation to be used for the distribution of CO2 CCR allowances is as follows:

$$\underline{SAA/TAA * CCR = SCCR}$$

Where:

SAA = source adjusted allocation

TAA = total adjusted allocation

SCCR = source CCR]

[E. D.] [Annual base budgets as described in subsections A and B of this section may be decreased in any year as necessary to account for transfers to the Virginia Emission Containment Reserve (ECR) account and adjustments for banked allowances. In the event that the ECR is triggered during an auction, the department will authorize its agent to withhold conditional allowances as needed]. The department will [further authorize its agent to] convert and transfer any [CO<sub>2</sub> conditional] allowances that have been withheld from any auction [in the prior year] 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 department's agent] will withhold CO<sub>2</sub> ECR allowances as follows:

1. If the condition in 9VAC5-140-6420 D 1 is met at an auction, then the maximum number of CO<sub>2</sub> 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<sub>2</sub> ECR allowances that have been withheld from any prior auction in that calendar year. Any CO<sub>2</sub> ECR allowances withheld from an auction will be transferred into the Virginia ECR account.

Table 140-5B  
ECR Allowances from 2021 Forward

<u>2021</u>	<u>[3.204 2.716] million tons</u>
<u>2022</u>	<u>[3.102 2.632] million tons</u>
<u>2023</u>	<u>[3.003 2.548] million tons</u>

<u>2024</u>	<u>[<del>2.904</del> 2.464] million tons</u>
<u>2025</u>	<u>[<del>2.805</del> 2.380] million tons</u>
<u>2026</u>	<u>[<del>2.706</del> 2.296] million tons</u>
<u>2027</u>	<u>[<del>2.607</del> 2.212] million tons</u>
<u>2028</u>	<u>[<del>2.508</del> 2.128] million tons</u>
<u>2029</u>	<u>[<del>2.409</del> 2.044] million tons</u>
<u>2030 and each year thereafter</u>	<u>[<del>2.310</del> 1.960] million tons</u>

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

[F. E.] The adjustment for banked allowances [shall will] be as follows. On [March 15, 2021 March 17, 2021], the department [will may] determine the [third] adjustment for banked allowances quantity for allocation years 2021 through 2025 through the application of the following formula:

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

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<sub>2</sub> Budget Trading Program, but not including accounts opened by participating states, as reflected in the CO<sub>2</sub> Allowance Tracking System on March 15, 2021.

TAE, adjustment emissions, is the total quantity of 2018, 2019 and 2020 emissions from all CO<sub>2</sub> budget sources in all participating states, reported pursuant to CO<sub>2</sub> Budget Trading Program as reflected in the CO<sub>2</sub> Allowance Tracking System on March 15, 2021.

RS% is Virginia budget divided by the regional budget.

[G. F.] CO<sub>2</sub> 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<sub>2</sub> Budget Trading Program adjusted budgets for the 2021 through 2025 allocation years by the following formula:

$$\underline{AB = BB - TABA}$$

Where:

AB is the Virginia CO<sub>2</sub> Budget Trading Program adjusted budget.

BB is the Virginia CO<sub>2</sub> Budget Trading Program base budget.

TABA is the adjustment for banked allowances quantity in tons.

[H. G.] The department or its agent will publish the CO<sub>2</sub> trading program adjusted budgets for the 2021 through 2025 allocation years.

[I. H.] Timing requirements for CO<sub>2</sub> allowance allocations shall be as follows.

1. By May 1, 2019, the department will submit to [RGGI, Inc., its agent] the [CO<sub>2</sub>] conditional allowance allocations[, in a format prescribed by RGGI, Inc., and] in accordance with 9VAC5-140-6215 A and B, for the initial control period, 2020.

2. [By May 1, 2020, the department will submit to its agent 50% of the conditional allowance allocations in accordance with 9VAC5-140-6215 A and B, for the 2021 control period. By April 1, 2021 the department will submit to its agent the remainder of the conditional allowance allocations in accordance with 9VAC5-140-6215 A and B, for 2021.

3.] By May 1, [2020 2021], and May 1 of every [third subsequent] year thereafter, the department will submit to [RGGI, Inc., its agent] the CO<sub>2</sub> allowance allocations[, in a format prescribed by RGGI, Inc.,] for the applicable control period[, and] in accordance with 9VAC5-140-6215 A and B.

[I. Implementation of the CCR (subsection C of this section), the ECR (subsection D of this section) and the banking adjustment (subsection E of this section) shall be determined based on the extent of the CO<sub>2</sub> trading program.]

[(Version 2, 34 million ton base budget):

9VAC5-140-6210. CO<sub>2</sub> allowance allocations:

A. The department will allocate 95% of the Virginia CO<sub>2</sub> Budget Trading Program base budget to CO<sub>2</sub> budget sources to be consigned to auction to the Virginia Consignment Auction Account.

B. The department will allocate 5% of the Virginia CO<sub>2</sub> Budget Trading Program base budget to DMME to be consigned to auction by the holder of a public contract with DMME to assist the department for the abatement and control of air pollution, specifically, CO<sub>2</sub>.

C. For allocation years 2020 through 2031, the Virginia CO<sub>2</sub> Budget Trading Program adjusted budget shall be the maximum number of allowances available for allocation in a given allocation year, except for CO<sub>2</sub> CCR allowances.

D. The cost containment reserve (CCR) allocation shall be managed as follows. The department will allocate CO<sub>2</sub> CCR allowances, separate from and additional to the Virginia CO<sub>2</sub> 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<sub>2</sub> allowances. The department will allocate CO<sub>2</sub> CCR allowances as follows:

1. The department will initially allocate 3.4 million CO<sub>2</sub> CCR allowances for calendar year 2020.

2. On or before January 1, 2021 and each year thereafter, the department will allocate current vintage year CCR allowances equal to the quantity in Table 140-5A, and withdraw the number of CO<sub>2</sub> CCR allowances that remain in the Virginia Auction Account at the end of the prior calendar year.

Table 140-5A. CCR Allowances from 2021 Forward.

<u>2021</u>	<u>3.298 million tons</u>
<u>2022</u>	<u>3.196 million tons</u>
<u>2023</u>	<u>3.094 million tons</u>
<u>2024</u>	<u>2.992 million tons</u>
<u>2025</u>	<u>2.890 million tons</u>
<u>2026</u>	<u>2.788 million tons</u>
<u>2027</u>	<u>2.686 million tons</u>

<u>2028</u>	<u>2.584 million tons</u>
<u>2029</u>	<u>2.482 million tons</u>
<u>2030 and each year thereafter</u>	<u>2.390 million tons</u>

E. Annual base budgets as described in subsections A and B of this section may be decreased in any year as necessary to account for transfers to the Virginia Emission Containment Reserve (ECR) account and adjustments for banked allowances. The department will convert and transfer any CO<sub>2</sub> allowances that have been withheld from any auction or auctions in the prior year 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 will withhold CO<sub>2</sub> ECR allowances as follows.

1. If the condition in 9VAC5-140-6420 D 1 is met at an auction, then the maximum number of CO<sub>2</sub> 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<sub>2</sub> ECR allowances that have been withheld from any prior auction or auctions in that calendar year. Any CO<sub>2</sub> ECR allowances withheld from an auction will be transferred into the Virginia ECR account.

Table 140-5B. ECR Allowances from 2021 Forward.

<u>2021</u>	<u>3.298 million tons</u>
<u>2022</u>	<u>3.196 million tons</u>
<u>2023</u>	<u>3.094 million tons</u>
<u>2024</u>	<u>2.992 million tons</u>
<u>2025</u>	<u>2.890 million tons</u>
<u>2026</u>	<u>2.788 million tons</u>
<u>2027</u>	<u>2.686 million tons</u>
<u>2028</u>	<u>2.584 million tons</u>
<u>2029</u>	<u>2.482 million tons</u>
<u>2030 and each year thereafter</u>	<u>2.390 million tons</u>

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

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

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

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<sub>2</sub> Budget Trading Program, but not including accounts opened by participating states, as reflected in the CO<sub>2</sub> Allowance Tracking System on March 15, 2021.

TAE, adjustment emissions, is the total quantity of 2018, 2019 and 2020 emissions from all CO<sub>2</sub> budget sources in all participating states, reported pursuant to CO<sub>2</sub> Budget Trading Program as reflected in the CO<sub>2</sub> Allowance Tracking System on March 15, 2021.

RS% is Virginia budget divided by the regional budget.

G. CO<sub>2</sub> 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<sub>2</sub> Budget Trading Program adjusted budgets for the 2021 through 2025 allocation years by the following formula:

$$\underline{AB = BB - TABA}$$

Where:

AB is the Virginia CO<sub>2</sub> Budget Trading Program adjusted budget.

BB is the Virginia CO<sub>2</sub> Budget Trading Program base budget.

TABA is the adjustment for banked allowances quantity in tons.

H. The department or its agent will publish the CO<sub>2</sub> trading program adjusted budgets for the 2021 through 2025 allocation years.

I. Timing requirements for CO<sub>2</sub> allowance allocations shall be as follows.

1. By May 1, 2019, the department will submit to RGGI, Inc., the CO<sub>2</sub> conditional allowance allocations, in a format prescribed by RGGI, Inc., and in accordance with 9VAC5-140-6215 A and B, for the initial control period (2020).

2. By May 1, 2020, and May 1 of every third year thereafter, the department will submit to RGGI, Inc., the CO<sub>2</sub> allowance allocations, in a format prescribed by RGGI, Inc., for the applicable control period, and in accordance with 9VAC5-140-6215 A and B.]

[9VAC5-140-6211. CO<sub>2</sub> allowance allocations, DMME allowances.

Notwithstanding 9VAC5-140-6210 the department will allocate 5.0% of the Virginia CO<sub>2</sub> Budget Trading Program base or adjusted budget allowances, as applicable, to DMME to be consigned to auction by the holder of a public contract with DMME to assist the department for the abatement and control of air pollution, specifically CO<sub>2</sub>, by the implementation of programs that lower base and peak electricity demand and reduce the cost of the program to consumers and budget sources.]

9VAC5-140-6215. CO<sub>2</sub> allocation methodology.

A. The net electric output (in MWh) used with respect to CO<sub>2</sub> allowance allocations under subsection B of this section for each CO<sub>2</sub> budget unit shall be:

1. For units operating on or before January 1, 2020, the average of the three amounts of the unit's net electric output during 2016, 2017 and 2018 to determine allocations for the initial control period.

2. For all units operating in each control period after 2020, the average of the three amounts of the unit's total net electric output during the 3 most recent years for which data are available prior to the start of the control period.

B.1. For each control period beginning in 2020 and thereafter, the department will allocate to all CO<sub>2</sub> budget units that have a net electric output, as determined under subsection A of this section, a total amount of CO<sub>2</sub> conditional allowances equal to the CO<sub>2</sub> base budget.

2. The department will allocate CO<sub>2</sub> conditional allowances to each CO<sub>2</sub> budget unit under subdivision 1 of this subsection in an amount determined by multiplying the total amount of CO<sub>2</sub> allowances allocated under subdivision 1 of this subsection by the ratio of the baseline electrical

output of such CO<sub>2</sub> budget unit to the total amount of baseline electrical output of all such CO<sub>2</sub> budget units and rounding to the nearest whole allowance as appropriate.

3. New CO<sub>2</sub> budget units will be allocated CO<sub>2</sub> conditional allowances once they have established electrical output data to be used in the conditional allowance allocation process.

C. For the purpose of the allocation process as described in subsections A and B of this section, CO<sub>2</sub> budget units shall report the unit's net electric output to the department on a yearly basis as follows.

1. By March 1, 2019, each CO<sub>2</sub> budget unit shall report yearly net electric output data during 2016, 2017 and 2018.

2. By March 1, 2020 and each year thereafter, each CO<sub>2</sub> budget unit shall report yearly net electric output data for the previous year.

## Article 6 CO<sub>2</sub> Allowance Tracking System

9VAC5-140-6220. CO<sub>2</sub> Allowance Tracking System accounts.

A. Consistent with 9VAC5-140-6230 A, the department or its agent will establish one compliance account for each CO<sub>2</sub> budget source. Allocations of CO<sub>2</sub> conditional allowances pursuant to Article 5 (9VAC5-140-6190 et seq.) of this part and deductions or transfers of CO<sub>2</sub> conditional 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<sub>2</sub> 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.

A. Upon receipt of a complete account certificate of representation under 9VAC5-140-6110, the department or its agent will establish a conditional allowance account and a compliance account for each CO<sub>2</sub> budget source and a conditional compliance account for DMME for which the 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<sub>2</sub> allowances. An application for a general account may designate one and only one CO<sub>2</sub> authorized account representative and one and only one [alternate] CO<sub>2</sub> authorized [alternate] account representative who may act on behalf of the CO<sub>2</sub> authorized account representative. The agreement by which the [alternate] CO<sub>2</sub> authorized [alternate] account representative is selected shall include a procedure for authorizing the [alternate] CO<sub>2</sub> authorized [alternate] account representative to act in lieu of the CO<sub>2</sub> 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<sub>2</sub> authorized account representative and any [alternate] CO<sub>2</sub> authorized [alternate] account representative;

b. At the option of the CO<sub>2</sub> authorized account representative, organization name and type of organization;

c. A list of all persons subject to a binding agreement for the CO<sub>2</sub> authorized account representative or any [alternate] CO<sub>2</sub> authorized [alternate] account representative to represent their ownership interest with respect to the CO<sub>2</sub> allowances held in the general account;

d. The following certification statement by the CO<sub>2</sub> authorized account representative and any [alternate] CO<sub>2</sub> authorized [alternate] account representative: "I certify that I was selected as the CO<sub>2</sub> authorized account representative or the [alternate] CO<sub>2</sub> authorized [alternate] account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CO<sub>2</sub> 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<sub>2</sub> 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<sub>2</sub> authorized account representative and any [alternate] CO<sub>2</sub> 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<sub>2</sub> 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 or persons for whom the application is submitted.

(2) The CO<sub>2</sub> authorized account representative and any [alternate] CO<sub>2</sub> 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<sub>2</sub> allowances held in the general account in all matters pertaining to the CO<sub>2</sub> Budget Trading Program, notwithstanding any agreement between the CO<sub>2</sub> authorized account representative or any [alternate] CO<sub>2</sub> authorized [alternate] account representative and such person. Any such person shall be bound by any order or decision issued to the CO<sub>2</sub> authorized account representative or any alternate CO<sub>2</sub> authorized account representative by the department or its agent or a court regarding the general account.

(3) Any representation, action, inaction, or submission by any [alternate] CO<sub>2</sub> authorized [alternate] account representative shall be deemed to be a representation, action, inaction, or submission by the CO<sub>2</sub> authorized account representative.

b. Each submission concerning the general account shall be submitted, signed, and certified by the CO<sub>2</sub> authorized account representative or any [alternate] CO<sub>2</sub> authorized [alternate] account representative for the persons having an ownership interest with respect to CO<sub>2</sub> allowances held in the general account. Each such submission shall include the following certification statement by the CO<sub>2</sub> authorized account representative or any [alternate] CO<sub>2</sub> 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<sub>2</sub> 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<sub>2</sub> authorized account representative and [alternate] CO<sub>2</sub> authorized [alternate] account representative, and changes in persons with ownership interest, shall be accomplished as follows.

a. The CO<sub>2</sub> 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<sub>2</sub> authorized account representative, or the previous [alternate] CO<sub>2</sub> 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<sub>2</sub> authorized account representative and the persons with an ownership interest with respect to the CO<sub>2</sub> allowances in the general account.

b. The [alternate] CO<sub>2</sub> 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<sub>2</sub> authorized account representative, or the previous [alternate] CO<sub>2</sub> 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<sub>2</sub> authorized account representative and the persons with an ownership interest with respect to the CO<sub>2</sub> allowances in the general account.

c. In the event a new person having an ownership interest with respect to CO<sub>2</sub> 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<sub>2</sub> authorized account representative and any [alternate] CO<sub>2</sub> 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<sub>2</sub> allowances in the general account, including the addition or deletion of persons, the CO<sub>2</sub> authorized account representative or any [alternate] CO<sub>2</sub> 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<sub>2</sub> allowances in the general account to include the change.

4. Objections concerning CO<sub>2</sub> 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 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<sub>2</sub> authorized account representative or any [alternate] CO<sub>2</sub> authorized [alternate] account representative for a general account shall affect any representation, action, inaction, or submission of the CO<sub>2</sub> authorized account representative or any [alternate] CO<sub>2</sub> authorized [alternate] account representative or the finality of any decision or order by the department or its agent under the CO<sub>2</sub> 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<sub>2</sub> authorized account representative or any [alternate] CO<sub>2</sub> authorized [alternate] account representative for a general account, including private legal disputes concerning the proceeds of CO<sub>2</sub> allowance transfers.

5. Delegation by CO<sub>2</sub> authorized account representative and [alternate] CO<sub>2</sub> authorized [alternate] account representative shall be accomplished as follows:

a. A CO<sub>2</sub> 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. [An alternate A] CO<sub>2</sub> 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<sub>2</sub> authorized account representative or [alternate] CO<sub>2</sub> 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<sub>2</sub> authorized account representative or [alternate] CO<sub>2</sub> authorized [alternate] account representative;

(2) The name, address, email address, telephone number and facsimile transmission number of each such natural person, herein 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<sub>2</sub> authorized account representative or [alternate] CO<sub>2</sub> 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<sub>2</sub> authorized account representative or [alternate] CO<sub>2</sub> 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<sub>2</sub> authorized account representative or [alternate] CO<sub>2</sub> 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<sub>2</sub> authorized account representative or [alternate] CO<sub>2</sub> 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<sub>2</sub> authorized account representative or [alternate] CO<sub>2</sub> 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. CO<sub>2</sub> Allowance Tracking System responsibilities of CO<sub>2</sub> authorized account representative.

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<sub>2</sub> allowances in the account, shall be made only by the CO<sub>2</sub> authorized account representative for the account.

9VAC5-140-6250. Recordation of CO<sub>2</sub> allowance allocations.

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

1. In each CO<sub>2</sub> budget source's and DMME's conditional allowance account, the CO<sub>2</sub> conditional allowances allocated to those sources and DMME by the department prior to being consigned to auction; and

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

B. Each year the department or its agent will record CO<sub>2</sub> 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<sub>2</sub> allowances were previously allocated to the compliance account. Each year, the department or its agent will also record CO<sub>2</sub> 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<sub>2</sub> allowances were previously allocated to an allocation set-aside.

C. Serial numbers for allocated CO<sub>2</sub> allowances shall be managed as follows. When allocating CO<sub>2</sub> allowances to and recording them in an account, the department or its agent will assign each CO<sub>2</sub> allowance a unique identification number that will include digits identifying the year for which the CO<sub>2</sub> allowance is allocated.

9VAC5-140-6260. Compliance.

A. CO<sub>2</sub> allowances that meet the following criteria are available to be deducted in order for a CO<sub>2</sub> budget source to comply with the CO<sub>2</sub> requirements of 9VAC5-140-6050 C for a control period or an interim control period.

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

[3. For CO<sub>2</sub> offset allowances generated by other participating states, the number of CO<sub>2</sub> offset allowances that are available to be deducted in order for a CO<sub>2</sub> budget source to comply with the CO<sub>2</sub> requirements of 9VAC5-140-6050 C for a control period, initial control period, or an interim control period shall not exceed 3.3% of the CO<sub>2</sub> budget source's CO<sub>2</sub> emissions for that control period, or may not exceed 3.3% of 0.50 times the CO<sub>2</sub> budget source's CO<sub>2</sub> emissions for an interim control period, as determined in accordance with Article 6 (9VAC5-140-6220 et seq.) and Article 8 (9VAC5-140-6330 et seq.) of this part.

~~3.~~ 4.] The CO<sub>2</sub> 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<sub>2</sub> allowance transfers submitted for recordation in the CO<sub>2</sub> budget source's compliance account by the CO<sub>2</sub> allowance transfer deadline for a control period or interim control period, the department or its agent will deduct CO<sub>2</sub> allowances available under subsection A of this section to cover the source's CO<sub>2</sub> 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<sub>2</sub> allowances deducted equals the number of tons of total CO<sub>2</sub> emissions, or 0.50 times the number of tons of total CO<sub>2</sub> emissions for an interim control period, determined in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part, from all CO<sub>2</sub> budget units at the CO<sub>2</sub> budget source for the control period or interim control period; or

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

C. Identification of available CO<sub>2</sub> allowances by serial number and default compliance deductions shall be managed as follows:

1. The CO<sub>2</sub> authorized account representative for a source's compliance account may request that specific CO<sub>2</sub> 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<sub>2</sub> allowances for a control period from the CO<sub>2</sub> budget source's compliance account, in the absence of an identification or in the case of a partial identification of available CO<sub>2</sub> allowances by serial number under subdivision 1 of this subsection, as follows: Any CO<sub>2</sub> allowances that are available for deduction under subdivision 1 of this subsection. CO<sub>2</sub> allowances shall be deducted in chronological order (i.e., CO<sub>2</sub> allowances from earlier allocation years shall be deducted before CO<sub>2</sub> allowances from later allocation years). In the event that some, but not all, CO<sub>2</sub> allowances from a particular allocation year are to be deducted, CO<sub>2</sub> 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<sub>2</sub> budget source's compliance account a number of CO<sub>2</sub> allowances equal to three times the number of the source's excess emissions. In the event that a source has insufficient CO<sub>2</sub> 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<sub>2</sub> allowance deduction required under subdivision 1 of this subsection shall not affect the liability of the owners and operators of the CO<sub>2</sub> budget source or the CO<sub>2</sub> 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<sub>2</sub> 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<sub>2</sub> 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<sub>2</sub> budget source had excess emissions and the concomitant deduction of CO<sub>2</sub> allowances from that CO<sub>2</sub> 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<sub>2</sub> allowances resulting from the department's original determination that the relevant CO<sub>2</sub> budget source has had excess emissions. Should the department's determination of the existence or extent of the CO<sub>2</sub> 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<sub>2</sub> budget source a number of CO<sub>2</sub> allowances equaling the number of CO<sub>2</sub> allowances deducted which are attributable to the difference between the original and final quantity of excess emissions. Should such CO<sub>2</sub> budget source's compliance account no longer exist, the CO<sub>2</sub> allowances will be provided to a general account selected by the owner or operator of the CO<sub>2</sub> 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<sub>2</sub> Budget Trading Program and make appropriate adjustments of the information in the submissions.

2. The department may deduct CO<sub>2</sub> allowances from or transfer CO<sub>2</sub> 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.

Each CO<sub>2</sub> allowance that is held in a compliance account or a general account will remain in such account unless and until the CO<sub>2</sub> 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.

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<sub>2</sub> authorized account representative for the account.

9VAC5-140-6290. Closing of general accounts.

A. A CO<sub>2</sub> 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<sub>2</sub> allowance transfer of all CO<sub>2</sub> 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<sub>2</sub> allowances, the department or its agent may notify the CO<sub>2</sub> 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<sub>2</sub> allowances into the account under 9VAC5-140-6300 or a statement submitted by the CO<sub>2</sub> 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<sub>2</sub> Allowance Transfers

9VAC5-140-6300. Submission of CO<sub>2</sub> allowance transfers.

The CO<sub>2</sub> authorized account representatives seeking recordation of a CO<sub>2</sub> allowance transfer shall submit the transfer to the department or its agent. To be considered correctly submitted, the CO<sub>2</sub> 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<sub>2</sub> allowance to be transferred;
3. The printed name and signature of the CO<sub>2</sub> 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 d of this section.

9VAC5-140-6310. Recordation.

A. Within five business days of receiving a CO<sub>2</sub> allowance transfer, except as provided in subsection B of this section, the department or its agent will record a CO<sub>2</sub> allowance transfer by moving each CO<sub>2</sub> 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<sub>2</sub> allowance identified by serial number in the transfer.

B. A CO<sub>2</sub> allowance transfer into or out of a compliance account that is submitted for recordation following the CO<sub>2</sub> allowance transfer deadline and that includes any CO<sub>2</sub> 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<sub>2</sub> allowance transfer deadline applies will not be recorded until after completion of the process pursuant to 9VAC5-140-6260 B.

C. Where a CO<sub>2</sub> 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.

A. Within 5 business days of recordation of a CO<sub>2</sub> 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<sub>2</sub> authorized account representatives of both the transferor and transferee accounts.

B. Within 10 business days of receipt of a CO<sub>2</sub> allowance transfer that fails to meet the requirements of 9VAC5-140-6310 A, the department or its agent will notify the CO<sub>2</sub> 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 non-recordation.

C. Nothing in this section shall preclude the submission of a CO<sub>2</sub> allowance transfer for recordation following notification of non-recordation.

Article 8  
Monitoring, Reporting and Recordkeeping

9VAC5-140-6330. General requirements.

A. The owners and operators, and to the extent applicable, the CO<sub>2</sub> authorized account representative of a CO<sub>2</sub> 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<sub>2</sub> 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<sub>2</sub> budget unit," "CO<sub>2</sub> 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<sub>2</sub> budget unit who monitor a non-CO<sub>2</sub> 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) as pursuant to 40 CFR 75.13, for purposes of complying with this part, shall monitor and report CO<sub>2</sub> mass emissions from such non-CO<sub>2</sub> budget [unit units] according to the procedures for CO<sub>2</sub> budget units established in this article.

B. The owner or operator of each CO<sub>2</sub> budget unit shall meet the following general requirements for installation, certification, and data accounting.

1. Install all monitoring systems necessary to monitor CO<sub>2</sub> 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<sub>2</sub> emissions under this part. This may require systems to monitor CO<sub>2</sub> concentration, stack gas flow rate, O<sub>2</sub> 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<sub>2</sub> budget unit, except for a CO<sub>2</sub> budget unit under subdivision 2 of this subsection, shall comply with the requirements of this section by January 1, 2020.

2. The owner or operator of a CO<sub>2</sub> budget unit that commences commercial operation July 1, 2020 shall comply with the requirements of this section by (i) January 1, 2021; 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<sub>2</sub> 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<sub>2</sub> 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<sub>2</sub> concentration, CO<sub>2</sub> emissions rate, stack gas moisture content, fuel flow rate, heat input, and any other parameter required to determine CO<sub>2</sub> 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<sub>2</sub> 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<sub>2</sub> budget units subject to an acid rain emissions limitation or CSAPR NO<sub>x</sub> Ozone Season Trading Program that qualify for the optional SO<sub>2</sub>, NO<sub>x</sub>, and CO<sub>2</sub> (for acid rain) or NO<sub>x</sub> (for CSAPR NO<sub>x</sub> 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<sub>2</sub> emissions calculations for LME units under 40 CFR 75.19 for purposes of compliance with these regulations.

b. CO<sub>2</sub> budget units subject to an acid rain emissions limitation that do not qualify for the optional SO<sub>2</sub>, NO<sub>x</sub>, and CO<sub>2</sub> (for acid rain) or NO<sub>x</sub> (for CSAPR NO<sub>x</sub> Ozone Season Trading Program) emissions calculations for LME units under 40 CFR 75.19, shall not use the CO<sub>2</sub> emissions calculations for LME units under 40 CFR 75.19 for purposes of compliance with these regulations.

c. CO<sub>2</sub> budget units not subject to an acid rain emissions limitation shall qualify for the optional CO<sub>2</sub> emissions calculation for LME units under 40 CFR 75.19, provided that they emit less than 100 tons of NO<sub>x</sub> annually and no more than 25 tons of SO<sub>2</sub> annually.

3. The owner or operator of a CO<sub>2</sub> 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<sub>2</sub> 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<sub>2</sub> budget unit shall operate the unit so as to discharge, or allow to be discharged, CO<sub>2</sub> 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<sub>2</sub> budget unit shall disrupt the CEMS, any portion thereof, or any other approved emissions monitoring method, and thereby avoid monitoring and recording CO<sub>2</sub> 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<sub>2</sub> 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<sub>2</sub> 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.

A. The owner or operator of a CO<sub>2</sub> 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<sub>2</sub> 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<sub>2</sub> 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<sub>2</sub> 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 in order 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<sub>2</sub> 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<sub>2</sub> or O<sub>2</sub> 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 which require recertification include: replacement of the analyzer, change in location or orientation of the sampling probe or site, or changing 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<sub>2</sub> 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<sub>2</sub> 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<sub>2</sub> 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 which 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<sub>2</sub> 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<sub>2</sub> authorized account representative shall submit the additional information required to complete the certification application. If the CO<sub>2</sub> 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<sub>2</sub> 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<sub>2</sub> mass emissions using a CO<sub>2</sub> pollutant concentration monitor and a flow monitor, the maximum potential concentration of CO<sub>2</sub> and the maximum potential flow rate of the unit under section 2.1 of appendix A of 40 CFR Part 75.

(2) The CO<sub>2</sub> 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<sub>2</sub> 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.

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.

The CO<sub>2</sub> authorized account representative for a CO<sub>2</sub> 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.

A. The CO<sub>2</sub> 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 with the requirements of 9VAC5-140-6080 E.

B. The owner or operator of a CO<sub>2</sub> budget unit shall submit a monitoring plan in the manner prescribed in 40 CFR 75.62.

C. The CO<sub>2</sub> authorized account representative shall submit an application to the department within 45 days after completing all CO<sub>2</sub> 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<sub>2</sub> authorized account representative shall submit quarterly reports, as follows:

1. The CO<sub>2</sub> authorized account representative shall report the CO<sub>2</sub> mass emissions data for the CO<sub>2</sub> budget unit, in an electronic format prescribed by the department unless otherwise prescribed by the department for each calendar quarter.

2. The CO<sub>2</sub> 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<sub>2</sub> 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<sub>x</sub>, and SO<sub>2</sub> provisions.

3. The CO<sub>2</sub> 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<sub>2</sub> 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<sub>2</sub> emissions; and

c. The CO<sub>2</sub> concentration values substituted for missing data under Subpart D of 40 CFR Part 75 do not systematically underestimate CO<sub>2</sub> emissions.

9VAC5-140-6380. Petitions.

A. Except as provided in subsection C of this section, the CO<sub>2</sub> authorized account representative of a CO<sub>2</sub> 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<sub>2</sub> budget unit that is not subject to an Acid Rain emissions limitation shall meet the following requirements.

1. The CO<sub>2</sub> authorized account representative of a CO<sub>2</sub> 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<sub>2</sub> authorized account representative of a CO<sub>2</sub> 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<sub>2</sub> authorized account representative of a CO<sub>2</sub> 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<sub>2</sub> 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.

9VAC5-140-6400. Reserved.

Article 9  
Auction of CO<sub>2</sub> CCR and ECR allowances

9VAC5-140-6410. Purpose.

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.

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

1. The number of CO<sub>2</sub> allowances offered for sale at the auction, not including any CO<sub>2</sub> CCR allowances;
2. The number of CO<sub>2</sub> CCR allowances that will be offered for sale at the auction if the condition of subdivision 1 of this subsection is met;
3. The minimum reserve price for the auction;
4. The CCR trigger price for the auction;
5. The maximum number of CO<sub>2</sub> allowances that may be withheld from sale at the auction if the condition of subsection 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<sub>2</sub> CCR allowances.

1. CO<sub>2</sub> 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<sub>2</sub> allowances available for purchase at the auction, not including any CO<sub>2</sub> CCR allowances.
2. If the condition of subdivision 1 of this subsection is met at an auction, then the number of CO<sub>2</sub> CCR allowances offered for sale by the department or its agent at the auction shall be equal to the number of CO<sub>2</sub> CCR allowances in the Virginia auction account at the time of the auction.
3. After all of the CO<sub>2</sub> CCR allowances in the Virginia auction account have been sold in a given calendar year, no additional CO<sub>2</sub> 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<sub>2</sub> CCR allowances are sold, the reserve price at for the auction shall be the CCR trigger price.

5. If the condition of subdivision 1 of this subsection is not satisfied, no CO<sub>2</sub> CCR allowances shall be offered for sale at the auction, and the reserve price for the auction shall be equal to the minimum reserve prices.

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<sub>2</sub> ECR allowances from an auction.

1. CO<sub>2</sub> 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<sub>2</sub> 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<sub>2</sub> ECR allowances that have been withheld from any prior auction in that calendar year. Any CO<sub>2</sub> ECR allowances withheld from an auction will be transferred into the Virginia ECR Account.

9VAC5-140-6430. Consignment auction.

In accordance with Article 5 (9VAC5-140-6190 et seq.) of this part, [one quarter of the annual] conditional [allowances allowance allocation] shall be consigned by the CO<sub>2</sub> budget source to whom they are allocated or [the holder of a public contract with] DMME to each auction [~~on a quarterly pro rata basis~~] in accordance with procedures specified by the department. At the completion of the consignment auction, a conditional allowance [sold at auction] shall become [~~an allowance to be used for compliance purposes a CO<sub>2</sub> allowance~~].

[9VAC5-140-6435. Other auction.

Notwithstanding the requirements of 9VAC5-140-6430, the department may participate in a direct auction of allowances without consignment in accordance with requirements established by the Virginia General Assembly. A "direct auction" means a CO<sub>2</sub> auction conducted by a CO<sub>2</sub> Budget Trading Program in which Virginia is a participating state.]

[Article 10. Program Monitoring and Review.

9VAC5-140-6440. Program monitoring and review.

In conjunction with the CO<sub>2</sub> 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.]