

AGENDA
STATE AIR POLLUTION CONTROL BOARD MEETING

WEDNESDAY, DECEMBER 7, 2022

IN PERSON ONLY – GALLERY, COMMUNITY COLLEGE WORKFORCE ALLIANCE,
1651 EAST PARHAM ROAD, RICHMOND, VA 23228

Meeting will be Live-Streamed. Go to: www.deq.virginia.gov
Any Updates To Details/Final Arrangements To Be Announced On Virginia Regulatory Town Hall

Convene – 10:30 A.M

Agenda Item	Presenter	Tab
Call to Order	Guy	
Review and Approve Agenda	Board Members	
Review and Approve Minutes (October 5, 2022)	Board Members	D
Final Exempt Regulations		
<i>Federal Documents Incorporated by Reference (Rev. C22) General Provisions (9VAC5-20); New and Modified Stationary Sources (9VAC5-50), Hazardous Air Pollutant Sources (9VAC5-60)</i>	Sabasteanski	E
Proposed Regulations		
<i>Repeal CO 2 Budget Trading Program as required by Executive Order 9 (Revision A22) Part VII of 9VAC5-140</i>	Voyles	F
Report to the Board Regarding Controversial Permits	Dowd	
Division Director’s Report	Dowd	
Public Forum <i>Individuals may comment on matters other than those on the agenda or pending regulatory actions</i>		

ADJOURN

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 Rachael Harrell at (804) 801-2932.

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 made by

the Department of Environmental Quality (Department). These procedures establish the times for the public to provide appropriate comment to the Board for regulatory action and the Department for case decisions for 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 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 (e.g., issuance and amendment of permits and enforcement orders), the Board adopts public participation procedures in the individual regulations which establish the permit programs. (Note: as of July 1, 2022, the Department takes final action on all case decisions.) 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, usually 45 days.

In light of these established procedures, the Board accepts public comment on regulatory actions 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. Also, public comment will be accepted for certain final exempt actions where there has been no public comment period. Persons are allowed up to 3 minutes to address the Board on the emergency regulation and final exempt actions under consideration.

POOLING MINUTES ON REGULATORY ACTIONS: 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 ON A REGULATORY ACTION will not be accepted at the meeting. The Board expects comments and information on a regulatory action 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 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. 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 or pending regulatory actions. 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. Note, there is no pooling of minutes during the public forum.

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: Rachael Harrell, Policy Analyst, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, Virginia 23218, phone (804) 801-2932, e-mail: rachael.harrell@deq.virginia.gov .

Additional Meeting Information:

- Attendees are not entitled to be disorderly or disrupt the meeting from proceeding in an orderly, efficient, and effective fashion. Disruptive behavior may result in a recess or removal from the meeting.
- Possession or use of any device that may disrupt the conduct of business is prohibited, including but not limited to: voice-amplification equipment; bullhorns; blow horns; sirens, or other noise-producing devices; as well as signs on sticks, poles or stakes; or helium-filled balloons.
- All attendees are asked to be respectful of all speakers.
- Rules will be enforced fairly and impartially not only to ensure the efficient and effective conduct of business, but also to ensure no interference with the business of the Community College Workforce Alliance, its employees and guests.
- All violators are subject to removal.



TAB D



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Travis A. Voyles
Acting Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director
(804) 698-4020

MEMORANDUM

To: Members of the State Air Pollution Control Board

From : Rachael Harrell

Date: December 7, 2022

Subject: Minutes

Attached are the minutes from your meeting on October 5, 2022. Staff will seek your approval of the minutes at your next meeting.

If you have any questions, please contact Rachael Harrell at (804) 801-2932 or rachael.harrell@deq.virginia.gov.

DRAFT MINUTES
STATE AIR POLLUTION CONTROL BOARD MEETING

WEDNESDAY, OCTOBER 5, 2022

COMMUNITY COLLEGE WORKFORCE ALLIANCE
1651 EAST PARHAM ROAD, RICHMOND, VA 23228

Board Members Present:

James Guy II	Dr. Lornel Tompkins
Jay Holloway	Staci H. Rijal
David Hudgins	

Board Members Absent: None

Department of Environmental Quality:

Michael S. Rolband, Director	Rachael Harrell, Board Coordinator
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Attorney General's Office:

Leslie Haley, Deputy Attorney General

These minutes summarize activities that took place at this Board meeting. The Chair convened the meeting at 10:32a.m. The meeting was adjourned at 10:48a.m.

Minute No. 1 – Review and Approval of Agenda: The Board, on a motion by Ms. Rijal and seconded by Mr. Holloway, unanimously approved the agenda.

Minute No. 2 – August 31, 2022 Minutes: The Board unanimously approved the minutes from the Board's meeting on August 31, 2022.

Minute No. 3 – Amend List of Nonattainment Areas- 9VAC5-20: Ms. Karen Sabasteanski presented final exempt amendments to amend the list of nonattainment areas. Ms. Sabasteanski explained that EPA has determined that a portion of Giles County, Virginia is not meeting the SO₂ NAAQS, and has designated it as a nonattainment area. In order to implement the standard, Virginia's list of nonattainment areas must be updated accordingly, and the new SO₂ nonattainment area must be added. Ms. Sabasteanski then made the following recommendation:

1. That the board adopt the proposal with an effective date consistent with the Administrative Process Act.
2. In adopting this proposal, the board affirms that it will receive, consider, and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the Administrative Process Act.

Based on the Board book material, staff presentation and Board discussion, the Board, on a motion by Mr. Holloway and seconded by Ms. Rijal, unanimously (i) adopted the amendments with an effective date consistent with the Administrative Process Act and (ii) affirmed that it would receive, consider, and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the Administrative Process Act.

Minute No. 4- Division Director Report: The Board received updates from Michael Dowd, Air and Renewable Energy Division Director. Mr. Dowd provided additional information on Virginia's nonattainment areas. Mr. Dowd informed the Board that there are currently no controversial permits to present to the Board but there may be a couple in the future. Mr. Dowd also provided an update on air quality.

Minute No. 5- Public Comment Forum: No individuals requested to speak during the public comment forum.

Minute No. 6 – Future Meetings: Staff will work with the Board to confirm the next meetings' dates.

DRAFT



TAB E

**COMMONWEALTH OF VIRGINIA
STATE AIR POLLUTION CONTROL BOARD MEETING**

December 7, 2022

SUBJECT: Federal Documents Incorporated by Reference (Rev. C22) - Request for Board Action on Exempt Final Regulation

CONTACT: Karen G. Sabasteanski
karen.sabasteanski@deq.virginia.gov/804-698-4426
Policy Analyst, Office of Air Data Analysis and Planning
Department of Environmental Quality

INTRODUCTION

The purpose of the proposed action is to amend the regulations to incorporate newly promulgated federal New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), and national emission standards for hazardous air pollutants for source categories (Maximum Achievable Control Technology, or MACT), Rules 5-5, 6-1, and 6-2, respectively, of the board's regulations. The board needs to incorporate newly promulgated NSPS, NESHAP, and MACT standards in order for the department to obtain authority from the U.S. Environmental Protection Agency (EPA) to enforce these standards. If the board does not do so, authority to enforce the standards remains with the federal government. Further, the standards reflect the most current technical research on the subjects addressed by the standards. To continue to follow the old standards would mean relying on inaccurate and outdated information.

Documents Incorporated by Reference (9VAC5-20-21) must be updated for the same reasons: the correct dates must be cited in order for the correct documents to be used when implementing the board's regulations. Beyond the dates, two federal code citations are added as they are referenced elsewhere in the board's regulations (40 CFR Part 81 in 9VAC5-20-204, and 40 CFR Part 82 in 9VAC5-145). These updates are needed in order for the state to maintain the legal authority to implement the federal requirements.

Finally, EPA has amended its list of hazardous air pollutants (HAPs) to include 1-bromopropane (1-BP); Virginia's corresponding list of HAPs at 9VAC5-60-100 C must be amended accordingly.

The department is requesting approval of draft final regulation amendments that meet federal statutory and regulatory requirements. Approval of the amendments will ensure that the Commonwealth will be able to meet its obligations under the federal Clean Air Act and the Air Pollution Control Law.

REGULATORY ACTION ADOPTION PROCESS

Because the state regulations are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the pertinent U.S. Environmental Protection Agency (EPA) regulations, the state regulations are exempt from the standard regulatory adoption process (Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act) by the provisions of § 2.2-4006 A 4 c of the Administrative Process Act. However, notice of the regulation adoption must be forwarded to the Registrar for publication in the Virginia Register 30 days prior to the effective date. Also, the Registrar must agree that the regulations are not materially different from the federal version and are, therefore, exempt from the standard regulatory adoption process and must notify the agency accordingly. This notification and the notice of adoption will be published in the Virginia Register subsequently. Further, in adopting the regulation amendments under the provisions of § 2.2-4006, the board is required to state that it will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Notice that the regulations would be considered by the board and that public comment would be accepted at the board meeting in accordance with the board's policy on public comment at board meetings was provided to the public by posting of the board's agenda to the Virginia Regulatory Town Hall and DEQ web site. In addition, email notification was provided to those persons signed up to receive notifications of board meetings through the Town Hall website.

SUMMARY OF AMENDMENTS TO REGULATION

1. The regulation amendments update state regulations that incorporate by reference certain federal regulations to reflect the Code of Federal Regulations as published on July 1, 2022. The date of the Code of Federal Regulations book being incorporated by reference is being updated to the latest version.
2. Documents Incorporated by Reference are updated with respect to dates, and to references to federal code cited elsewhere in the regulations of the board.
3. Reference to the list of hazardous air pollutants in subpart A of 40 CFR Part 63 is added.

SUPPORTING DOCUMENTATION

Immediately following this agenda memo are:

1. The agency background document.
2. The draft proposed regulation.

DEPARTMENT RECOMMENDATION

1. It is recommended that the board adopt the attached proposal, with an effective date as provided in the Administrative Process Act.

2. In adopting this proposal, the board should affirm that it will receive, consider, and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the Administrative Process Act.

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REG\DEV\C22-07BF



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Exempt Action: Final Regulation Agency Background Document

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	Primary: Article 5 (9VAC5-50-400 et seq.), 9VAC5-50 Secondary: 9VAC5-20-21; Article 1 (9VAC5-60-60 et seq.) and Article 2 (9VAC5-60-90 et seq.)
VAC Chapter title(s)	General Provisions (9VAC5-20); New and Modified Stationary Sources (9VAC5-50), Hazardous Air Pollutant Sources (9VAC5-60)
Action title	Federal Documents Incorporated by Reference (Rev. C22)
Final agency action date	
Date this document prepared	

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The regulation amendments update state regulations that incorporate by reference certain federal regulations to reflect the Code of Federal Regulations as published on July 1, 2022. The date of the Code of Federal Regulations book being incorporated by reference is being updated to the latest version. References to two federal standards that have recently been cited in other regulations of the board have been updated in order that the federal standards are correctly referenced. Finally, EPA has amended its list of hazardous air pollutants (HAPs) to include 1-bromopropane (1-BP); Virginia's corresponding list must be amended accordingly.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

Section 111 of the federal Clean Air Act requires that EPA develop new source performance standards (NSPSs). The Standards of Performance for New Stationary Sources are found in 40 CFR Part 60. Emissions guidelines for existing sources are also codified under 40 CFR Part 60.

Hazardous air pollutants (HAPs) are pollutants for which no ambient air quality standard is applicable, yet pose the risk of serious health problems. EPA's program for dealing with HAPs is established in § 112 of the Clean Air Act. The National Emission Standards for Hazardous Air Pollutants are found in 40 CFR Part 61. In addition, EPA controls HAPs for specific source categories as required under § 112. The National Emission Standards for Hazardous Air Pollutants for Source Categories are more familiarly referred to as Maximum Achievable Technology Standards (MACT), and are found in 40 CFR Part 63.

The Act provides that each state may develop and submit to EPA a procedure for implementing and enforcing these standards. If EPA finds the state procedures adequate, the state is delegated the authority to implement and enforce the standards. Virginia has sought and received this authority. In order to retain this authority, the state's regulations must be consistent with the federal.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

- 1-BP - 1-bromopropane
- CFR - Code of Federal Regulations
- HAP - hazardous air pollutant
- MACT - Maximum Achievable Control Technology
- NESHAP - National Emissions Standards for Hazardous Air Pollutants
- NSPS - New Source Performance Standard

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On December 7, 2022, the State Air Pollution Control Board took final action to adopt amendments to the Regulations for the Control and Abatement of Air Pollution, specifically federal regulations incorporated by reference (9VAC5-20-21, Article 5 of 9VAC5-50, and Articles 1 and 2 of 9VAC5-60). The regulatory action is to be effective as provided in the Administrative Process Act.

The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 4 c of the Administrative Process Act because they are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the pertinent U.S. Environmental Protection Agency (EPA) regulations.

In adopting these amendments, the board affirmed that it will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the Administrative Process Act.

Legal Basis

Identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity’s overall regulatory authority.

Section 10.1-1308 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare. Written assurance from the Office of the Attorney General that the State Air Pollution Control Board possesses the statutory authority to promulgate the proposed regulation amendments is available upon request.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it’s intended to solve.

The regulatory changes are needed in order to meet the mandates of the federal Clean Air Act and its implementing regulations in order to protect public health and welfare from hazardous air pollutants and pollution generated by categories of new sources, which are proven to be detrimental to both health and welfare. The goal of the regulatory changes is to address air pollution throughout the Commonwealth by controlling emissions of hazardous air pollutants and pollution emitted by categories of new and existing sources. The regulation amendments update the version of regulations being implemented in Virginia to the most current federal versions, as required by the Clean Air Act and the state’s delegation agreement with EPA. Other federal requirements implemented throughout the state regulations must also be properly adopted, and the effective dates updated, in order for the regulations to be implemented at the state level.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.

The regulation amendments update state regulations that incorporate by reference certain federal regulations (NSPS, NESHAP and MACT) to reflect the Code of Federal Regulations as published on July 1, 2022. The date of the Code of Federal Regulations book being incorporated by reference is being updated to the latest version.

Federal standards other than NSPS, NESHAP and MACT that are referenced throughout the regulations of the board are adopted by reference at 9VAC5-20-21, and the effective CFR date must be updated. Additionally, the federal standards at Part 81 (Designation of Areas for Air Quality Planning Purposes) list nonattainment areas, including a new nonattainment area for sulfur dioxide; this new nonattainment area has been added to the state list of nonattainment areas at 9VAC5-20-206. The federal standards at 40 CFR Part 82 (Protection of Stratospheric Ozone), which control emissions of hydrofluorocarbons, were adopted by reference in the Regulation for the Control of Greenhouse Gases (9VAC5-145). These standards must be entered into the list of adopted documents in the state regulations at 9VAC5-20-21.

Finally, EPA amended its list of HAPs to include 1-bromopropane (1-BP) on January 5, 2022 (87 FR 393); Virginia’s corresponding list at 9VAC5-60-100 C must be amended accordingly.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

Public: Advantages to the regulated community include more certainty, as consistency with EPA requirements provides assurance regarding specific federal and state requirements. The general public will benefit from a reduction in the health and welfare effects of air pollution, as the most current standards are more protective of human health and welfare. Properly implementing federal requirements will ensure the control of numerous types of air pollutants, which are proven to harm human health and welfare. There is an overall benefit to all sectors of the public in that the Commonwealth is retaining its ability to directly manage its sources of air pollution rather than relying on the federal government.

Department: The department will benefit by meeting its federal mandates in a consistent and clear manner.

There are no disadvantages associated with this regulatory action to either the public or the Commonwealth.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change that is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no requirements more restrictive than the federal.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact, which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected:

No other state agencies will be particularly affected by this regulatory action.

Localities Particularly Affected:

There are no localities particularly affected.

Other Entities Particularly Affected:

There are no other entities particularly affected.

Details of All Changes Proposed in this Regulatory Action

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
*9VAC5-20-21 B	n/a	Federal documents incorporated by reference.	Updates referenced Code of Federal Regulations to the most current version; lists 2 recently incorporated federal standards. Needed in order to meet federal requirements for protecting human health and welfare. No significant impacts are anticipated.
*9VAC5-50-400	n/a	General requirements for NSPSs.	Updates referenced Code of Federal Regulations to the most current version. Needed in order to meet federal requirements for protecting human health and welfare. No significant impacts are anticipated.
*9VAC5-60-60	n/a	General requirements for NESHAPs.	Updates referenced Code of Federal Regulations to the most current version. Needed in order to meet federal requirements for protecting human health and welfare. No significant impacts are anticipated.
*9VAC5-60-90	n/a	General requirements for MACTs.	Updates referenced Code of Federal Regulations to the most current version. Needed in order to meet federal requirements for protecting human health and welfare. No significant impacts are anticipated.
*9VAC5-60-100	n/a	Designated emission standards.	Update list of the General Provisions of Subpart A of 40 CFR Part 63 to include EPA's new adoption of 1-BP to the list of HAPs. Needed in order to meet federal requirements for protecting human health and welfare. No significant impacts are anticipated.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

These regulation amendments meet the requirements of federal law and regulation. Any less stringent compliance requirements, any delays in adopting the standards, any different compliance or reporting requirements, any substitution of performance standards, and any exemption of small businesses from these requirements will not meet the minimum requirements of federal law and regulation. Any such changes would compromise the effectiveness of the regulations in protecting the health and welfare of the public.

Family Impact

In accordance with § 2.2-606 of the Code of Virginia, please assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

No family impacts are anticipated.

Office of Regulatory Management

Economic Review Form

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	Primary: Article 5 (9VAC5-50-400 et seq.), 9VAC5-50 Secondary: 9VAC5-20-21; Article 1 (9VAC5-60-60 et seq.) and Article 2 (9VAC5-60-90 et seq.)
VAC Chapter title(s)	General Provisions (9VAC5-20); New and Modified Stationary Sources (9VAC5-50), Hazardous Air Pollutant Sources (9VAC5-60)
Action title	Federal Documents Incorporated by Reference (Rev. C22)
Date this document prepared	State Air Pollution Control Board

Cost Benefit Analysis

Table 1a must be completed for all actions. Tables 1b and 1c must be completed for actions (or portions thereof) where the agency is exercising discretion, including those where some of the changes are mandated by state or federal law or regulation. Tables 1b and 1c are not needed if **all** changes are mandated, and the agency is not exercising any discretion. In that case, enter a statement to that effect.

- (1) Direct Costs & Benefits: Identify all specific, direct economic impacts (costs and/or benefits), anticipated to result from the regulatory change. (A direct impact is one that affects entities regulated by the agency and which directly results from the regulatory change itself, without any intervening steps or effects. For example, the direct impact of a regulatory fee change is the change in costs for these regulated entities.) When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo. One bullet has been provided, add additional bullets as needed.
- (2) Quantitative Factors:
 - (a) Enter estimated dollar value of total (overall) direct costs described above.
 - (b) Enter estimated dollar value of total (overall) direct benefits described above.
 - (c) Enter the present value of the direct costs based on the worksheet.
 - (d) Enter the present value of the direct benefits based on the worksheet.
- (3) Benefits-Costs Ratio: Calculate d divided by c OR enter it from the worksheet.
- (4) Net Benefit: Calculate d minus c OR enter it from the worksheet.
- (5) Indirect Costs & Benefits: Identify all specific, indirect economic impacts (costs and/or benefits), anticipated to result from the regulatory change. (An indirect impact is one that results from responses to the regulatory change, but which are not directly required by the regulation. Indirect impacts of a regulatory fee change on regulated entities could include a change in the prices they charge, changes in their operating procedures or employment levels, or decisions to enter or exit the regulated profession or market. Indirect impacts also include responses by other entities that have close economic ties to the regulated

entities, such as suppliers or partners.) If there are no indirect costs or benefits, include a specific statement to that effect.

(6) Information Sources: Describe the sources of information used to determine the benefits and costs, including the source of the Quantitative Factors. If dollar amounts are not available, indicate why they are not.

(7) Optional: Use this space to add any further information regarding the data provided in this table, including calculations, qualitative assessments, etc.

Table 1a: Costs and Benefits of the Proposed Changes (Primary Option)

(1) Direct Costs & Benefits	<ul style="list-style-type: none"> • Update referenced Code of Federal Regulations to the most current version. Direct Costs: There are no direct costs associated with this action. Direct Benefits: Needed in order to meet federal requirements for protecting human health and welfare. No significant impacts are anticipated. • Update references to two federal standards in other regulations of the board. Direct Costs: There are no direct costs associated with this action. Direct Benefits: Needed in order to meet federal requirements for protecting human health and welfare. No significant impacts are anticipated. • Add 1-BP to list of hazardous air pollutants. Direct Costs: There are no direct costs associated with this action. Direct Benefits: Needed in order to meet federal requirements for protecting human health and welfare. No significant impacts are anticipated. 		
(2) Quantitative Factors	Estimated Dollar Amount	Present Value	
Direct Costs	(a) None.	(c) None.	
Direct Benefits	(b) None.	(d) None.	
(3) Benefits-Costs Ratio	None quantifiable.	(4) Net Benefit	None quantifiable.

(5) Indirect Costs & Benefits	<p>There is an indirect benefit of the Commonwealth retaining authority to implement the regulatory requirements instead of the federal government.</p> <p>As further discussed in Table 4, adding 1-BP to the list of hazardous air pollutants as required by federal law has no immediate effect on businesses that use this product, and there are no manufacturers of this product in Virginia. Regardless, the standard is a federal standard that must be met whether it is implemented by Virginia or the federal government.</p>
(6) Information Sources	Clean Air Act §§ 111 and 112; 40 CFR Parts 60, 61 and 63.
(7) Optional	

Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

This table addresses current requirements and the implications of not making any changes. In other words, describe the costs and benefits of maintaining the current regulatory requirements as is.

(1) Direct Costs & Benefits	<ul style="list-style-type: none"> All changes are mandated, and the agency is not exercising any discretion. 		
(2) Quantitative Factors	Estimated Dollar Amount	Present Value	
Direct Costs	(a)	(c)	
Direct Benefits	(b)	(d)	
(3) Benefits-Costs Ratio		(4) Net Benefit	
(5) Indirect Costs & Benefits			
(6) Information Sources			
(7) Optional			

Table 1c: Costs and Benefits under an Alternative Approach

This table addresses an alternative approach to accomplishing the objectives with different requirements. These alternative approaches may include the use of reasonably available alternatives in lieu of regulation, or information disclosure requirements or performance standards instead of regulatory mandates.

(1) Direct Costs & Benefits	<u>All</u> changes are mandated, and the agency is not exercising any discretion.		
(2) Quantitative Factors	Estimated Dollar Amount	Present Value	
Direct Costs	(a)	(c)	
Direct Benefits	(b)	(d)	
(3) Benefits-Costs Ratio		(4) Net Benefit	
(5) Indirect Costs & Benefits			
(6) Information Sources			
(7) Optional			

Impact on Local Partners

- (1) Describe the direct costs and benefits (as defined on page 1) for local partners in terms of real monetary costs and FTEs. Local partners include local or tribal governments, school divisions, or other local or regional authorities, boards, or commissions. If local partners are not affected, include a specific statement to that effect and a brief explanation of the rationale.
- (2) Quantitative Factors:
 - (a) Enter estimated dollar value of total (overall) direct costs described above.
 - (b) Enter estimated dollar value of total (overall) direct benefits described above.
- (3) Indirect Costs & Benefits: Describe any indirect benefits and costs (as defined on page 1) for local partners that are associated with all significant changes. If there are no indirect costs or benefits, include a specific statement to that effect.

- (4) Information Sources: describe the sources of information used to determine the benefits and costs, including the source of the Quantitative Factors. If dollar amounts are not available, indicate why they are not.
- (5) Assistance: Identify the amount and source of assistance provided for compliance in both funding and training or other technical implementation assistance.
- (6) Optional: Use this space to add any further information regarding the data provided in this table, including calculations, qualitative assessments, etc.

Note: If any of the above information was included in Table 1, use the same information here.

Table 2: Impact on Local Partners

(1) Direct Costs & Benefits	See Table 1a.
(2) Quantitative Factors	Estimated Dollar Amount
Direct Costs	(a) See Table 1a.
Direct Benefits	(b) See Table 1a.
(3) Indirect Costs & Benefits	There may be indirect benefits in the protection of human health and welfare, and in the retention of implementing authority by Virginia instead of the federal government.
(4) Information Sources	See Table 1a.
(5) Assistance	None.
(6) Optional	

Economic Impacts on Families

- (1) Describe the direct costs and benefits (as defined on page 1) to a typical family of three (average family size in Virginia according to the U. S. Census) arising from any proposed regulatory changes that would affect the costs of food, energy, housing, transportation, healthcare, and education. If families are not affected, include a specific statement to that effect and a brief explanation of the rationale.
- (2) Quantitative Factors:
 - (a) Enter estimated dollar value of direct costs.
 - (b) Enter estimated dollar value of direct benefits.

- (3) Indirect Costs & Benefits: Describe any indirect costs and benefits (as defined on page 1) to a typical family of three that are most likely to result from the proposed changes.
- (4) Information Sources: describe the sources of information used to determine the benefits and costs, including the source of the Quantitative Factors. If dollar amounts are not available, indicate why not.
- (5) Optional: Use this space to add any further information regarding the data provided in this table, including calculations, qualitative assessments, etc.

Note: If any of the above information was included in Table 1, use the same information here.

Table 3: Impact on Families

(1) Direct Costs & Benefits	See Table 1a.
(2) Quantitative Factors	Estimated Dollar Amount
Direct Costs	(a) See Table 1a.
Direct Benefits	(b) See Table 1a.
(3) Indirect Costs & Benefits	There may be indirect benefits in the protection of human health and welfare, and in the retention of implementing authority by Virginia instead of the federal government.
(4) Information Sources	See Table 1a.
(5) Optional	

Impacts on Small Businesses

- (1) Describe the direct costs and benefits (as defined on page 1) for small businesses. For purposes of this analysis, “small business” means the same as that term is defined in § 2.2-4007.1. If small businesses are not affected, include a specific statement to that effect and a brief explanation of the rationale.
- (2) Quantitative Factors:
 - (a) Enter estimated dollar value of direct costs.
 - (b) Enter estimated dollar value of direct benefits.
- (3) Indirect Costs & Benefits: Describe the indirect benefits and costs (as defined on page 1) for small businesses that are most likely to result from the proposed changes.

- (4) Alternatives: Add a qualitative discussion of any equally effective alternatives that would make the regulatory burden on small business more equitable compared to other affected business sectors, and how those alternatives were identified.
- (5) Information Sources: describe the sources of information used to determine the benefits and costs, including the source of the Quantitative Factors. If dollar amounts are not available, indicate why not.
- (6) Optional: Use this space to add any further information regarding the data provided in this table, including calculations, qualitative assessments, etc.

Note: If any of the above information was included in Table 1, use the same information here.

Table 4: Impact on Small Businesses

(1) Direct Costs & Benefits	See Table 1a.
(2) Quantitative Factors	Estimated Dollar Amount
Direct Costs	(a) See Table 1a.
Direct Benefits	(b) See Table 1a.
(3) Indirect Costs & Benefits	There may be indirect benefits in the protection of human health and welfare, and in the retention of implementing authority by Virginia instead of the federal government.
(4) Alternatives	See Table 1a.
(5) Information Sources	See Table 1a; communications with potentially affected facilities.
(6) Optional	<p>Slocum Adhesives, which is located in Lynchburg VA, uses adhesives, including 1-BP. This company is owned by Innovative Chemical Products Group, LLC which is headquartered in Andover MA, has over 250 employees, and is not a small business. Based on review by permitting and compliance staff with the facility, no changes to the facility permit or operations are required.</p> <p>Times Fiber is located in Chatham VA, and uses 1-BP as a solvent. This company is owned by Amphenol Broadband Solutions, which is headquartered in Wallingford CT, has over 250 employees, and is not a small business. Permitting and compliance staff are currently working with the facility to ensure that it is meeting the emission limits in its permit.</p>

	Aerojet Rocketdyne is located in Orange County VA and has used 1-BP as a degreaser. The facility is owned by a company that employs over 250 employees, and is not a small business. Based on review by permitting and compliance staff with the facility, no changes to the facility permit or operations are required.
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Changes to Number of Regulatory Requirements

For each individual VAC Chapter amended, repealed, or promulgated by this regulatory action, list (a) the initial requirement count, (b) the count of requirements that this regulatory package is adding, (c) the count of requirements that this regulatory package is reducing, (d) the net change in the number of requirements. This count should be based upon the text as written when this stage was presented for executive branch review. Five rows have been provided, add or delete rows as needed.

Table 5: Total Number of Requirements

No change.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-20, -50 AND -60)

9VAC5 CHAPTER 20.
GENERAL PROVISIONS.

PART I.
ADMINISTRATIVE.

9VAC5-20-21. Documents incorporated by reference.

A. The Administrative Process Act and Virginia Register Act provide that state regulations may incorporate documents by reference. Throughout these regulations, documents of the types specified below have been incorporated by reference.

1. United States Code.
2. Code of Virginia.
3. Code of Federal Regulations.
4. Federal Register.
5. Technical and scientific reference documents.

Additional information on key federal regulations and nonstatutory documents incorporated by reference and their availability may be found in subsection E of this section.

B. Any reference in these regulations to any provision of the Code of Federal Regulations (CFR) shall be considered as the adoption by reference of that provision. The specific version of the provision adopted by reference shall be that contained in the CFR ~~(2020)~~ (2022) in effect July 1, ~~2020~~ 2022. In making reference to the Code of Federal Regulations, 40 CFR Part 35 means Part 35 of Title 40 of the Code of Federal Regulations; 40 CFR 35.20 means § 35.20 in Part 35 of Title 40 of the Code of Federal Regulations.

C. Failure to include in this section any document referenced in the regulations shall not invalidate the applicability of the referenced document.

D. Copies of materials incorporated by reference in this section may be examined by the public at the central office of the Department of Environmental Quality, Eighth Floor, 1111 East Main Street, Suite 1400, Richmond, Virginia, between 8:30 a.m. and 4:30 p.m. of each business day.

E. Information on federal regulations and nonstatutory documents incorporated by reference and their availability may be found below in this subsection.

1. Code of Federal Regulations.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-20, -50 AND -60)

a. The provisions specified below from the Code of Federal Regulations (CFR) are incorporated herein by reference.

(1) 40 CFR Part 50 - National Primary and Secondary Ambient Air Quality Standards.

(a) Appendix A-1 -- Reference Measurement Principle and Calibration Procedure for the Measurement of Sulfur Dioxide in the Atmosphere (Ultraviolet Fluorescence Method).

(b) Appendix A-2 -- Reference Method for the Determination of Sulfur Dioxide in the Atmosphere (Pararosaniline Method).

(c) Appendix B -- Reference Method for the Determination of Suspended Particulate Matter in the Atmosphere (High-Volume Method).

(d) Appendix C -- Measurement Principle and Calibration Procedure for the Continuous Measurement of Carbon Monoxide in the Atmosphere (Non-Dispersive Infrared Photometry).

(e) Appendix D -- Measurement Principle and Calibration Procedure for the Measurement of Ozone in the Atmosphere.

(f) Appendix E -- Reserved.

(g) Appendix F -- Measurement Principle and Calibration Procedure for the Measurement of Nitrogen Dioxide in the Atmosphere (Gas Phase Chemiluminescence).

(h) Appendix G -- Reference Method for the Determination of Lead in Suspended Particulate Matter Collected from Ambient Air.

(i) Appendix H -- Interpretation of the National Ambient Air Quality Standards for Ozone.

(j) Appendix I -- Interpretation of the 8-Hour Primary and Secondary National Ambient Air Quality Standards for Ozone.

(k) Appendix J -- Reference Method for the Determination of Particulate Matter as PM_{10} in the Atmosphere.

(l) Appendix K -- Interpretation of the National Ambient Air Quality Standards for Particulate Matter.

(m) Appendix L -- Reference Method for the Determination of Fine Particulate Matter as $PM_{2.5}$ in the Atmosphere.

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(n) Appendix M -- Reserved.

(o) Appendix N -- Interpretation of the National Ambient Air Quality Standards for PM_{2.5}.

(p) Appendix O -- Reference Method for the Determination of Coarse Particulate Matter as PM in the Atmosphere.

(q) Appendix P -- Interpretation of the Primary and Secondary National Ambient Air Quality Standards for Ozone.

(r) Appendix Q -- Reference Method for the Determination of Lead in Suspended Particulate Matter as PM₁₀ Collected From Ambient Air.

(s) Appendix R -- Interpretation of the National Ambient Air Quality Standards for Lead.

(t) Appendix S -- Interpretation of the Primary National Ambient Air Quality Standards for Oxides of Nitrogen (Nitrogen Dioxide).

(u) Appendix T -- Interpretation of the Primary National Ambient Air Quality Standards for Oxides of Sulfur (Sulfur Dioxide).

(v) Appendix U -- Interpretation of the Primary and Secondary National Ambient Air Quality Standards for Ozone.

(2) 40 CFR Part 51 -- Requirements for Preparation, Adoption, and Submittal of Implementation Plans.

(a) Appendix M -- Recommended Test Methods for State Implementation Plans.

(b) Appendix S -- Emission Offset Interpretive Ruling.

(c) Appendix W -- Guideline on Air Quality Models (Revised).

(d) Appendix Y - Guidelines for BART Determinations Under the Regional Haze Rule.

(3) 40 CFR Part 55 -- Outer Continental Shelf Air Regulations, except §§ 55.5, 55.11, and 55.12.

(4) 40 CFR Part 58 -- Ambient Air Quality Surveillance.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-20, -50 AND -60)

Appendix A -- Quality Assurance Requirements for
SLAMS, SPMs and PSD Air Monitoring.

(5) 40 CFR Part 59 -- National Volatile Organic Compound
Emission Standards for Consumer and Commercial Products.

(a) Subpart C -- National Volatile Organic Compound
Emission Standards for Consumer Products.

(b) Subpart D -- National Volatile Organic Compound
Emission Standards for Architectural Coatings, Appendix A -- Determination of Volatile
Matter Content of Methacrylate Multicomponent Coatings Used as Traffic Marking
Coatings.

(6) 40 CFR Part 60 -- Standards of Performance for New
Stationary Sources.

The specific provisions of 40 CFR Part 60
incorporated by reference are found in Article 5 (9VAC5-50-400 et seq.) of Part II of
9VAC5-50 (New and Modified Sources).

(7) 40 CFR Part 61 -- National Emission Standards for
Hazardous Air Pollutants.

The specific provisions of 40 CFR Part 61
incorporated by reference are found in Article 1 (9VAC5-60-60 et seq.) of Part II of
9VAC5-60 (Hazardous Air Pollutant Sources).

(8) 40 CFR Part 63 -- National Emission Standards for
Hazardous Air Pollutants for Source Categories.

The specific provisions of 40 CFR Part 63
incorporated by reference are found in Article 2 (9VAC5-60-90 et seq.) of Part II of
9VAC5-60 (Hazardous Air Pollutant Sources).

(9) 40 CFR Part 64, Compliance Assurance Monitoring.

(10) 40 CFR Part 72, Permits Regulation.

(11) 40 CFR Part 73, Sulfur Dioxide Allowance System.

(12) 40 CFR Part 74, Sulfur Dioxide Opt-Ins.

(13) 40 CFR Part 75, Continuous Emission Monitoring.

(14) 40 CFR Part 76, Acid Rain Nitrogen Oxides Emission
Reduction Program.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-20, -50 AND -60)

(15) 40 CFR Part 77, Excess Emissions.

Program.
(16) 40 CFR Part 78, Appeal Procedures for Acid Rain

Planning Purposes.
(17) 40 CFR Part 81, Designation of Areas for Air Quality

(18) 40 CFR Part 82, Protection of Stratospheric Ozone.

(19) 40 CFR Part 152 Subpart I, Classification of Pesticides.

~~(18)~~ (20) 49 CFR Part 172, Hazardous Materials Table.
Special Provisions, Hazardous Materials Communications, Emergency Response
Information, and Training Requirements, Subpart E, Labeling.

~~(19)~~ (21) 29 CFR Part 1926 Subpart F, Fire Protection and
Prevention.

b. Copies may be obtained from: Superintendent of Documents,
P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954; phone (202) 783-3238.

2. U.S. Environmental Protection Agency.

a. The following documents from the U.S. Environmental Protection
Agency are incorporated herein by reference:

(1) Reich Test, Atmospheric Emissions from Sulfuric Acid
Manufacturing Processes, Public Health Service Publication No. PB82250721, 1980.

(2) Compilation of Air Pollutant Emission Factors (AP-42).
Volume I: Stationary and Area Sources, stock number 055-000-00500-1, 1995;
Supplement A, stock number 055-000-00551-6, 1996; Supplement B, stock number
055-000-00565, 1997; Supplement C, stock number 055-000-00587-7, 1997;
Supplement D, 1998; Supplement E, 1999.

(3) "Guidelines for Determining Capture Efficiency" (GD-35),
Emissions Monitoring and Analysis Division, Office of Air Quality Planning and
Standards, January 9, 1995.

b. Copies of the document identified in subdivision E 2 a (1) of this
section, and Volume I and Supplements A through C of the document identified in
subdivision E 2 a (2) of this section, may be obtained from: U.S. Department of
Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield,
Virginia 22161; phone 1-800-553-6847. Copies of Supplements D and E of the
document identified in subdivision E 2 a (2) of this section may be obtained online from

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-20, -50 AND -60)

EPA's Technology Transfer Network at <http://www.epa.gov/ttn/index.html>. Copies of the document identified in subdivision E 2 a (3) of this section are only available online from EPA's Technology Transfer Network at <http://www.epa.gov/ttn/emc/guidInd.html>.

3. U.S. government.

a. The following document from the U.S. government is incorporated herein by reference: Standard Industrial Classification Manual, 1987 (U.S. Government Printing Office stock number 041-001-00-314-2).

b. Copies may be obtained from: Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954; phone (202) 512-1800.

4. American Society for Testing and Materials (ASTM).

a. The documents specified below from the American Society for Testing and Materials are incorporated herein by reference.

(1) D323-99a, "Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method)."

(2) D97-96a, "Standard Test Method for Pour Point of Petroleum Products."

(3) D129-00, "Standard Test Method for Sulfur in Petroleum Products (General Bomb Method)."

(4) D388-99, "Standard Classification of Coals by Rank."

(5) D396-98, "Standard Specification for Fuel Oils."

(6) D975-98b, "Standard Specification for Diesel Fuel Oils."

(7) D1072-90(1999), "Standard Test Method for Total Sulfur in Fuel Gases."

(8) D1265-97, "Standard Practice for Sampling Liquefied Petroleum (LP) Gases (Manual Method)."

(9) D2622-98, "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry."

(10) D4057-95(2000), "Standard Practice for Manual Sampling of Petroleum and Petroleum Products."

(11) D4294-98, "Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-Ray Fluorescence"

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-20, -50 AND -60)

Spectroscopy."

(12) D523-89, "Standard Test Method for Specular Gloss" (1999).

(13) D1613-02, "Standard Test Method for Acidity in Volatile Solvents and Chemical Intermediates Used in Paint, Varnish, Lacquer and Related Products" (2002).

(14) D1640-95, "Standard Test Methods for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature" (1999).

(15) E119-00a, "Standard Test Methods for Fire Tests of Building Construction Materials" (2000).

(16) E84-01, "Standard Test Method for Surface Burning Characteristics of Building Construction Materials" (2001).

(17) D4214-98, "Standard Test Methods for Evaluating the Degree of Chalking of Exterior Paint Films" (1998).

(18) D86-04b, "Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure" (2004).

(19) D4359-90, "Standard Test Method for Determining Whether a Material is a Liquid or a Solid" (reapproved 2000).

(20) E260-96, "Standard Practice for Packed Column Gas Chromatography" (reapproved 2001).

(21) D3912-95, "Standard Test Method for Chemical Resistance of Coatings Used in Light-Water Nuclear Power Plants" (reapproved 2001).

(22) D4082-02, "Standard Test Method for Effects of Gamma Radiation on Coatings for Use in Light-Water Nuclear Power Plants."

(23) F852-99, "Standard Specification for Portable Gasoline Containers for Consumer Use" (reapproved 2006).

(24) F976-02, "Standard Specification for Portable Kerosine and Diesel Containers for Consumer Use."

(25) D4457-02, "Standard Test Method for Determination of Dichloromethane and 1,1,1-Trichloroethane in Paints and Coatings by Direct Injection into a Gas Chromatograph" (reapproved 2008).

(26) D3792-05, "Standard Test Method for Water Content of

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-20, -50 AND -60)

Coatings by Direct Injection Into a Gas Chromatograph."

(27) D2879-97, "Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isotenoscope" (reapproved 2007).

b. Copies may be obtained from: American Society for Testing Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959; phone (610) 832-9585.

5. American Petroleum Institute (API).

a. The following document from the American Petroleum Institute is incorporated herein by reference: Evaporative Loss from Floating Roof Tanks, API MPMS Chapter 19, April 1, 1997.

b. Copies may be obtained from: American Petroleum Institute, 1220 L Street, Northwest, Washington, D.C. 20005; phone (202) 682-8000.

6. American Conference of Governmental Industrial Hygienists (ACGIH).

a. The following document from the ACGIH is incorporated herein by reference: 1991-1992 Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices (ACGIH Handbook).

b. Copies may be obtained from: ACGIH, 1330 Kemper Meadow Drive, Suite 600, Cincinnati, Ohio 45240; phone (513) 742-2020.

7. National Fire Prevention Association (NFPA).

a. The documents specified below from the National Fire Prevention Association are incorporated herein by reference.

(1) NFPA 385, Standard for Tank Vehicles for Flammable and Combustible Liquids, 2000 Edition.

(2) NFPA 30, Flammable and Combustible Liquids Code, 2000 Edition.

(3) NFPA 30A, Code for Motor Fuel Dispensing Facilities and Repair Garages, 2000 Edition.

b. Copies may be obtained from the National Fire Prevention Association, One Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269-9101; phone (617) 770-3000.

8. American Society of Mechanical Engineers (ASME).

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a. The documents specified below from the American Society of Mechanical Engineers are incorporated herein by reference.

(1) ASME Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1--1964 (R1991).

(2) ASME Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th edition (1971).

(3) Standard for the Qualification and Certification of Resource Recovery Facility Operators, ASME QRO-1-1994.

b. Copies may be obtained from the American Society of Mechanical Engineers, Three Park Avenue, New York, New York 10016; phone (800) 843-2763.

9. American Hospital Association (AHA).

a. The following document from the American Hospital Association is incorporated herein by reference: An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities, AHA Catalog no. W5-057007, 1993.

b. Copies may be obtained from: American Hospital Association, One North Franklin, Chicago, IL 60606; phone (800) 242-2626.

10. Bay Area Air Quality Management District (BAAQMD).

a. The following documents from the Bay Area Air Quality Management District are incorporated herein by reference:

(1) Method 41, "Determination of Volatile Organic Compounds in Solvent-Based Coatings and Related Materials Containing Parachlorobenzotrifluoride" (December 20, 1995).

(2) Method 43, "Determination of Volatile Methylsiloxanes in Solvent-Based Coatings, Inks, and Related Materials" (November 6, 1996).

b. Copies may be obtained from: Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109, phone (415) 771-6000.

11. South Coast Air Quality Management District (SCAQMD).

a. The following documents from the South Coast Air Quality Management District are incorporated herein by reference:

(1) Method 303-91, "Determination of Exempt Compounds,"

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-20, -50 AND -60)

in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).

(2) Method 318-95, "Determination of Weight Percent Elemental Metal in Coatings by X-Ray Diffraction," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).

(3) Rule 1174 Ignition Method Compliance Certification Protocol (February 28, 1991).

(4) Method 304-91, "Determination of Volatile Organic Compounds (VOC) in Various Materials," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).

(5) Method 316A-92, "Determination of Volatile Organic Compounds (VOC) in Materials Used for Pipes and Fittings" in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).

(6) "General Test Method for Determining Solvent Losses from Spray Gun Cleaning Systems," October 3, 1989.

b. Copies may be obtained from: South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765, phone (909) 396-2000.

12. California Air Resources Board (CARB).

a. The following documents from the California Air Resources Board are incorporated herein by reference:

(1) Test Method 510, "Automatic Shut-Off Test Procedure for Spill-Proof Systems and Spill-Proof Spouts" (July 6, 2000).

(2) Test Method 511, "Automatic Closure Test Procedure for Spill-Proof Systems and Spill-Proof Spouts" (July 6, 2000).

(3) Method 100, "Procedures for Continuous Gaseous Emission Stack Sampling" (July 28, 1997).

(4) Test Method 513, "Determination of Permeation Rate for Spill-Proof Systems" (July 6, 2000).

(5) Method 310, "Determination of Volatile Organic Compounds (VOC) in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products (Including Appendices A and B)" (May 5, 2005).

(6) California Code of Regulations, Title 17, Division 3,

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Chapter 1, Subchapter 8.5, Article 1, § 94503.5 (2003).

(7) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 2, §§ 94509 and 94511 (2003).

(8) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 4, §§ 94540-94555 (2003).

(9) "Certification Procedure 501 for Portable Fuel Containers and Spill-Proof Spouts, CP-501" (July 26, 2006).

(10) "Test Procedure for Determining Integrity of Spill-Proof Spouts and Spill-Proof Systems, TP-501" (July 26, 2006).

(11) "Test Procedure for Determining Diurnal Emissions from Portable Fuel Containers, TP-502" (July 26, 2006).

b. Copies may be obtained from: California Air Resources Board, P.O. Box 2815, Sacramento, CA 95812, phone (906) 322-3260 or (906) 322-2990.

13. American Architectural Manufacturers Association.

a. The following documents from the American Architectural Manufacturers Association are incorporated herein by reference:

(1) Voluntary Specification 2604-02, "Performance Requirements and Test Procedures for High Performance Organic Coatings on Aluminum Extrusions and Panels" (2002).

(2) Voluntary Specification 2605-02, "Performance Requirements and Test Procedures for Superior Performing Organic Coatings on Aluminum Extrusions and Panels" (2002).

b. Copies may be obtained from: American Architectural Manufacturers Association, 1827 Walden Office Square, Suite 550, Schaumburg, IL 60173, phone (847) 303-5664.

14. American Furniture Manufacturers Association.

a. The following document from the American Furniture Manufacturers Association is incorporated herein by reference: Joint Industry Fabrics Standards Committee, Woven and Knit Residential Upholstery Fabric Standards and Guidelines (January 2001).

b. Copies may be obtained from: American Furniture Manufacturers Association, P.O. Box HP-7, High Point, NC 27261; phone (336) 884-5000.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-20, -50 AND -60)

15. Petroleum Equipment Institute.

a. The following document from the Petroleum Equipment Institute is incorporated herein by reference: Recommended Practices for Installation and Testing of Vapor-Recovery Systems at Vehicle-Fueling Sites, PEI/RP300-09 (2009).

b. Copies may be obtained from: Petroleum Equipment Institute, 6931 S. 66th E. Ave., Suite 310, Tulsa, OK 74133; telephone (918) 494-9696; www.pei.org.

16. American Architectural Manufacturers Association (AAMA).

a. The following documents from the American Architectural Manufacturers Association are incorporated herein by reference:

(1) Voluntary Specification, Performance Requirements and Test Procedures for High Performance Organic Coatings on Aluminum Extrusions and Panels, publication number AAMA 2604-05.

(2) Voluntary Specification, Performance Requirements and Test Procedures for Superior Performing Organic Coatings on Aluminum Extrusions and Panels, publication number AAMA 2605-05.

b. Copies may be obtained from: American Architectural Manufacturers Association, 1827 Walden Office Square, Suite 550, Schaumburg, IL 60173-4268; phone 847-303-5774.

9VAC5 CHAPTER 50.
NEW AND MODIFIED STATIONARY SOURCES.

PART II.
Emission Standards.

ARTICLE 5.
Environmental Protection Agency Standards of Performance
For New Stationary Sources (Rule 5-5).

9VAC5-50-400. General.

The U.S. Environmental Protection Agency Regulations on Standards of Performance for New Stationary Sources (NSPSs), as promulgated in 40 CFR Part 60 and designated in 9VAC5-50-410 are, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9VAC5-50-420. The complete text of the subparts in 9VAC5-50-410 incorporated in this regulation by reference is contained in 40 CFR Part 60. The 40 CFR section numbers appearing under each subpart in 9VAC5-50-410 identify the

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specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR ~~(2020)~~ (2022) in effect July 1, ~~2020~~ 2022. In making reference to the Code of Federal Regulations, 40 CFR Part 60 means Part 60 of Title 40 of the Code of Federal Regulations; 40 CFR 60.1 means Section 60.1 in Part 60 of Title 40 of the Code of Federal Regulations.

9VAC5-60.
HAZARDOUS AIR POLLUTANT SOURCES.

PART II.
Emission Standards.

ARTICLE 1.
Environmental Protection Agency National Emission
Standards For Hazardous Air Pollutants (Rule 6-1).

9VAC5-60-60. General.

The Environmental Protection Agency (EPA) Regulations on National Emission Standards for Hazardous Air Pollutants (NESHAP), as promulgated in 40 CFR Part 61 and designated in 9VAC5-60-70 are, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9VAC5-60-80. The complete text of the subparts in 9VAC5-60-70 incorporated in this regulation by reference is contained in 40 CFR Part 61. The 40 CFR section numbers appearing under each subpart in 9VAC5-60-70 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR ~~(2020)~~ (2022) in effect July 1, ~~2020~~ 2022. In making reference to the Code of Federal Regulations, 40 CFR Part 61 means Part 61 of Title 40 of the Code of Federal Regulations; 40 CFR 61.01 means Section 61.01 in Part 61 of Title 40 of the Code of Federal Regulations.

ARTICLE 2.
Environmental Protection Agency National Emission Standards for
Hazardous Air Pollutants for Source Categories (Rule 6-2).

9VAC5-60-90. General.

The Environmental Protection Agency (EPA) National Emission Standards for Hazardous Air Pollutants for Source Categories (Maximum Achievable Control Technologies, or MACTs) as promulgated in 40 CFR Part 63 and designated in 9VAC5-60-100 are, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9VAC5-60-110. The complete text of the subparts in 9VAC5-60-100 incorporated in this regulation by reference is contained in 40 CFR Part 63. The 40 CFR section numbers appearing under each subpart in 9VAC5-60-100 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR ~~(2020)~~ (2022) in effect July 1, ~~2020~~ 2022. In making

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reference to the Code of Federal Regulations, 40 CFR Part 63 means Part 63 of Title 40 of the Code of Federal Regulations; 40 CFR 63.1 means Section 63.1 in Part 63 of Title 40 of the Code of Federal Regulations.

9VAC5-60-100. Designated emission standards.

Subpart A -- General Provisions.

40 CFR 63.1 through 40 CFR 63.11; 40 CFR 63.16

(applicability, definitions, units and abbreviations, prohibited activities and circumvention, construction and reconstruction, compliance with standards and maintenance requirements, performance testing requirements, monitoring requirements, notification requirements, recordkeeping and reporting requirements, control device requirements, performance track provisions)

Subpart B -- Not applicable.

Subpart C -- List of Hazardous Air Pollutants, Petitions Process, Lesser Quantity Designations, Source Category List.

40 CFR 63.60, 40 CFR 63.61, 40 CFR 63.62, ~~and 40 CFR 63.63,~~ and 40 CFR 63.64

(deletion of caprolactam from the list of hazardous air pollutants, deletion of methyl ethyl ketone from the list of hazardous air pollutants, redefinition of glycol ethers listed as hazardous air pollutants, deletion of ethylene glycol monobutyl ether from the list of hazardous air pollutants, addition of 1-bromopropane (1-BP) to the list of hazardous air pollutants)

Subpart D -- Not applicable.

Subpart E -- Not applicable.

Subpart F -- Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.

40 CFR 63.100 through 40 CFR 63.106

(chemical manufacturing process units that manufacture as a primary product one or more of a listed chemical; use as a reactant or manufacture as a product, by-product, or co-product, one or more of a listed organic hazardous air pollutant; and are located at a plant site that is a major source as defined in §112 of the federal Clean Air Act)

Subpart G -- Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and

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Wastewater.

40 CFR 63.110 through 40 CFR 63.152

(all process vents, storage vessels, transfer operations, and wastewater streams within a source subject to subpart F, 40 CFR 63.100 through 40 CFR 63.106)

Subpart H -- Organic Hazardous Air Pollutants for Equipment Leaks.

40 CFR 63.160 through 40 CFR 63.182

(pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, surge control vessels, bottoms receivers, instrumentation systems, and control devices or systems that are intended to operate in organic hazardous air pollutant service 300 hours or more during the calendar year within a source subject to the provisions of a specific subpart in 40 CFR Part 63)

Subpart I -- Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.

40 CFR 63.190 through 40 CFR 63.192

(emissions of designated organic hazardous air pollutants from processes specified in this subpart that are located at a plant site that is a major source as defined in §§112 of the federal Clean Air Act)

Subpart J -- Polyvinyl Chloride and Copolymers Production.

40 CFR 63.210 through 40 CFR 63.217

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)

Subpart K -- Reserved.

Subpart L -- Coke Oven Batteries.

40 CFR 63.300 through 40 CFR 63.313

(existing byproduct coke oven batteries at a coke plant, and existing nonrecovery coke oven batteries located at a coke plant)

Subpart M -- Perchloroethylene Dry Cleaning Facilities.

40 CFR 63.320 through 40 CFR 63.325

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(each dry cleaning facility that uses perchlorethylene)

Subpart N -- Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.

40 CFR 63.340 through 40 CFR 63.347

(each chromium electroplating or chromium anodizing tank at facilities performing hard chromium electroplating, decorative chromium electroplating, or chromium anodizing)

Subpart O -- Ethylene Oxide Commercial Sterilization and Fumigation Operations.

40 CFR 63.360 through 40 CFR 63.367

(sterilization sources using ethylene oxide in sterilization or fumigation operations)

Subpart P --Reserved.

Subpart Q -- Industrial Process Cooling Towers.

40 CFR 63.400 through 40 CFR 63.406

(industrial process cooling towers that are operated with chromium-based water treatment chemicals)

Subpart R -- Gasoline Distribution Facilities.

40 CFR 63.420 through 40 CFR 63.429

(bulk gasoline terminals and pipeline breakout stations)

Subpart S -- Pulp and Paper Industry.

40 CFR 63.440 through 40 CFR 63.458

(processes that produce pulp, paper, or paperboard, and use the following processes and materials: kraft, soda, sulfite, or semi-chemical pulping processes using wood; or mechanical pulping processes using wood; or any process using secondary or non-wood fibers)

Subpart T -- Halogenated Solvent Cleaning.

40 CFR 63.460 through 40 CFR 63.469

(each individual batch vapor, in-line vapor, in-line cold, and batch cold solvent

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cleaning machine that uses any solvent containing methylene chloride, perchlorethylene, trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, or chloroform)

Subpart U -- Group I Polymers and Resins.

40 CFR 63.480 through 40 CFR 63.506

(elastomer product process units that produce butyl rubber, halobutyl rubber, epichlorohydrin elastomers, ethylene propylene rubber, Hypalon™, neoprene, nitrile butadiene rubber, nitrile butadiene latex, polysulfide rubber, polybutadiene rubber/styrene butadiene rubber by solution, styrene butadiene latex, and styrene butadiene rubber by emulsion)

Subpart V -- Reserved.

Subpart W -- Epoxy Resins Production and Non-Nylon Polyamides Production.

40 CFR 63.520 through 40 CFR 63.527

(manufacturers of basic liquid epoxy resins and wet strength resins)

Subpart X -- Secondary Lead Smelting.

40 CFR 63.541 through 40 CFR 63.552

(at all secondary lead smelters: blast, reverbatory, rotary, and electric smelting furnaces; refining kettles; agglomerating furnaces; dryers; process fugitive sources; and fugitive dust sources)

Subpart Y -- Marine Tank Vessel Tank Loading Operations.

40 CFR 63.560 through 40 CFR 63.567

(marine tank vessel unloading operations at petroleum refineries)

Subpart Z --Reserved.

Subpart AA -- Phosphoric Acid Manufacturing Plants.

40 CFR 63.600 through 40 CFR 63.611

(wet-process phosphoric acid process lines, evaporative cooling towers, rock dryers, rock calciners, superphosphoric acid process lines, purified acid process lines)

Subpart BB -- Phosphate Fertilizers Production Plants.

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40 CFR 63.620 through 40 CFR 63.632

(diammonium and monoammonium phosphate process lines, granular triple superphosphate process lines, and granular triple superphosphate storage buildings)

Subpart CC -- Petroleum Refineries.

40 CFR 63.640 through 40 CFR 63.671

(storage tanks, equipment leaks, process vents, and wastewater collection and treatment systems at petroleum refineries)

Subpart DD -- Off-Site Waste and Recovery Operations.

40 CFR 63.680 through 40 CFR 63.697

(operations that treat, store, recycle, and dispose of waste received from other operations that produce waste or recoverable materials as part of their manufacturing processes)

Subpart EE -- Magnetic Tape Manufacturing Operations.

40 CFR 63.701 through 40 CFR 63.708

(manufacturers of magnetic tape)

Subpart FF -- Reserved.

Subpart GG -- Aerospace Manufacturing and Rework Facilities.

40 CFR 63.741 through 40 CFR 63.759

(facilities engaged in the manufacture or rework of commercial, civil, or military aerospace vehicles or components)

Subpart HH -- Oil and Natural Gas Production Facilities.

40 CFR 63.760 through 40 CFR 63.779

(facilities that process, upgrade, or store hydrocarbon liquids or natural gas; ancillary equipment and compressors intended to operate in volatile hazardous air pollutant service)

Subpart II -- Shipbuilding and Ship Repair (Surface Coating).

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40 CFR 63.780 through 40 CFR 63.788

(shipbuilding and ship repair operations)

Subpart JJ -- Wood Furniture Manufacturing Operations.

40 CFR 63.800 through 40 CFR 63.819

(finishing materials, adhesives, and strippable spray booth coatings; storage, transfer, and application of coatings and solvents)

Subpart KK -- Printing and Publishing Industry.

40 CFR 63.820 through 40 CFR 63.831

(publication rotogravure, product and packaging rotogravure, and wide-web printing processes)

Subpart LL -- Primary Aluminum Reduction Plants.

40 CFR 63.840 - through 40 CFR 63.859

(each pitch storage tank, potline, paste production plant, or anode bulk furnace associated with primary aluminum production)

Subpart MM -- Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite and Stand-Alone Semicheical Pulp Mills.

40 CFR 63.860 through 63.868

(chemical recovery systems, direct and nondirect contact evaporator recovery furnace systems, lime kilns, sulfite combustion units, semicheical combustion units)

Subpart NN -- Wool Fiberglass Manufacturing at Area Sources.

40 CFR 63.880 through 40 CFR 63.899

(manufacture of wool fiberglass insulation materials composed of glass fibers made from glass produced or melted at the same facility where the manufacturing line is located)

Subpart OO -- Tanks - Level 1.

40 CFR 63.900 through 40 CFR 63.907

(for off-site waste and recovery operations, fixed-roof tanks)

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Subpart PP -- Containers.

40 CFR 63.920 through 40 CFR 63.928

(for off-site waste and recovery operations, containers)

Subpart QQ -- Surface Impoundments.

40 CFR 63.940 through 40 CFR 63.948

(for off-site waste and recovery operations, surface impoundment covers and vents)

Subpart RR -- Individual Drain Systems.

40 CFR 63.960 through 40 CFR 63.966

(for off-site waste and recovery operations, inspection and maintenance of individual drain systems)

Subpart SS -- Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.

40 CFR 63.980 through 40 CFR 63.999

(closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process, when associated with facilities subject to a referencing subpart)

Subpart TT -- Equipment Leaks -- Control Level 1.

40 CFR 63.1000 through 40 CFR 63.1018

(control of air emissions from equipment leaks when associated with facilities subject to a referencing subpart)

Subpart UU -- Equipment Leaks -- Control Level 2.

40 CFR 63.1019 through 40 CFR 63.1039

(control of air emissions from equipment leaks when associated with facilities subject to a referencing subpart: pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, closed vent systems and control devices)

Subpart VV -- Oil-Water Separators and Organic-Water Separators.

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40 CFR 63.1040 through 40 CFR 63.1049

(for off-site waste and recovery operations, oil-water separators and organic-water separator roofs and vents)

Subpart WW -- Storage Vessels (Tanks) -- Control Level 2.

40 CFR 63.1060 through 40 CFR 63.1066

(storage vessels associated with facilities subject to a referencing subpart)

Subpart XX -- Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste.

40 CFR 63.1080 through 40 CFR 63.0198

(any cooling tower system or once-through cooling water system)

Subpart YY -- Generic Maximum Achievable Control Technology Standards.

40 CFR 63.1100 through 40 CFR 63.1113

(acetal resins production, acrylic and modacrylic fibers production, hydrogen fluoride production, polycarbonate production)

Subpart ZZ -- Reserved.

Subpart AAA -- Reserved.

Subpart BBB -- Reserved.

Subpart CCC -- Steel Pickling--Hydrogen Chloride Process Facilities and Hydrochloric Acid Regeneration Plants.

40 CFR 63.1155 through 40 CFR 63.1174

(steel pickling facilities that pickle carbon steel using hydrochloric acid solution, hydrochloric acid regeneration plants)

Subpart DDD -- Mineral Wool Production.

40 CFR 63.1175 through 63.1199

(cupolas and curing ovens at mineral wool manufacturing facilities)

Subpart EEE -- Hazardous Waste Combustors.

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40 CFR 63.1200 through 40 CFR 63.1221

(hazardous waste combustors)

Subpart FFF -- Reserved.

Subpart GGG -- Pharmaceutical Production.

40 CFR 63.1250 through 40 CFR 63.1261

(pharmaceutical manufacturing operations)

Subpart HHH -- Natural Gas Transmission and Storage Facilities.

40 CFR 63.1270 through 40 CFR 63.1289

(natural gas transmission and storage facilities that transport or store natural gas prior to entering the pipeline to a local distribution company or to a final end user)

Subpart III -- Flexible Polyurethane Foam Production.

40 CFR 63.1290 through 40 CFR 63.1309

(flexible polyurethane foam or rebond processes)

Subpart JJJ -- Group IV Polymers and Resins.

40 CFR 63.1310 through 40 CFR 63.1335

(facilities which manufacture acrylonitrile butadiene styrene resin, styrene acrylonitrile resin, methyl methacrylate butadiene styrene resin, polystyrene resin, poly(ethylene terephthalate) resin, or nitrile resin)

Subpart KKK -- Reserved.

Subpart LLL -- Portland Cement Manufacturing.

40 CFR 63.1340 through 40 CFR 63.1359

(kilns; in-line kilns/raw mills; clinker coolers; raw mills; finish mills; raw material dryers; raw material, clinker, or finished product storage bins; conveying system transfer points; bagging systems; bulk loading or unloading systems)

Subpart MMM -- Pesticide Active Ingredient Production.

40 CFR 63.1360 through 40 CFR 63.1369

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(pesticide active ingredient manufacturing process units, waste management units, heat exchange systems, and cooling towers)

Subpart NNN -- Wool Fiberglass Manufacturing.

40 CFR 63.1380 through 63.1399

(glass melting furnaces, rotary spin wool fiberglass manufacturing lines producing bonded wool fiberglass building insulation or bonded heavy-density product)

Subpart OOO -- Amino/Phenolic Resins Production.

40 CFR 63.1400 through 63.1419

(Unit operations, process vents, storage vessels, equipment subject to leak provisions)

Subpart PPP -- Polyether Polyols Production.

40 CFR 63.1420 through 40 CFR 63.1439

(polyether polyol manufacturing process units)

Subpart QQQ -- Primary Copper Smelting.

40 CFR 63.1440 through 63.1459

(batch copper converters, including copper concentrate dryers, smelting furnaces, slag cleaning vessels, copper converter departments, and the entire group of fugitive emission sources)

Subpart RRR -- Secondary Aluminum Production.

40 CFR 63.1500 through 63.1520

(scrap shredders; thermal chip dryers; scrap dryers/delacquering kilns/decoating kilns; group 2, sweat, dross-only furnaces; rotary dross coolers; processing units)

Subpart SSS -- Reserved.

Subpart TTT -- Primary Lead Smelting.

40 CFR 63.1541 through 40 CFR 63.1550

(sinter machines, blast furnaces, dross furnaces, process fugitive sources,

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fugitive dust sources)

Subpart UUU -- Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.

40 CFR 63.1560 through 40 CFR 63.1579

(petroleum refineries that produce transportation and heating fuels or lubricants, separate petroleum, or separate, crack, react, or reform an intermediate petroleum stream, or recover byproducts from an intermediate petroleum stream)

Subpart VVV -- Publically Owned Treatment Works.

40 CFR 63.1580 through 63.1595

(intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment)

Subpart WWW -- Reserved.

Subpart XXX -- Ferroalloys Production: Ferromanganese and Silicomanganese.

40 CFR 63.1620 through 40 CFR 63.1679

(submerged arc furnaces, metal oxygen refining processes, crushing and screening operations, fugitive dust sources)

Subpart YYY -- Reserved.

Subpart ZZZ -- Reserved.

Subpart AAAA -- Municipal Solid Waste Landfills.

40 CFR 63.1930 through 40 CFR 63.1990

(municipal solid waste landfills that have accepted waste since November 8, 1987 or has additional capacity for waste deposition)

Subpart BBBB -- Reserved.

Subpart CCCC -- Manufacturing of Nutritional Yeast.

40 CFR 63.2130 through 40 CFR 63.2192

(fermentation vessels)

Subpart DDDD -- Plywood and Composite Wood Products.

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40 CFR 63.2230 through 40 CFR 63.2292

(manufacture of plywood and composite wood products by bonding wood material or agricultural fiber with resin under heat and pressure to form a structural panel or engineered wood product)

Subpart EEEE -- Organic Liquids Distribution (Non-gasoline).

40 CFR 63.2330 through 40 CFR 63.2406

(transfer of non-crude oil liquids or liquid mixtures that contain organic hazardous air pollutants, or crude oils downstream of the first point of custody, via storage tanks, transfer racks, equipment leak components associated with pipelines, and transport vehicles)

Subpart FFFF -- Miscellaneous Organic Chemical Manufacturing.

40 CFR 63.2430 through 40 CFR 63.2550

(reaction, recovery, separation, purification, or other activity, operation, manufacture, or treatment which are used to produce a product or isolated intermediate)

Subpart GGGG -- Solvent Extraction for Vegetable Oil Production.

40 CFR 63.2830 through 40 CFR 63.2872

(vegetable oil production processes)

Subpart HHHH -- Wet-formed Fiberglass Mat Production.

40 CFR 63.2980 through 63.3079

(wet-formed fiberglass mat drying and curing ovens)

Subpart III -- Surface Coating of Automobiles and Light-Duty Trucks.

40 CFR 63.3080 through 40 CFR 63.3176

(application of topcoat to new automobile or new light-duty truck bodies or body parts)

Subpart JJJJ -- Paper and Other Web Coating.

40 CFR 63.3280 through 40 CFR 63.3420

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(web coating lines engaged in the coating of metal webs used in flexible packaging and in the coating of fabric substrates for use in pressure-sensitive tape and abrasive materials)

Subpart KKKK -- Surface Coating of Metal Cans.

40 CFR 63.3480 through 40 CFR 63.3561

(application of coatings to a substrate using spray guns or dip tanks, including one- and two-piece draw and iron can body coating; sheetcoating; three-piece can body assembly coating; and end coating)

Subpart LLLL -- Reserved.

Subpart MMMM -- Surface Coating of Miscellaneous Metal Parts and Products.

40 CFR 63.3880 through 40 CFR 63.3981

(application of coatings to industrial, household, and consumer products)

Subpart NNNN -- Surface Coating of Large Appliances.

40 CFR 63.4080 through 40 CFR 63.4181

(surface coating of a large appliance part or product, including cooking equipment; refrigerators, freezers, and refrigerated cabinets and cases; laundry equipment; dishwashers, trash compactors, and water heaters; and HVAC units, air-conditioning, air-conditioning and heating combination units, comfort furnaces, and electric heat pumps)

Subpart OOOO -- Printing, Coating, and Dyeing of Fabrics and Other Textiles.

40 CFR 63.4280 through 40 CFR 63.4371

(printing, coating, slashing, dyeing, or finishing of fabric and other textiles)

Subpart PPPP -- Surface Coating of Plastic Parts and Products.

40 CFR 63.4480 through 40 CFR 63.4581

(application of coating to a substrate using spray guns or dip tanks, including motor vehicle parts and accessories for automobiles, trucks, recreational vehicles; sporting and recreational goods; toys; business machines; laboratory and medical equipment; and household and other consumer products)

Subpart QQQQ -- Surface Coating of Wood Building Products.

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40 CFR 63.4680 through 40 CFR 63.4781

(finishing or laminating of wood building products used in the construction of a residential, commercial, or institutional building)

Subpart RRRR -- Surface Coating of Metal Furniture.

40 CFR 63.4880 through 40 CFR 63.4981

(application of coatings to substrate using spray guns and dip tanks)

Subpart SSSS -- Surface Coating of Metal Coil.

40 CFR 63.5080 through 63.5209

(organic coating to surface of metal coil, including web unwind or feed sections, work stations, curing ovens, wet sections, and quench stations)

Subpart TTTT -- Leather Finishing Operations.

40 CFR 63.5280 through 63.5460

(multistage application of finishing materials to adjust and improve the physical and aesthetic characteristics of leather surfaces)

Subpart UUUU -- Cellulose Products Manufacturing.

40 CFR 63.5480 through 63.5610

(cellulose food casing, rayon, cellulosic sponge, cellophane manufacturing, methyl cellulose, hydroxypropyl methyl cellulose, hydroxypropyl cellulose, hydroxyethyl cellulose, and carboxymethyl cellulose manufacturing industries)

Subpart VVVV -- Boat Manufacturing.

40 CFR 63.5680 through 63.5779

(resin and and gel coat operations, carpet and fabric adhesive operations, aluminum recreational boat surface coating operations)

Subpart WWWW -- Reinforced Plastic Composites Production.

40 CFR 63.5780 through 40 CFR 63.5935

(reinforced or nonreinforced plastic composites or plastic molding compounds using thermoset resins and gel coats that contain styrene)

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Subpart XXXX -- Rubber Tire Manufacturing.

40 CFR 63.5980 through 63.6015

(production of rubber tires and components including rubber compounds, sidewalls, tread, tire beads, tire cord and liners)

Subpart YYYY -- Stationary Combustion Turbines.

40 CFR 63.6080 through 40 CFR 63.6175

(simple cycle, regenerative/recuperative cycle, cogeneration cycle, and combined cycle stationary combustion turbines)

Subpart ZZZZ -- Stationary Reciprocating Internal Combustion Engines.

40 CFR 63.6580 through 40 CFR 63.6675

(any stationary internal combustion engine which uses reciprocating motion to convert heat energy into mechanical work)

(NOTE: Authority to enforce provisions related to affected facilities located at a major source as defined in 40 CFR 63.6675 is being retained by the Commonwealth. Authority to enforce the area source provisions of the above standard is being retained by EPA and are not incorporated by reference into these regulations for any source that is not (i) a major source as defined in 9VAC5-80-60 and subject to Article 1, Federal Operating Permits for Stationary Sources, or (ii) an affected source as defined in 9VAC5-80-370 and subject to Article 3, Federal Operating Permits for Acid Rain Sources, of Part II of 9VAC5-80 (Permits for Stationary Sources).)

Subpart AAAAA -- Lime Manufacturing Plants.

40 CFR 63.7080 through 40 CFR 63.7143

(manufacture of lime product, including calcium oxide, calcium oxide with magnesium oxide, or dead burned dolomite, by calcination of limestone, dolomite, shells or other calcareous substances)

Subpart BBBB -- Semiconductor Manufacturing.

40 CFR 63.7180 through 63.7195

(semiconductor manufacturing process units used to manufacture p-type and n-type semiconductors and active solid-state devices from a wafer substrate)

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Subpart CCCCC -- Coke Ovens: Pushing, Quenching, and Battery Stacks.

40 CFR 63.7280 through 40 CFR 63.7352

(pushing, soaking, quenching, and battery stacks at coke oven batteries)

Subpart DDDDD -- Industrial, Commercial, and Institutional Boilers and Process Heaters.

40 CFR 63.7480 through 40 CFR 63.7575

(industrial, commercial, and institutional boilers and process heaters)

Subpart EEEEE -- Iron and Steel Foundries.

40 CFR 63.7680 through 40 CFR 63.7765

(metal melting furnaces, scrap preheaters, pouring areas, pouring stations, automated conveyor and pallet cooling lines, automated shakeout lines, and mold and core making lines)

Subpart FFFFF -- Integrated Iron and Steel Manufacturing.

40 CFR 63.7780 through 40 CFR 63.7852

(each sinter plant, blast furnace, and basic oxygen process furnace at an integrated iron and steel manufacturing facility)

Subpart GGGGG -- Site Remediation.

40 CFR 63.7880 through 40 CFR 63.7957

(activities or processes used to remove, destroy, degrade, transform, immobilize, or otherwise manage remediation material)

Subpart HHHHH -- Miscellaneous Coating Manufacturing.

40 CFR 63.7980 through 40 CFR 63.8105

(process vessels; storage tanks for feedstocks and products; pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems; wastewater tanks and transfer racks)

Subpart IIIII -- Mercury Cell Chlor-Alkali Plants.

40 CFR 63.8180 through 40 CFR 63.8266

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(byproduct hydrogen streams, end box ventilation system vents, and fugitive emission sources associated with cell rooms, hydrogen systems, caustic systems, and storage areas for mercury-containing wastes)

Subpart JJJJJ -- Brick and Structural Clay Products Manufacturing.

40 CFR 63.8380 through 40 CFR 63.8515

(facilities that manufacture brick, clay pipe, roof tile, extruded floor and wall tile, and other extruded, dimensional clay products, and typically process raw clay and shale, form the processed materials into bricks or shapes, and dry and fire the bricks or shapes)

Subpart KKKKK -- Ceramics Manufacturing.

40 CFR 63.8530 through 40 CFR 63.8665

(facilities that manufacture pressed floor tile, pressed wall tile, other pressed tile, or sanitaryware, and typically process clay, shale, and various additives, form the processed materials into tile or sanitaryware shapes, and dry and fire the ceramic products)

Subpart LLLLL -- Asphalt Processing and Asphalt Roof Manufacturing.

40 CFR 63.8680 through 40 CFR 63.8698

(preparation of asphalt flux at stand-alone asphalt processing facilities, petroleum refineries, and asphalt roofing facilities)

Subpart MMMMM -- Flexible Polyurethane Foam Fabrication Operations.

40 CFR 63.8780 through 40 CFR 63.8830

(flexible polyurethane foam fabrication plants using flame lamination or loop slitter adhesives)

Subpart NNNNN -- Hydrochloric Acid Production.

40 CFR 63.8980 through 40 CFR 63.9075

(HCl production facilities that produce a liquid HCl product)

Subpart OOOOO -- Reserved.

Subpart PPPPP -- Engine Test Cells and Stands.

40 CFR Subpart 63.9280 through 40 CFR 63.9375

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-20, -50 AND -60)

(any apparatus used for testing uninstalled stationary or uninstalled mobile (motive) engines)

Subpart QQQQQ -- Friction Materials Manufacturing Facilities.

40 CFR 63.9480 through 40 CFR 63.9579

(friction materials manufacturing facilities that use a solvent-based process)

Subpart RRRRR -- Taconite Iron Ore Processing.

40 CFR 63.9580 through 40 CFR 63.9652

(ore crushing and handling, ore dryer stacks, indurating furnace stacks, finished pellet handling, and fugitive dust)

Subpart SSSSS -- Refractory Products Manufacturing.

40 CFR 63.9780 through 40 CFR 63.9824

(manufacture of refractory products, including refractory bricks and shapes, monolithics, kiln furniture, crucibles, and other materials for liming furnaces and other high temperature process units)

Subpart TTTTT -- Primary Magnesium Refining.

40 CFR 63.9880 through 40 CFR 63.9942

(spray dryer, magnesium chloride storage bin scrubber, melt/reactor system, and launder off-gas system stacks)

Subpart UUUUU -- Coal- and Oil-fired Electric Utility Steam Generating Units.

40 CFR 63.9980 through 40 CFR 63.10042

(any furnace, boiler, or other device used for combusting fuel for the purpose of producing steam, including fossil-fuel-fired steam generators associated with integrated gasification combined cycle gas turbines and excluding nuclear steam generators, for the purpose of powering a generator to produce electricity or electricity and other thermal energy)

Subpart VVVVV -- Reserved.

Subpart WWWW - Hospital Ethylene Oxide Sterilizer Area Sources.

40 CFR 63.10382 through 40 CFR 63.10448

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-20, -50 AND -60)

(any enclosed vessel that is filled with ethylene oxide gas or an ethylene oxide/inert gas mixture for the purpose of sterilization)

Subpart XXXXX -- Reserved.

Subpart YYYYYY -- Electric Arc Furnace Steelmaking Facility Area Sources.

40 CFR 63.10680 through 40 CFR 63.10692

(a steel plant that produces carbon, alloy, or specialty steels using an electric arc furnace)

Subpart ZZZZZ -- Iron and Steel Foundries Area Sources.

40 CFR 63.10880 through 40 CFR 63.10906

(a facility that melts scrap, ingot, and/or other forms of iron and/or steel and pours the resulting molten metal into molds to produce final or near final shape products for introduction into commerce)

Subpart AAAAAA -- Reserved.

Subpart BBBBBB -- Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities, Area Sources.

40 CFR 63.11080 through 40 CFR 63.11100

(gasoline storage tanks, gasoline loading racks, vapor collection-equipped gasoline cargo tanks, and equipment components in vapor or liquid gasoline service)

Subpart CCCCCC -- Gasoline Dispensing Facilities, Area Sources.

40 CFR 63.11110 through 40 CFR 63.11132

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations for any source that is not (i) a major source as defined in 9VAC5-80-60 and subject to Article 1, Federal Operating Permits for Stationary Sources, or (ii) an affected source as defined in 9VAC5-80-370 and subject to Article 3, Federal Operating Permits for Acid Rain Sources, of Part II of 9VAC5-80 (Permits for Stationary Sources).)

Subpart DDDDDD -- Polyvinyl Chloride and Copolymers Production Area Sources.

40 CFR 63.11140 through 40 CFR 63.11145

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-20, -50 AND -60)

(plants that produce polyvinyl chloride or copolymers)

Subpart EEEEEEE -- Primary Copper Smelting Area Sources.

40 CFR 63.11146 through 40 CFR 63.11152

(any installation or any intermediate process engaged in the production of copper from copper sulfide ore concentrates through the use of pyrometallurgical techniques)

Subpart FFFFFFF -- Secondary Copper Smelting Area Sources.

40 CFR 63.11153 through 40 CFR 63.11159

(a facility that processes copper scrap in a blast furnace and converter or that uses another pyrometallurgical purification process to produce anode copper from copper scrap, including low-grade copper scrap)

Subpart GGGGGG - Primary Nonferrous Metals Area Sources--Zinc, Cadmium, and Beryllium.

40 CFR 63.11160 through 40 CFR 63.11168

(cadmium melting furnaces used to melt cadmium or produce cadmium oxide from the cadmium recovered in the zinc production; primary beryllium production facilities engaged in the chemical processing of beryllium ore to produce beryllium metal, alloy, or oxide, or performing any of the intermediate steps in these processes; and primary zinc production facilities engaged in the production, or any intermediate process in the production, of zinc or zinc oxide from zinc sulfide ore concentrates through the use of pyrometallurgical techniques)

Subpart HHHHHH -- Paint Stripping and Miscellaneous Surface Coating Operations Area Sources.

40 CFR 63.11169 through 40 CFR 63.11180

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations for any source that is not (i) a major source as defined in 9VAC5-80-60 and subject to Article 1, Federal Operating Permits for Stationary Sources, or (ii) an affected source as defined in 9VAC5-80-370 and subject to Article 3, Federal Operating Permits for Acid Rain Sources, of Part II of 9VAC5-80 (Permits for Stationary Sources).)

Subpart IIIIII -- Reserved.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-20, -50 AND -60)

Subpart JJJJJJ -- Industrial, Commercial, and Institutional Boiler Area Sources.

40 CFR 63.11193 through 40 CFR 63.11226

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations for any source that is not (i) a major source as defined in 9VAC5-80-60 and subject to Article 1, Federal Operating Permits for Stationary Sources, or (ii) an affected source as defined in 9VAC5-80-370 and subject to Article 3, Federal Operating Permits for Acid Rain Sources, of Part II of 9VAC5-80 (Permits for Stationary Sources).)

Subpart KKKKKK -- Reserved.

Subpart LLLLLL -- Acrylic and Modacrylic Fibers Production Area Sources.

40 CFR 63.11393 through 40 CFR 63.11399

(production of either of the following synthetic fibers composed of acrylonitrile units: acrylic fiber or modacrylic fiber)

Subpart MMMMMM - Carbon Black Production Area Sources.

40 CFR 63.11400 through 40 CFR 63.11406

(carbon black production process units including all waste management units, maintenance wastewater, and equipment components that contain or contact HAP that are associated with the carbon black production process unit)

Subpart NNNNNN -- Chemical Manufacturing Area Sources: Chromium Compounds.

40 CFR 63.11407 through 40 CFR 63.11413

(any process that uses chromite ore as the basic feedstock to manufacture chromium compounds, primarily sodium dichromate, chromic acid, and chromic oxide)

Subpart OOOOOO - Flexible Polyurethane Foam Production and Fabrication Area Sources.

40 CFR 63.11414 through 40 CFR 63.11420

(a facility where pieces of flexible polyurethane foam are cut, bonded, and/or laminated together or to other substrates)

Subpart PPPPPP -- Lead Acid Battery Manufacturing Area Sources.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-20, -50 AND -60)

40 CFR 63.11421 through 40 CFR 63.11427

(grid casting facilities, paste mixing facilities, three-process operation facilities, lead oxide manufacturing facilities, lead reclamation facilities, and any other lead-emitting operation that is associated with the lead acid battery manufacturing plant)

Subpart QQQQQQ - Wood Preserving Area Sources.

40 CFR 63.11428 through 40 CFR 63.11434

(pressure or thermal impregnation of chemicals into wood to provide effective long-term resistance to attack by fungi, bacteria, insects, and marine borers)

Subpart RRRRRR -- Clay Ceramics Manufacturing Area Sources.

40 CFR 63.11435 through 40 CFR 63.11447

(manufacture of pressed tile, sanitaryware, dinnerware, or pottery with an atomized glaze spray booth or kiln that fires glazed ceramic ware)

Subpart SSSSSS -- Glass Manufacturing Area Sources.

40 CFR 63.11448 through 40 CFR 63.11461

(manufacture of flat glass, glass containers, or pressed and blown glass by melting a mixture of raw materials to produce molten glass and form the molten glass into sheets, containers, or other shapes)

Subpart TTTTTT -- Secondary Nonferrous Metals Processing Area Sources.

40 CFR 63.11462 through 40 CFR 63.11474

(all crushing and screening operations at a secondary zinc processing facility and all furnace melting operations located at any secondary nonferrous metals processing facility)

Subpart UUUUUU -- Reserved.

Subpart VVVVVV -- Chemical Manufacturing Area Sources.

40 CFR 63.11494 through 40 CFR 11503

(each chemical manufacturing process unit that uses as feedstocks, generates as byproducts, or produces as products any of the following: 1,3-butadiene; 1,3-dichloropropene; acetaldehyde; chloroform; ethylene dichloride; methylene chloride; hexachlorobenzene; hydrazine; quinoline; or compounds of arsenic,

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-20, -50 AND -60)

cadmium, chromium, lead, manganese, or nickel)

Subpart WWWWWW -- Plating and Polishing Operations, Area Sources.

40 CFR 63.11504 through 40 CFR 11513

(new and existing tanks, thermal spraying equipment, and mechanical polishing equipment used in non-chromium electroplating, electroless or non-electrolytic plating, non-electrolytic metal coating, dry mechanical polishing, electroforming, and electropolishing)

Subpart XXXXXX -- Nine Metal Fabrication and Finishing Source Categories, Area Sources.

40 CFR 63.11514 through 40 CFR 63.11523

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations for any source that is not (i) a major source as defined in 9VAC5-80-60 and subject to Article 1, Federal Operating Permits for Stationary Sources, or (ii) an affected source as defined in 9VAC5-80-370 and subject to Article 3, Federal Operating Permits for Acid Rain Sources, of Part II of 9VAC5-80 (Permits for Stationary Sources).)

Subpart YYYYYY -- Ferroalloys Production Facilities, Area Sources.

40 CFR 63.11524 through 40 CFR 63.11543

(manufacture of silicon metal, ferrosilicon, ferrotitanium using the aluminum reduction process, ferrovanadium, ferromolybdenum, calcium silicon, silicomanganese zirconium, ferrochrome silicon, silvery iron, high-carbon ferrochrome, charge chrome, standard ferromanganese, silicomanganese, ferromanganese silicon, calcium carbide or other ferroalloy products using electrometallurgical operations including electric arc furnaces or other reaction vessels)

Subpart ZZZZZZ -- Aluminum, Copper, and Other Nonferrous Foundries, Area Sources.

40 CFR 63.11544 through 40 CFR 63.11558

(melting operations at aluminum, copper, and other nonferrous foundries, including the collection of induction, reverberatory, crucible, tower, or dry hearth furnaces used to melt metal ingot, alloyed ingot and/or metal scrap to produce molten metal that is poured into molds to make castings)

Subpart AAAAAA -- Asphalt Processing and Asphalt Roofing Manufacturing Area Sources.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-20, -50 AND -60)

40 CFR 63.11559 through 40 CFR 63.11567

(asphalt processing operations that prepare asphalt flux at standalone asphalt processing facilities, petroleum refineries, and asphalt roofing facilities that include one or more asphalt flux blowing stills; and asphalt roofing manufacturing operations that manufacture asphalt roofing products through a series of sequential process steps depending upon whether the type of substrate used is organic or inorganic)

Subpart BBBB BBB -- Chemical Preparations Industry Area Sources.

40 CFR 63.11579 through 40 CFR 63.11588

(any facility-wide collection of chemical preparation operations, including the collection of mixing, blending, milling, and extruding equipment used to manufacture chemical preparations that contain metal compounds for chromium, lead, manganese, and nickel)

Subpart CCCCCC -- Paints and Allied Products Manufacturing Area Sources.

40 CFR 63.11599 through 40 CFR 63.11638

(paints and allied products manufacturing processes, including, weighing, blending, mixing, grinding, tinting, dilution or other formulation, as well as cleaning operations, material storage and transfer, and piping)

Subpart DDDDDDD -- Prepared Feeds Manufacturing Area Sources.

40 CFR 63.11619 through 40 CFR 63.11638

(production of animal feed from the point in the process where a material containing chromium or manganese is added, to the point where the finished product leaves the facility, including areas where materials containing chromium and manganese are stored, areas where materials containing chromium and manganese are temporarily stored prior to addition to the feed at the mixer, mixing and grinding processes, pelleting and pellet cooling processes, packing and bagging processes, crumblers and screens, bulk loading operations, and all conveyors and other equipment that transfer feed materials)

Subpart EEEEEEE -- Gold Mine Ore processing and Production Area Sources.

40 CFR 63.11640 through 40 CFR 63.11653

(any industrial facility engaged in the processing of gold mine ore that uses any of the following processes: roasting operations, autoclaves, carbon kilns, preg tanks, electrowinning, mercury retorts, or melt furnaces)

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-20, -50 AND -60)

Subpart FFFFFFFF -- Reserved.

Subpart GGGGGGGG -- Reserved.

Subpart HHHHHHHH -- Polyvinyl Chloride and Copolymers Production.

40 CFR 63.11860 through 40 CFR 63.12000

(facility-wide collection of PVCPU, storage vessels, heat exchange systems, surge control vessels, wastewater and process wastewater treatment systems that are associated with producing polyvinyl chloride and copolymers)

Appendix A -- Test Methods.

Appendix B -- Sources Defined for Early Reduction Provisions.

Appendix C -- Determination of the Fraction Biodegraded (F_{bio}) in a Biological Treatment Unit.

Appendix D -- Alternative Validation Procedure for EPA Waste and Wastewater Methods.

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TAB F

**COMMONWEALTH OF VIRGINIA
STATE AIR POLLUTION CONTROL BOARD MEETING**

December 7, 2022

SUBJECT: Regulation for Emissions Trading (9VAC5 Chapter 140, Rev. A22) - Request for Board Action, Proposal

CONTACT: Karen G. Sabasteanski
karen.sabasteanski@deq.virginia.gov/804-659-1973
Office of Air Data Analysis and Planning
Department of Environmental Quality

INTRODUCTION

Executive Order 9 (2022), "Protecting Ratepayers from the Rising Cost of Living Due to the Regional Greenhouse Gas Initiative," requires that the department re-evaluate Virginia's participation in the Regional Greenhouse Gas Initiative (RGGI) and begin regulatory processes to end it. Specifically, the order requires that the department develop a regulation for the State Air Pollution Control Board's consideration to repeal the implementing regulation implementing participation in RGGI (Part VII of 9VAC5-140), and take all necessary steps so that any proposed regulation to the State Air Pollution Control Board can be immediately presented for consideration for approval for public comment in accordance with the Board's authority pursuant to § 10.1-1308 of the Code of Virginia.

The department is requesting approval of a proposal for public comment that meets the requirements of EO-9.

PUBLIC PARTICIPATION ACTIVITIES

To solicit comment from the public on the Notice of Regulatory Action (NOIRA), the department issued a notice that provided for receiving comment during a comment period (September 26 through October 26, 2022). A summary of comment received is included in the Agency Background Document.

SUMMARY OF PROPOSED AMENDMENTS

The regulation is repealed in its entirety; a new transition clause is added at the end in order for the repeal to be implemented smoothly.

SUPPORTING DOCUMENTATION

Immediately following this agenda memo are the following documents:

1. Agency Background Document, including a summary of comments received during the NOIRA public comment period, with agency responses. This document does not include the statement from the Attorney General's Office, which is issued after the board meeting.

2. Office of Regulatory Management Interim Economic Review Form.

2. Draft proposed regulation.

DEPARTMENT RECOMMENDATION

It is recommended that the board approve the attached proposal and authorize the department to issue the proposal for public comment.

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townhall.virginia.gov

Proposed Regulation Agency Background Document

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	Part VII of 9VAC5-140
VAC Chapter title(s)	Regulation for Emissions Trading
Action title	Repeal CO ₂ Budget Trading Program as required by Executive Order 9 (Revision A22)
Date this document prepared	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

Executive Order 9 (2022), "Protecting Ratepayers from the Rising Cost of Living Due to the Regional Greenhouse Gas Initiative," requires that the department re-evaluate Virginia's participation in the Regional Greenhouse Gas Initiative (RGGI) and begin regulatory processes to end it. Specifically, the order requires that the department develop a regulation for the State Air Pollution Control Board's consideration to repeal the implementing regulation implementing participation in RGGI (Part VII of 9VAC5-140), and take all necessary steps so that any proposed regulation to the State Air Pollution Control Board can be immediately presented for consideration for approval for public comment in accordance with the Board's authority pursuant to § 10.1-1308 of the Code of Virginia. This regulatory action repeals Part VII of 9VAC-140, and adds transition language in a new section in order that the repeal be implemented without disruption to affected facilities or the market.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

APA - Virginia Administrative Process Act
 ASNH - Affordable and Special Needs Housing
 CFPF - Community Flood Preparedness Fund
 CO₂ - carbon dioxide
 DCR - Virginia Department of Conservation and Recreation
 DEQ - Virginia Department of Environmental Quality
 DHCD - Virginia Department of Housing and Community Development
 DOE - Virginia Department of Energy
 GHG - greenhouse gas
 HIEE - Housing Innovations in Energy Efficiency
 EO-9 - Executive Order 9 (2022)
 kWh - kilowatt hour
 MWe - megawatt electrical
 NO_x - nitrogen oxides
 PDC - planning district commission
 PJM - PJM Interconnection
 REC - renewable energy certificate
 RGGI - Regional Greenhouse Gas Initiative
 RPS - Renewable Energy Portfolio Standards
 SCC - State Corporation Commission
 SO₂ - sulfur dioxide
 U.S. DOE - U.S. Department of Energy
 VCEA - Virginia Clean Economy Act
 WAP - Weatherization Assistance Program
 WDR - Weatherization Deferral Repair

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

The mandate and necessity for this regulatory change are described in EO-9 as follows:

Virginia’s participation in the Regional Greenhouse Gas Initiative (RGGI) risks contributing to the increased cost of electricity for our citizens. Virginia’s utilities have sold over \$227 million in allowances in 2021 during the RGGI auctions, doubling the initial estimates. Those utilities are allowed to pass on the costs of purchasing allowances to their ratepayers. Under the initial bill “RGGI rider” created for Dominion Energy customers, typical residential customer bills were increased by \$2.39 a month and the typical industrial customer bill by was raised by \$1,554 per month. In a filing before the State Corporation Commission, Dominion Energy stated that RGGI will cost ratepayers between \$1 billion and \$1.2 billion over the next four years.

Simply stated, the benefits of RGGI have not materialized, while the costs have skyrocketed. Re-evaluation of the Initiative represents a meaningful step toward alleviating this financial burden on

the Commonwealth's businesses and households. Regulations must be evaluated in view of the costs and benefits to all Virginians.

According to the U.S. DOE, Virginians pay on average \$2,323 per year in non-transportation energy costs, which is higher than the national average of \$1,850. The index for electricity rose by more than 13% over the last 12 months, the largest single-year increase since 2006, while the natural gas index rose by 38.4%--the biggest 12-month jump since October 2005. In July 2022 alone, electricity prices rose 1.7% and natural gas prices 8.2%. Considering that Virginia obtains most of its electricity from natural gas, rising natural gas prices have forced electricity prices even higher.

Dominion Energy has filed for 16 rate adjustments over a 12-month period ending July 1, 2022. In May 2022 alone, Dominion filed for a rate increase with the State Corporation Commission (SCC) that could result in monthly rate increases between 12-20% due to rising fuel costs. The cumulative impact of those adjustments results in an increase of \$0.022423/kilowatt hour or 18% in Dominion's rates that it charges for delivered electricity. This assumes final SCC approval of the fuel rate adjustment and its agreement to Dominion's request to amortize the fuel adjustment over three years.

According to the most recent data supplied by the Federal Energy Information Administration (2020), the average annual household consumption of electricity in Virginia is 13,140 kilowatt hours. Historically, the average energy consumption in Virginia has increased by 1.38% per year. The cumulative impact of the adjustments described above would increase the average household's bill by approximately \$294 per year, but will increase as consumption continues to increase.

The current energy framework in Virginia allows energy providers to also charge ratepayers for the transition and expansion of clean energy infrastructure. For example, the SCC recently approved an application by Dominion for cost recovery associated with its proposed Coastal Virginia Offshore Wind Project. The project consists of 176 wind turbines, each designed to generate 14.7 megawatts, to be located about 27 miles off the coast of Virginia Beach. The project is expected to have a capital cost of \$9.8 billion and will likely be the largest capital investment, and single largest project, in Dominion's history. The SCC approved a revenue requirement of \$78.702 million for the rate year of September 1, 2022, to August 31, 2023, to be recovered through a new rate adjustment clause. Over the projected 35-year lifetime of the project, for a residential customer using 1,000 kilowatt-hours of electricity per month, the rate adjustment is projected to result in an average monthly bill increase of \$4.72 and a peak monthly bill increase of \$14.22 in 2027. This is another instance of upward pressure on utility costs with a direct impact on consumers.

These energy cost increases are coming at a time that Virginians can least afford them. As of June 2022, inflation has risen 9.1% on an annual basis, the highest increase in over 40 years. According to the Bureau of Labor Statistics, consumer energy prices are up 41.6% in the last year. The rate of inflation for energy is more than four times the inflation rate of all food items and the Consumer Price Index.

Real wage growth has not kept pace with this rapid inflation, and real wages decreased by 1% in June 2022; over the last year they have decreased 3.6%. This hurts Virginia families, and those families and individuals who can least afford increases in energy costs. According to the American Council for an Energy Efficient Economy, "Black households spend 43% more of their income on energy costs, Hispanic households spend 20% more, and Native American households spend 45% more. Low-income households (those with incomes 200% of the federal poverty level) spend three times more of their income on energy costs than non-low income households."

EO-9 directed the department to provide the Governor with a full report re-evaluating the costs and benefits of participation in RGGI in view of all available data. As detailed above, it is clear that in effect participation in RGGI operates as a direct tax on households and businesses. Since the consumers are utility-captive ratepayers that do not have the opportunity to switch electric providers, they are unable to avoid the pass-through of RGGI costs—whether through a direct rate adjustment clause or incorporation into the base rate of their electricity bill. Emission allowance prices have increased over 146% since

Virginia joined RGGI in 2020, and these substantial increases are expected to continue, which in turn will result in increased rates to ratepayers.

The original analysis and consignment auction approach for RGGI was designed on the basis that proceeds would be returned to offset the cost of compliance, and have little impact on electricity prices. However, since this is not how the program was implemented in Virginia, the costs of compliance with RGGI have materialized in higher electricity rates for Virginians. The impact of RGGI and the other factors discussed above on the current state of electricity costs shows a substantial burden placed on Virginians that must be addressed.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Statutory Authority

Section 10.1-1308 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare.

Promulgating Entity

The promulgating entity for this regulation is the State Air Pollution Control Board.

State Requirements

EO-9 specifically directs the Director of the Department of Environmental Quality, in coordination with the Secretary of Natural and Historic Resources, to present to the State Air Pollution Control Board a regulation amendment to repeal 9VAC5-140 in accordance with the board's authority pursuant to § 10.1-1308 of the Code of Virginia.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

As described in the Mandate and Impetus section of this document, EO-9 describes the necessity for this regulatory change in order to protect public health, safety, and welfare.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The purpose of this regulatory action is to repeal Part VII of 9VAC5-140 in its entirety, while adding a new transition section so that the repeal will be effected smoothly.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

The primary advantage to the public include reduced residential and commercial energy costs.

The primary advantages to the Commonwealth are reduced energy costs. The Commonwealth will also benefit from greater certainty and transparency in the energy markets.

There are no disadvantages to the public or the Commonwealth associated with this regulatory change.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

Department of Housing and Community Development (DHCD); Department of Conservation and Recreation (DCR) Flood Preparedness Fund.

Localities Particularly Affected

No locality will be particularly affected by this action.

Other Entities Particularly Affected

Organizations that receive funding from DHCD and DCR; any fossil fuel-fired unit that serves an electricity generator with a nameplate capacity equal to or greater than 25 MWe (megawatt electrical).

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits) anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including:</p> <ul style="list-style-type: none"> a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources. 	<p>It is expected that repealing the regulation will not result in any cost to the department. The sources of department funds to carry out this regulation are currently the general fund and RGGI funds (3% of total auction proceeds for administrative needs), which will no longer be generated. The activities are budgeted under the following programs (codes): Air Protection Permitting (513025); Air Protection Compliance and Enforcement (513026); Air Protection Planning and Policy (513028); and Air Protection Monitoring and Assessment (513029). The ongoing costs will cease with the program.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>DHCD: Any ongoing expenses associated with administering the program will cease with the program.</p> <p>DCR: Any ongoing expenses associated with administering the program will cease with the program.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The primary benefits of the regulatory change are reduced energy costs, and greater certainty and transparency in the energy markets.</p>

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

<p>Projected costs, savings, fees, or revenues resulting from the regulatory change.</p>	<p>See ORM Economic Impact form.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>See ORM Economic Impact form.</p>

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

<p>Description of the individuals, businesses, or other entities likely to be affected by the</p>	<p>See ORM Economic Impact form.</p>
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regulatory change. If no other entities will be affected, include a specific statement to that effect.	
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated, and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	See ORM Economic Impact form.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	See ORM Economic Impact form.
Benefits the regulatory change is designed to produce.	See ORM Economic Impact form.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

1. Repeal the regulation to satisfy the provisions of EO-9. This option is being selected because it meets the stated purpose of the regulatory action.
2. Make alternative regulatory changes to those required by EO-9. This option is not being selected because it would not meet the stated purpose of the regulatory action.
3. Take no action. This option is not being selected because it would not satisfy the provisions of EO-9.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the

proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

See ORM Economic Impact form.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in EO 19 and the ORM procedures, e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable. In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

This form is not being used to report the result of a periodic review/small business impact review.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency’s response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response
1. About 50 Town Hall commenters	General support for the proposal. Key topics included the effectiveness of the program, and whether the program constitutes a tax and unneeded financial burden.	Support for the proposal is appreciated.
2. About 745 Town Hall commenters, and about 16 individual emails	General opposition to the proposal. Key topics included the legality of the regulatory action, the need for utility structure reform, protection of public health and welfare, and the need to fund resiliency and energy efficiency programs.	The commenters' concerns are acknowledged; detailed responses to specific issues are noted below.
3. About 225 identical emails sponsored by Virginia League of	In a time of extreme weather and climate impacts, and rising energy costs, RGGI is bringing hundreds of millions of dollars to our state every year to help localities address flooding and sea level rise;	The commenters' concerns are acknowledged; detailed responses to specific issues are noted below.

<p>Conservation Voters</p>	<p>and fund energy efficiency improvements for low-income households. An estimated 60% of total proceeds help either low-income individuals directly, or low-income communities. Since January 2021, RGGI has generated upward of \$378M for these efforts. With no Plan B to make up this revenue, this action would leave localities without funding to adapt to climate change and protect their communities, while also leaving low-income Virginians behind. Taking Virginia out of RGGI undermines our ability to cut harmful pollution from power plants; dirty air threatens us all, and RGGI is helping drive down pollution. This misguided repeal also imperils our economy. We are one of the fastest growing states for clean energy jobs because of strong policies like membership in RGGI, and we must stay the course to advance the clean energy transition. Lastly, Governor Youngkin lacks the authority to leave RGGI through the regulatory process--our participation is mandated by the General Assembly and only the General Assembly can legally take us out.</p>	
<p>4. Ceres</p>	<p>To reaffirm the sentiments of leading businesses in Virginia, we recognize that climate change poses a material risk to business operations, the livelihood of employees, and the health of Virginia's communities. In March 2020, a coalition of our Virginia based member companies and other large Virginia employers sent a letter in support of Virginia joining RGGI. In January 2022, 11 companies and educational institutions wrote a letter in support of maintaining and building upon Virginia's climate legislation. RGGI is one of many important tools that exist in Virginia to help businesses cut energy costs, avoid the volatility of fuel prices, and stay competitive. Our companies are motivated to make investments in places where we can continue to access these</p>	<p>DEQ agrees with the commenters that that climate change represents a serious threat to Virginia's public health and welfare. We note that emissions of CO₂ and other pollutants have been and continue to decrease within Virginia's borders. Such decreases are not directly attributable to participation in RGGI but are primarily the result of other ongoing programs, thus, the health benefits resulting from reduced pollution are not attributable to RGGI participation. These programs include market-driven trends toward cleaner electricity generation (fuel switching, use of solar, etc.) and federal emissions reduction mandates (such as the suite of clean power rules and motor vehicle standards).</p>

	<p>types of policies. We hope Virginia will continue to provide a hospitable environment for spurring clean energy adoption and expansion by not leaving RGGI. We appreciate the many economic opportunities presented by Virginia’s continued transition to a clean energy economy. It is critical that these programs persist to ensure both the state and our companies achieve the shared goals of driving new in-state investment, encouraging innovation, and fostering long-term economic health.</p>	
<p>5. Ceres</p>	<p>RGGI is a cooperative agreement among 11 states; there is no abandonment or relinquishment of state sovereignty or responsibility. RGGI is implemented through a CO₂ Budget Trading Program specific to each member state. Virginia’s DEQ coordinates Virginia’s participation. Due to the structure of RGGI, member states are allowed to bank emission allowances for future use, which yields substantial flexibility in the trading program.</p>	<p>Participating RGGI states must follow a model rule which is agreed to by all states. Very little flexibility may be realized by states in changes to the model rule, and rightly so-- such a regional agreement could not function effectively if there were significant differences among the participants. The fact remains that once a state enters into RGGI, that state must follow in step with every other state with respect to CO₂ budgets, compliance mechanisms, and the overall structure of RGGI. As previously noted, there are additional costs and steps associated with participating in RGGI that are avoided through direct implementation of Virginia programs by Virginia agencies.</p>
<p>6. Ceres</p>	<p>After decades of overinvestment in fossil fuels, Virginia’s electric rates have climbed higher than every neighboring regulated state. Under the leadership of both Republicans and Democrats, RGGI states have seen their economies grow faster while utility rates are lower. RGGI states have agreed that at least 25% of the emission allowance value will be distributed for consumer benefit, which is predominantly used for energy efficiency and renewable energy investments. Studies have indicated that this provides multiple benefits of emission reductions, lower electricity bills, and regional job creation. Any adjustment in the utility rate structure should come through legislative reform and not the proven and successful RGGI program.</p>	<p>Virginia is currently a participating RGGI state, and has yet to see the lower utility rates. Over the past 15 years, an average monthly residential bill for a Dominion customer has increased by over \$30 (roughly 34%). Consumer energy prices were up by 41.6% in the last year, with an increase in June 2022 alone of 9%. Natural gas is the predominant fuel in Virginia, and the natural gas price index is sharply higher (+38%), resulting in rate increases amounting to 18%. Furthermore, the cost of allowances continues to increase; these costs are being passed down directly to Virginia consumers. Given the current climate of economic distress, including increasing energy costs to every household and business in Virginia, the benefits of certain carbon control programs must be weighed against their costs, and their effectiveness carefully reviewed.</p> <p>It is important to note that all RGGI costs are passed through to the ratepayers as required by state law. By design, utilities are not</p>

		<p>penalized for failure to meet RGGI CO₂ emissions limits since they can pass on the costs to the ratepayers. Consumers are unable to avoid these costs because they do not have the opportunity to switch electric providers. Other states designed their systems to provide rebates to ratepayers, while the Virginia General Assembly chose to disburse the funds through grant programs. The costs of compliance with the trading rule and participation in RGGI are materializing in higher electricity rates for all ratepayers, and future rate increases due to RGGI are expected and will be tied to the allowance prices which are difficult to predict.</p> <p>We agree that any adjustments to the utility rate structure would require changes to state law that are beyond the purview of this regulatory action or the legal authority of DEQ to implement; however, the fact remains that participation in RGGI is not helping bring utility rates down in Virginia. Moreover, RGGI participation does not comport with the "all of the above" strategy espoused by the Commonwealth's 2022 Energy Plan.</p>
<p>7. Ceres</p>	<p>The market-based mechanisms of RGGI not only ensure that Virginia pursues the most economically efficient carbon reduction pathways, but that the proceeds from RGGI allow for the establishment of energy efficiency programs and the creation and expansion of flood mitigation programs in every corner of the state. Virginia has received approximately \$452M in cumulative proceeds since its first auction in March 2021. In terms of health benefits, for the first six years of the RGGI program, RGGI states' improvement in air quality had a cumulative economic value of \$5.7B. RGGI accounts for nearly half of the northeastern U.S. post-2009 emissions reductions, which is far greater than those achieved in the rest of the U.S. The estimated avoided cases of adverse children health outcomes from 2009-2020, includes an avoided cost ranging from \$191-\$350M. This monetary figure represents the prevention of infant</p>	<p>Energy efficiency programs and resiliency measures are indeed needed throughout the state. These programs are obviously costly, and the money to fund them must be obtained one way or another; regardless, such programs should be funded in an open and transparent way, not through a third party. Other sources of funding are available, both state and federal, without the additional costs and complex means of creating and distributing the revenue that the RGGI program imposes. The Virginia General Assembly will also fund important resiliency and energy efficiency programs in future sessions.</p>

	<p>mortality, preterm births, respiratory illness, and asthma among our most vulnerable Virginians.</p>	
<p>8. Virginia Energy Efficiency Council (VEEC); City of Charlottesville; Virginia Conservation Network</p>	<p>RGGI provides unprecedented and irreplaceable funding for energy efficiency improvements in low income residences. Virginia is the only RGGI state that dedicates 50% of its carbon-trading funds to make both new and existing low-income housing more energy efficient, allowing weatherization providers and affordable housing developers to provide safe, affordable and energy-efficient homes to low-income families like never before. Only the General Assembly has the authority to cut off this vital funding source.</p> <p>Virginia's first year in RGGI provided nearly \$114M in revenue for low-income energy efficiency housing. Administered by DHCD, the HIEE fund provides capital to make energy efficiency upgrades to residential buildings. From major health and safety repairs on existing housing to the construction of affordable, energy-efficient homes, money from RGGI is being used in every region of Virginia-- and is creating high-paying jobs that cannot be outsourced.</p> <p>Along the Eastern Shore, weatherization provider Project:HOMES was able to use RGGI dollars to help the most vulnerable in this community. But something was standing in the way--hazardous living conditions. While the federal weatherization program helps provide energy-efficient upgrades, homes that require major repairs are disqualified from receiving services. That means weatherization providers have had to walk away, or "defer," houses in such disrepair, leaving those most in need living in unsafe, unhealthy and energy-inefficient homes. This is where the state Weatherization Deferral Repair (WDR) program comes in. This RGGI-funded program works</p>	<p>As discussed in the response to comment 7, we agree that these types of projects are important for protecting public health and welfare; however, RGGI is not the only possible source of funding for these types of projects, nor is it the most efficient or transparent means of obtaining this type of funding.</p>

	<p>in tandem with the federal weatherization program to provide funds specifically for health and safety repairs to help vulnerable citizens qualify for weatherization services. Project:HOMES took advantage of this program to make extensive health and safety repairs to 12 homes. The organization hired more than 30 local subcontractors to fix roofs, repair heating and cooling systems and address major mold, electrical and plumbing problems. Once repairs were made through WDR, those homes received weatherization services through the federal program. Those residents now reap on average 20% savings on their utility bills, in addition to living in safer, healthier homes.</p> <p>The Senior Deerfield Apartments in Crewe VA received \$93,195 in repairs, including replacement roofs and new HVAC systems. In Shenandoah County, Community Housing Partners used RGGI funds to help weatherize 52 units of low-income housing and put 24 subcontractors to work in the process. And that's just on existing housing stock. RGGI dollars also provide affordable housing developers the financial capital to build and renovate energy-efficient housing for low-income families. In Charlottesville, Piedmont Housing Alliance was awarded RGGI money through the Affordable and Special Needs Housing program to renovate and build over 230 homes. They are committed to making all future housing units more energy-efficient, but that may not be feasible if RGGI funding disappears. People Inc. Housing Group is building a new, energy-efficient 22-unit complex in Abingdon for low-income families, which will include five accessible units for those with disabilities. The RGGI funding received for this project ensures that these units will be as energy-efficient as possible.</p>	
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	<p>RGGI funding is a game-changer for the most vulnerable in our communities. While administration officials have suggested that other funding sources could be found to replace RGGI funds, that would be a herculean task. In 2021, the RGGI auctions brought in millions of dollars more than every other energy efficiency program in the state--combined. Virginians can't afford to have these programs disappear.</p>	
<p>9. Northern Virginia Regional Commission (NVRC)</p>	<p>NVRC strongly encourages maintaining participation in RGGI because of the benefits to northern Virginia and the rest of the state from RGGI funding and programing. RGGI funds and programs have helped make northern Virginia climate resilient, socially equitable and economically sustainable. The 2020 law gave DEQ the authority it had lacked previously--to sell allowances directly into the quarterly RGGI auctions and raise revenue for Virginia. But it also requires DEQ to use that new authority, mandating that DEQ "shall seek to sell 100 percent of allowances" in a trading program consistent with RGGI. Thus, Virginia's participation in RGGI is required by the statute. Therefore, any effort to withdraw Virginia from the RGGI program must be approved by the General Assembly. This position was acknowledged by an Attorney General's Opinion dated January 11, 2022.</p> <p>Participation by Virginia in RGGI has led to the establishment of two important funding sources: CFPF, and HIEE. These programs have been provided vital--and at times the only--financial support to help financially-pressed local governments protect marginalized and low-income communities from economic hardship, health threats and environmental degradation. These funds also promote proactive climate resilient planning that supports public, ecologic and</p>	<p>As discussed in the response to comment 7, we agree that these types of projects are important and necessary. We disagree that RGGI is the best means of achieving them.</p> <p>§ 10.1-1330 A of the Clean Energy and Community Flood Preparedness Act does require that the department adopt the provisions of Article 4 into the final regulation previously adopted by the board. However, § 10.1-1330 B then goes on merely to authorize the Director to establish an auction program. This is an authorization, not a mandate, and that provision of the code is therefore discretionary.</p>

	<p>commercial health, rather than costly reactive and unplanned remediation. Local governments in northern Virginia have used and will continue to use these funds to support resiliency planning that aids the operations of our region's hospitals, energy and water infrastructure, schools, businesses, and residences.</p> <p>Withdrawing Virginia from RGGI would seriously limit local governments a vital financial mechanism that cannot be replaced. For example, in RGGI funds from CFPF will support these critical resiliency planning activities in 2022:</p> <ul style="list-style-type: none"> - \$3,241,200 City of Alexandria Waterfront Improvement Project Design - \$516,500 City of Alexandria Flood Mitigation, Edison and Dale Street Capacity Project Phase I - \$11,250 Northern Virginia Regional Commission, Flood Prevention and Protection Study: Northern Virginia Rain Gauge Network Evaluation <p>Alexandria's waterfront is already highly vulnerable flooding from storm events and sea level rise. Funds from the CFPF will help the city and region prevent loss of property, infrastructure, and economic stress. NVRC analysis points to the current threats from flooding: a rise in the water levels of the Potomac River between 3-5 feet would impact property values of parcels along Alexandria's waterfront between the northern boundary of Jones Point Park and Oronoco Park between \$35-100M. The ties between Alexandria's flood protection efforts, affordable housing planning and support from CFPF can also be seen in NVRC's Social and Housing Vulnerable Populations interactive mapping tool. This information indicates that the Alexandria flood mitigation project not only supports flood mitigation, but it also is supporting</p>	
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	<p>a socially vulnerable community in need of housing support. Alexandria has one of northern Virginia's largest concentrations of socially vulnerable populations. Alexandria is a majority-minority community with approximately 51.5% of renter households overburdened by housing costs. Flood mitigation planning like that supported by RGGI and CFPF, give the city greater opportunities to protect the low-income families of Alexandria from the threats of flooding.</p> <p>Despite its affluence, northern Virginia has sizeable concentrations of low-income households vulnerable to high energy costs. NVRC has analyzed the number of households earning below 50% of Area Median Income. It is estimated that there are over 170,000 households below this threshold. Since July 2021, RGGI on a statewide basis has invested \$27.8M in funds to help 2335 families residing in affordable housing projects. It is estimated that some of these families have incomes as low as 40% of area median income. RGGI funds via HIEE for 2021-2022 also will help low-income households in northern Virginia receive weatherization services: \$1.2M for 80 units in Fairfax County and \$2.0M for 163 units in Arlington County</p> <p>Currently, RGGI provides long-term, institutional, and reliable funding across the state. As the stressors from climate change escalate, reliance on RGGI-funded programs will rise. Virginia was the first southern state to participate in RGGI and RGGI-funded programs have helped Virginia reduce carbon emissions, create a more stable business environment, protect the state's infrastructure and improve public health at unprecedented rates. It would be unfortunate to slow or halt this progress.</p>	
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<p>10. Virginia Chapter, American Academy of Pediatrics</p>	<p>Market-driven reductions in air and water pollution have proven highly successful at preserving a healthy environment for children. Building on the success of prior programs in the northeast, RGGI reduces air pollution and thereby protects children’s health.</p> <p>The health outcomes of RGGI have been characterized in two studies. The first analyzed RGGI's health effects from 2009-2014. Reductions in air pollution associated with the program prevented adverse health outcomes across the northeast from 2009-2014, including 420-510 instances of acute bronchitis, over 200 asthma emergency department visits, more than 8200 asthma exacerbations, and tens of thousands of lost work days. These and other health benefits have resulted in over \$5.7B in health and productivity savings. A second study published in 2020 focused on children and the developing fetus. This study found that from 2009-2014, RGGI-associated reductions in air pollution prevented 537 cases of child asthma, 98 instances of autism spectrum disorder and 112 pre-term births.</p> <p>While reducing criteria air pollutants, the program also has reduced carbon emissions from power plants in participating states by almost 50%, a 90% greater reduction than in non-participating states. Protecting children from climate change is a priority of this organization. RGGI is working to protect the health of current and future children. We therefore support Virginia’s continued participation in this program.</p>	<p>The commenters' concerns are acknowledged and shared. As discussed elsewhere, these issues must be addressed; however, RGGI participation is not the best approach for doing so.</p>
<p>11. Hampton Roads Planning District Commission (HRPDC)</p>	<p>On behalf of the HRPDC board and 17 member jurisdictions, I write to oppose the proposed actions to remove Virginia from RGGI. HRPDC appreciates the concern regarding the increase in energy costs, part of which are due to the state’s participation in RGGI. We</p>	<p>As discussed in the response to comment 6, a balance must be struck between the need for pollution control to protect public health and welfare, and the reasonableness of the costs needed to achieve it. Energy efficiency and resiliency are indeed important concerns that must be addressed--they must be</p>

	<p>recognize that any increase in energy costs places significant burdens on Virginia residents and businesses. Securing more affordable energy will help Virginia remain economically competitive and protect our quality of life. However, we also believe that energy costs cannot be the only factor in reconsidering whether the participation in RGGI continues. Crucially, the NOIRA does not consider that Virginia's proceeds from RGGI auctions fund both the HIEE program and the CFPF. RGGI auctions have provided nearly \$430M to these programs since March 2021, funding that would not have been possible without participation in RGGI. The Hampton Roads region is significantly vulnerable to both current and future flooding. The CFPF is the only significant source of state funding for local resiliency initiatives and projects. Having a reliable, ongoing, and adequate funding source is critical for addressing resiliency and flooding issues. Until an alternative source of revenue is identified, any decision to remove the state from RGGI will be premature. The HRPDC therefore opposes the regulatory action. We encourage the Administration to consider Virginia's participation in RGGI in the broader context of resiliency and energy efficiency goals.</p>	<p>achieved in the most efficient and fiscally responsible means possible.</p>
<p>12. Town of Blacksburg</p>	<p>The Mayor and Town Council of the Town of Blacksburg urge the board to reject attempts to remove Virginia from RGGI. Participation in RGGI is already yielding tremendous economic benefit and has put the state on a predictable, market-driven path to a clean energy economy. The 10 other states that have participated in RGGI have reduced climate-warming emissions 90% faster than the rest of the country while growing 31% faster economically. Furthermore, it has been asserted that the board does not have clear authority to take this action as</p>	<p>As discussed elsewhere, DEQ acknowledges that the impacts of carbon and other forms of pollution must be addressed to protect public health and welfare; there are means of achieving this other than participating in RGGI.</p> <p>See the response to comment 9 for further discussion of the board's authority to address this issue by means of the APA regulatory process.</p>

	<p>detailed in a recent letter signed by 61 state lawmakers.</p> <p>Evidence continues to mount that continued inaction on GHG emissions could lead to catastrophic changes for Virginians, destabilizing the systems that support and sustain our communities. Millions of people will experience these changes through threats to public health, disruption of national and local economies, and food and water insecurity. Buildings and infrastructure will be increasingly impacted by the severity and frequency of weather events with enormous response and recovery costs falling on resource-strapped local governments. For coastal communities, these threats will be amplified by rising sea levels.</p> <p>We know that nearly every element of our society is impacted by energy. A step-wise, predictable transition to a clean energy future will preserve our quality of life, improve economic resilience and foster an ethic of responsible stewardship of our shared natural resources and climate. RGGI provides the state policy framework and structure needed to support that transition.</p> <p>Beyond its climate implications, participation in RGGI benefits Virginia in other ways. Residents of RGGI states enjoy lower energy prices: electricity prices in RGGI states dropped by almost 6% while they went up almost 9% throughout the rest of the country. And RGGI has generated \$452M to support much-needed low-income energy efficiency programs and flood resilience infrastructure in Virginia.</p> <p>We urge the board to embrace the numerous economic and environmental benefits of Virginia's continued participation in RGGI.</p>	
<p>13. American Lung</p>	<p>We strongly oppose the efforts to repeal the regulation implementing</p>	<p>The commenter's concerns are acknowledged. As discussed elsewhere, the</p>

<p>Association (ALA) Virginia</p>	<p>Virginia’s participation in RGGI. ALA believes that Virginia must continue participation in RGGI to make meaningful reductions in GHG emissions that protect the health and well-being of Virginians. Our 2022 State of the Air report revealed that some of Virginia’s metro areas were named the top places to live while others had much worse results. Ozone and particle pollution can harm the health of all Virginia’s residents and of particular risk are children, older adults, pregnant people and those living with chronic diseases – approximately 140,000 children and 580,000 adults are living with asthma in Virginia. Both ozone and particle pollution can cause premature death and other serious health effects such as asthma attacks, cardiovascular damage, and developmental and reproductive harm.</p> <p>Climate change is one of the most urgent threats to human health of the 21st century. Reduction of harmful pollutants caused by burning fossil fuels is critical to improving the local health today and ensuring a stable climate for future generations. Climate change is first and foremost a public health issue and one that creates disproportionate impacts across Virginia’s diverse communities. Climate change is making the job of cleaning our air much more difficult as temperatures rise and drive conditions for unhealthy ozone pollution days, among other health challenges.</p> <p>In 2020, Virginia became the first southern state to join RGGI. The RGGI states have established a regional cap on CO₂ emissions. Over time these caps will decline and so will CO₂ and other harmful emissions. For example, a July 2020 study published in Environmental Health Perspectives concluded, "RGGI has provided considerable child health benefits</p>	<p>protection of public health and welfare through the control of GHG and other forms of air pollution can be better realized outside of the RGGI program.</p>
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	<p>to participating and neighboring states beyond those conventionally considered. Moreover, those health benefits are estimated to have significant economic value." Participation in RGGI allows for CO₂ emission to decline in a planned and predictable way to protect health and safeguard our children's future. Since RGGI started emissions have already reduced more than 50%. Through the auction process, it allows funds to be raised to be reinvested into local communities. When the General Assembly passed legislation authorizing participation in RGGI it also outlined initiatives where the revenues should be invested, including 50% for low-income energy efficiency programs, and 45% for the CFPF to address recurrent flooding and rising sea levels.</p> <p>All people are entitled to breathe healthy air and to be free of the adverse health effects of air pollution, especially those who suffer disproportionate exposure from local sources of emissions. ALA strongly opposes efforts to repeal Virginia's participation in RGGI.</p>	
<p>14. James River Association (JRA)</p>	<p>Every two years, JRA releases a comprehensive assessment of the health of the river and ongoing efforts to restore the James. Our 2021 State of the James report found that the effects of climate change, including heavier and more frequent rainfall, will increasingly impact the overall health of the river and our watershed communities. Virginia's participation in RGGI plays a key role in addressing these impacts by reducing carbon emissions and helping communities prepare for flooding. Absent viable alternatives for an emissions reduction program and dedicated flood resilience funding, removing Virginia from RGGI would leave the river and our communities at greater risk, and we urge you to abandon this path.</p>	<p>DEQ recognizes that the continued health of the James River and our other natural resources is essential, as is the protection of human health. See the responses to comments 4 and 7 for a discussion of program effectiveness, and the availability of sources to fund energy efficiency and resiliency programs.</p>

	<p>As a market-based, cap and invest cooperative initiative, RGGI has produced results. DEQ's report to Governor Youngkin regarding the costs and benefits of the Virginia Carbon Trading Rule and RGGI participation agrees that "the RGGI region has a long track record of emissions reductions . . . Since its inception, RGGI emissions have reduced by more than 50%--twice as fast as the nation as a whole--and raised over \$4B to invest in local communities." While Virginia's participation is too nascent for data to show state-specific trends, modeling predicts that RGGI participation, with closure of coal electric facilities and renewable energy generation, will put the state on a path to net-zero carbon emissions by 2045. An emissions reduction program akin to RGGI is not just complimentary but, in fact, necessary to meet our carbon free power sector targets. As DEQ's cost-benefit report makes clear, "[i]n the absence of any such program, emissions may not reduce sufficiently to achieve these goals."</p> <p>Removing Virginia from RGGI would cripple our ability to reach our emissions reduction needs, and it would significantly handicap the resources available for communities facing localized flood risks as a result of climate change. Currently, 45% of the proceeds received from RGGI allowances are invested in the statewide CFPF, the only dedicated state funding for critical flood resilience planning and projects. RGGI is the sole source of revenue for the CFPF and has successfully generated over \$203M since Virginia's first allowance auction. Of this amount, nearly \$46M has been awarded to localities--\$28M of which was to localities completely or partially within the James River watershed. This level of state investment, unheard of until now, is</p>	
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	<p>greatly needed by communities from our headwaters to our coastal regions. CFPF, and the RGGI proceeds fueling its success, can remove obstacles for localities needing new sources of investment. For example, CFPF can be used for capacity-building and planning initiatives that most federal grant programs will not support. These planning initiatives will help to identify and prioritize where investments can be most impactful. With these plans in place, localities can go on to pursue larger project implementation funds made available through other state and federal initiatives. CFPF dollars can also be used as a match for federal grant programs, increasing Virginia's competitiveness on the national stage. And one out of every four dollars invested in CFPF is set aside for low-income geographic areas. Gutting CFPF's sole source of funding without a viable, reliable alternative in place would make it much harder for localities, particularly low income communities, to address the current and future flood risks. No feasible alternative to RGGI has been proposed that will maintain Virginia's trajectory toward a carbon-free future and guarantee much-needed state funding for local flood resilience efforts. Accordingly, RGGI remains the best bet for mitigating the impacts of and preparing localities for a changing climate, which will increasingly put our rivers and our watershed communities at risk. We urge DEQ to maintain Virginia's participation within RGGI.</p>	
<p>15. National Parks Conservation Association (NPCA)</p>	<p>Virginia is fortunate to host 22 national park sites. Over 20M visitors come to national parks in Virginia and contribute over \$1.5B in economic benefit from tourism. Our parks must have clean, healthy air to thrive. RGGI reduces GHG emissions and improves air quality. Decreased pollution translates into public health benefits for all</p>	<p>Public health and welfare, including the continuing health of Virginia's national parks, are indeed important, and must be protected from the effects of carbon and other forms of pollution. See the response to comment 7 for a discussion of funding, and the response to comment 6 for a discussion of utility structure reform.</p>

	<p>Virginians. Not only does RGGI improve our public health by improving air quality, it generates funding for important programs. RGGI funding allows low-income families to have access to energy-efficient homes and localities to better plan for and prevent the flooding we continue to experience during recurrent coastal storms. Rather than repeal this successful program, we urge you to reform Dominion's current monopoly on utility rates that hurt consumers. RGGI is working in Virginia to clean our air, improve our health, and fund important programs that help our citizens. We urge you to continue to build upon the success of this program by keeping Virginia enrolled in RGGI.</p>	
<p>16. The Nature Conservancy</p>	<p>The Nature Conservancy strongly supports Virginia's continued full participation in RGGI and the full distribution of revenue of RGGI funds as prescribed in Code of Va § 10.1-1330. The benefits of RGGI to the state are numerous. Half of the revenue that Virginia acquires through RGGI auctions is designated for low-income energy efficiency programs, including programs for eligible housing developments, administered by DHCD, which has created the HIEE program with the RGGI funds.</p> <p>1. Using RGGI revenue to reduce wasted energy through energy efficiency is a direct way to lower unnecessary pollution. Since energy efficiency upgrades are being done on households that could not otherwise afford the upgrades, RGGI is directly causing cleaner air through improved energy efficiency.</p> <p>2. Through energy efficiency improvements, the HIEE program reduces the high energy bills of low-income households. This is a wise investment in Virginia households. Rather than relying on bill assistance programs which must go on indefinitely, HIEE fixes the underlying root of the problem</p>	<p>We agree that resiliency and energy efficiency projects are essential for protecting public health and welfare throughout the state, however, we do not believe that the RGGI program is the best way to effectuate such programs; see the response to comments 4 and 7 for further discussion.</p>

	<p>to help families consume less energy in the first place.</p> <p>3. The HIEE program can provide health benefits to program participants. Energy efficiency and weatherization improves ventilation and regulates indoor temperature and moisture, leading to lower rates of asthma, allergies, hypertension, heart disease, and other costly medical conditions.</p> <p>4: The HIEE program is generating economic benefits by hiring local contractors and subcontractors across the state, creating local jobs that cannot be outsourced.</p> <p>There are two components to the HIEE program. First, DHCD uses HIEE funds to make new Affordable and Special Needs Housing more efficient. This investment keeps this housing affordable while also lowering the monthly energy bills for its residents. The second is the innovative WDR program. DHCD administers the federal WAP to low-income households. However, almost 20% of WAP applicants in Virginia are turned down or "deferred" for this program because their home needs repair before it can support the weatherization. Because the residents do not have the funds to repair the building, it does not qualify for WAP upgrades, perpetuating the cycle of paying too-high energy bills. The WDR program invests RGGI revenue to make those repairs in order to unlock the federal WAP dollars. Given that all the benefits of WAP had previously been out of reach for many, leveraging RGGI revenue to tap into federal dollars is important and should continue.</p> <p>The longer Virginia stays in RGGI and puts RGGI revenue to work as designed, the more these benefits will accrue for society. That's important, because the need to improve energy efficiency for low-income households is huge, and the benefits extend beyond the</p>	
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	<p>families living in them. There are no other sources of funds that comes close to matching RGGI if these funds are revoked--in 2021, the RGGI auctions brought in millions of dollars more than every other energy efficiency program in the state, combined. The HIEE program has only just begun. The potential benefits of what it can achieve for Virginians with RGGI revenue is substantial. We ask the board to reject proposals to end Virginia's participation in RGGI.</p>	
<p>17. William Penniman</p>	<p>Climate change and air pollution generally are strongly driven by combustion of fossil fuels, and electric utilities are among the largest sources of those emissions. CO₂ is the largest cause of climate change and must be rapidly reduced if we are to have any chance of protecting our children and future generations from severe harm. The Governor's proposal, the rapidly drafted March 11 report to support it and the Agency Background Document are badly flawed. They ignore the dangers and harms from CO₂ emissions and are based on flawed claims about RGGI, electric utilities and consumers. They also ignore the reality that states participating in RGGI have substantially reduced CO₂ emissions while growing their economies faster than non-RGGI states and while improving health outcomes through reduced pollution from electric utilities.</p> <p>The March 11 report makes many sweeping assertions based on very little actual data. It acknowledges that the availability of data is "limited since Virginia has just completed its first year of participation." It ignores the actual benefits achieved by states that have participated longer in RGGI. The NOIRA Background Document repeats many of the same mistakes and adds a collection of prices-are-rising statistics that have nothing to do with RGGI and its benefits and do not differentiate electricity from</p>	<p>Resiliency and energy efficiency projects are indeed essential for protecting public health and welfare throughout the state from the effects of carbon and other air pollution, however, the RGGI program is not the best way to effectuate such programs; see the response to comments 4 and 7 for further discussion.</p>

	<p>other parts of the economy. Indeed, the rising cost of natural gas is a good reason to reduce reliance on fossil fuels, which is one of RGGI's benefits.</p> <p>The report asserts that "participation in RGGI is in effect a direct carbon tax on all households and businesses." One could more accurately characterize it as a fee for emissions, which all economists would agree is a sensible way to link price to causation in order to mitigate harms from an activity like combusting fossil fuels. Moreover, after surveying the recent climate-driven disasters in southwestern Virginia, the Governor said he intended to fund disaster relief and efficiency programs, which would require taxing Virginians based on income or transactions without any linkage to the CO₂ emissions they cause. That general taxation would cost all taxpayers without the incentives from a carbon-based emission fee. It would be still worse to gut funding designed to help residents to reduce their energy bills through energy efficiency improvements or to gut funding to help communities threatened or harmed by accelerating climate change. Gutting such funding is likely what would result from trying to shift such measures to general taxation.</p> <p>The report claims that "RGGI fails to achieve its goal as a carbon 'cap-and-trade' system because it lacks any incentive for power generators to actually reduce carbon-intensive gas emissions." That claim is built on two other misleading claims: that utilities have no incentive to reduce emissions due to cost-based ratemaking and that customers have no ability to reduce their purchases because Virginia's market has not yet open to full competition. Those claims are wrong for several reasons. (a) Utilities' rates are subject to review</p>	
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	<p>for imprudent incurrence of costs which can result in limiting recovery of costs that a prudent utility would have avoided. (b) Utilities always have incentives to grow load, which requires them to seek to mitigate costs. (c) Virginia utilities are directed by existing law to reduce their CO₂ emissions over the next 20 years which fits well with RGGI's system. (d) Small and large customers can reduce their purchases of electricity from utilities through greater energy efficiency or conservation practices, by installing solar on their property or by joining a community solar program. Utility prices, including CO₂ charges, will help to drive those consumer decisions, which is what we want in order to mitigate global warming.</p> <p>The report makes the misleading claim that other states return RGGI revenues through rebates. Most offer rebates to support energy efficiency investments by residents, which is what much of what Virginia would do. Some use funds to support adaptation and recovery measures, which is part of what Virginia would do. It is misleading to imply that most or any other states use most of their RGGI revenues to simply return cash to residents.</p> <p>Although it is possible that CO₂ emission charges will raise utilities' per-KWH rates for sales, that would likely be a temporary impact. As utilities shift to zero-carbon energy sources their operating costs will decline both because wind and solar have near-zero operating costs and because that switch will reduce incurrence of RGGI charges. Also, customers' reduced purchases from utilities through energy efficiency or solar energy would offset rate increases and lower bills, while cutting CO₂ emissions. In other words, RGGI's CO₂ charges will do what they are supposed to do: provide incentives</p>	
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	<p>to reduce emissions and mitigate climate change.</p> <p>The report says that Virginia’s CO₂ emission rates per MWH have been reduced but "mass emissions levels of CO₂ from the Virginia power sector have remained fairly constant over the last 10 years despite a 30% increase in power production." However, continuing to emit the same total amount of CO₂ as in the past will destroy the future for our children. We need to achieve total reductions to limit the accelerating climate change. It is fortunate that renewable energy options have become the cheapest fuel and that there still remains much that can be done to improve energy efficiency. But there is no guarantee that past trends will continue. RGGI's targeting CO₂ emissions is vital to moving Virginia to the net-zero emissions level.</p> <p>The report and Background Document focus on hypothesized utility rate impacts in a vacuum. They ignore the external costs of fossil fuel emissions to human health and climate harms. The primary recommendation of these documents is to turn the clock back to higher emissions. GHG must be cut now and cut rapidly. Virginia’s citizens and economy will be badly harmed by removing RGGI’s incentives for more rapidly reducing CO₂ and for accelerating energy efficiency.</p>	
<p>18. Climate Action Alliance of the Valley</p>	<p>We take issue with EO-9, which requires DEQ to re-evaluate Virginia’s participation in RGGI and begin the regulatory processes to end it. As we noted in our letter of August 25, 2022 to the Governor, in our view DEQ and the board, cannot legally withdraw Virginia from RGGI. The 2022 General Assembly declined to repeal RGGI; therefore the law stands. As VAECC noted in its October 13 submission, RGGI is performing as intended and many low and middle income Virginians are benefiting</p>	<p>As discussed in the response to comment 9, § 10.1-1330 B of the Clean Energy and Community Flood Preparedness Act authorizes the Director to establish an auction program. This is an authorization, not a mandate.</p> <p>We agree that resiliency and energy efficiency projects are essential for protecting public health and welfare throughout the state, however, we do not believe that the RGGI program is the best way to effectuate such programs; see the responses to comment 4 and 7.</p>

	<p>from RGGI's revenues. Other funding sources could be found to replace RGGI funds, but finding those funds would be a herculean task. Even if other funding sources are identified, there will be a gap in the forward progress made to date and in all likelihood the new sources would not provide the added benefit of reducing Virginia's carbon emissions. We concur with VAEEC's comments.</p> <p>We provided two opinion pieces addressing our substantive concerns with the proposal for Virginia to withdraw from RGGI. Our January 26, 2022 piece argued that Virginia Should Remain In RGGI; our March 25, 2022 open letter to Valley Legislators pointed out that there is no logical reason to withdraw Virginia from RGGI and that the decision to do so must come from the legislature. We stand by our previous opinions.</p> <p>The RGGI auction proceeds that go to the CFPF is and will remain sorely needed. The Governor has pointed out that the need for community resiliency is real and urgent. RGGI is the sole source of revenue for the statewide CFPF, which represents the only dedicated state funding source for flood resilience planning and project implementation for localities, tribes, and soil and water conservation districts across Virginia. The CFPF provides money for capacity-building efforts not usually funded through federal grants and that CFPF dollars can serve as a match for such programs. The need for long-term planning and action—and funding—for recurrent flooding inland and on the coast is real, ongoing, and increasing. There is no justification for pulling Virginia out of RGGI because critical funding that local governments need would disappear, be greatly reduced or be available episodically subject to annual and</p>	
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	<p>biennial decisions. The obvious result would mean disproportionate harm to under-resourced, small, rural cities, towns, and counties who cannot address flood risk on their own. This is no time to deprive the CFPF of the RGGI funds. Doing so would make a mockery of the Governor's publicly expressed concerns for places like Buchanan County and certainly would greatly limit Virginia's ability to assist its many vulnerable localities when the worst happens.</p>	
<p>19. Virginia Clinicians for Climate Action (VCCA)</p>	<p>RGGI protects the health of Virginia residents from climate change and air pollution. VCCA strongly opposes efforts to remove Virginia from the program. Climate change is associated with far-reaching adverse health impacts. Worsening extreme weather events place residents of affected communities at risk of injury, death, disrupted medical services and mental health effects. Longer and more intense heat waves increase the risk of heat-related illness, particularly in the elderly, outdoor workers and athletes. More severe allergy seasons worsen exacerbations of asthma, chronic lung disease, and allergic diseases. Infectious disease patterns shift in response to changing climate conditions. Reducing carbon emissions in order to reduce climate change impacts is imperative to protecting public health.</p> <p>Since its inception, RGGI has effectively reduced carbon emissions from electricity generating facilities. States that participate in the RGGI program have reduced their power plant carbon emissions by 50%, outpacing the rest of the country by 90%. Electricity prices have simultaneously declined in RGGI states while increasing in the rest of the country. In addition to CO₂, fossil fuel combustion releases numerous other air pollutants including fine particulate matter, VOCs, NO_x, and SO₂ that are</p>	<p>Reducing carbon emissions in order to reduce climate change impacts is indeed imperative to protecting public health and welfare. We note in the responses to comment 4 and 7 that the RGGI program is not the most effective means of achieving these important goals.</p>

	<p>harmful to human health. Adverse health impacts of air pollution include heart attacks, strokes, asthma exacerbations, chronic obstructive pulmonary disease exacerbations, and preterm births. These harms disproportionately impact low income and racial minority populations.</p> <p>RGGI is already protecting health across the northeast by reducing toxic air pollution. A 2017 study found that from 2009-2014, RGGI-associated reductions in air pollution prevented 420-510 instances of acute bronchitis, 240-540 instances of adult mortality, 8,200 asthma exacerbations, over 200 asthma emergency room visits, and tens of thousands of lost work days. Prevention of these outcomes resulted in over \$5.7B in health and productivity savings. A 2020 study found that air pollution reductions associated with RGGI prevented 537 cases of child asthma, 98 instances of autism spectrum disorder, and 112 preterm births in the northeast from 2009-2014.</p> <p>In addition to reducing air pollution, RGGI protects the health of Virginians by providing crucial funding for energy efficiency improvements to low-income families. Through major health and safety repairs on existing homes as well as the construction of affordable energy efficient homes, revenue from RGGI is being used to improve living conditions for residents across the state. These improvements create homes with reduced indoor pollutants, better controlled moisture, and reduced mold. These improvements lower the risk of heart disease, respiratory disease, severe asthma, COPD, and cancer. Since its implementation, the RGGI program has proven highly effective at reducing harmful emissions and protecting health . VCCA therefore strongly supports</p>	
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	<p>Virginia’s continued participation in the program.</p>	
<p>20 The Pew Charitable Trusts</p>	<p>Virginia’s participation in RGGI is pursuant to the Clean Energy and Community Flood Preparedness Act. Repeal of the regulations governing the state’s participation in RGGI without the promulgation of replacement regulations appears to be facially inconsistent with the statutory requirements of existing law and will undermine a key flood-preparedness resource funded by RGGI auction revenue.</p> <p>Injecting uncertainty into Virginia’s participation in RGGI would have significant adverse impacts for the state. RGGI auction receipts represent Virginia’s sole source of funding for community-scale flood mitigation projects and capacity-building through its resourcing of the CFPF. The Fund has accrued more than \$203M and dedicated \$46M. The National Institute of Building Sciences research shows investing in mitigation has a national average benefit of \$6 to every \$1 invested in upfront mitigation costs.</p> <p>The Youngkin Administration has repeatedly raised its commitment to mitigating the risk of flooding to Virginians. Efforts to withdraw from RGGI run counter to this priority, and Pew urges the Administration to reverse course.</p>	<p>DEQ disagrees that this action conflicts with state law; see the response to comment 9. Rather than injecting uncertainty into the electricity market, leaving the RGGI program will protect utilities and their customers from the uncertain outcomes of RGGI auctions. As discussed elsewhere, there are other more transparent and stable means of funding important resiliency and energy efficiency projects.</p>
<p>21. American Council for an Energy-Efficient Economy (ACEEE)</p>	<p>Energy efficiency programs reduce energy costs and protect health, making them a powerful tool for mitigating longstanding inequities experienced particularly by marginalized and underserved communities. Proceeds generated from RGGI’s quarterly auctions yield millions of dollars of funding that can be used to invest in energy efficiency programs in historically underserved communities. These investments can help ensure an equitable distribution of benefits and avoid placing disproportionate cost burdens on already disadvantaged communities. In</p>	<p>See the responses to comments 4 and 7 for a discussion of the need to fund these types of projects, and the clearest, most effective means of obtaining and distributing funding.</p>

	<p>short, RGGI makes energy affordable for low-income Virginians, in alignment with the objectives of the 2022 Virginia Energy Plan.</p> <p>In recognition of the importance of investing in energy efficiency for marginalized communities, the Clean Energy and Community Flood Preparedness Act requires Virginia to allocate half of its RGGI proceeds to low-income energy efficiency housing programs. In 2021, these proceeds amounted to \$114M. These funds are administered by DHCD and go toward the HIEE program. HIEE provides funding to the WDR program and the ASNH program to tackle energy efficiency improvements for both new and existing housing. The WDR program provides crucial health and safety repairs for homes that have been deferred from the federal WAP. WAP provides funding to make low-income homes more energy efficient, but households are often deferred from the program due to health and safety hazards, that make weatherization difficult or unsafe. Using WDR to address preexisting conditions that need to be remediated prior to weatherization lowers the energy burden for low-income households and allows them to reap the benefits of living in safe homes.</p> <p>The ASNH program uses RGGI dollars to develop new affordable housing and renovate existing affordable housing units. Developers that receive this funding must work to greatly increase the energy efficiency performance of the units.</p> <p>Virginia’s participation in RGGI reduces energy bills for the state’s most vulnerable residents by offering affordable, healthy, and efficient housing. From 2008–2017, other states that participated in</p>	
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	<p>RGGI saw a decline in electricity prices by 5.7% while other non-RGGI states saw electricity prices rise by 8.6% during the same time period. RGGI is also a job creator and improves overall air quality and health from decreased pollution. In 2020 alone, investments in energy efficiency using RGGI proceeds created 1,400–1,500 job-years for states involved in the cap-and-invest program. Other analyses have shown that from 2009–2017, RGGI generated over \$4B in net economic benefits and resulted in more than 44,000 job-years. Virginians deserve to have these economic benefits of RGGI, and Virginia should avoid taking steps that will jeopardize these benefits. ACEEE urges the board to reject any efforts to withdraw Virginia's participation in RGGI.</p>	
<p>22. Arlington County Office of Sustainability and Environmental Management</p>	<p>RGGI is a high-performance mechanism for delivery of vital services and benefits to Virginia's citizens and businesses. Participation in this market-based program provides direct, cost-effective benefits addressing energy efficiency opportunities for the vulnerable populations and addressing community resiliency. As a cap-and-investment compact, RGGI:</p> <ul style="list-style-type: none"> - Benefits utilities with a flexible and responsibly paced instrument for decarbonizing its energy resources that is cost-neutral to the utility - Has kept costs for households low, which is especially important for low-income ratepayers, by distributing the expense of investments and allowing utilities to identify the most cost-effective, high-performance approaches to reduce emissions - Funds Virginia programs that generate benefits and co-benefits at a scale that cannot be otherwise duplicated, at a conversely low-cost-of-government - Creates an investment stream that levels opportunity between high- and low-income communities and reduces profound, near- and 	<p>As discussed in the responses to comments 4 and 7, we agree that these types of projects are important; we disagree that the RGGI program is the clearest, most effective means of obtaining and distributing funding to these projects.</p>

	<p>long-term risk and cost burdens to Virginia constituents - Benefits utilities with a flexible and responsibly paced instrument for decarbonizing its energy resources that is cost-neutral</p> <p>RGGI's market-based approach allows utilities to meet electricity demands without requiring a specific mix of generation sources, while allowing for flexible decision-making. Utilities can meet the environmental performance requirements of the program in the most cost-effective manner with the flexibility to plan and phase implementation in a responsible path toward a clean energy resource portfolio. The allowance market enables utilities to optimize their approach to decarbonization, encouraging early GHG reductions through allowance banking and multi-year compliance periods. The cost containment reserve mechanism of RGGI mitigates any risk associated with high allowance costs, thus limiting price volatility so utilities can plan energy generating resources for the future with limited uncertainty. At the same time, RGGI is a tailored, mission-specific program that will cease operation once decarbonization goals and defined outcomes are achieved.</p> <p>RGGI has kept costs for households low, which is especially important for low-income ratepayers, by distributing the expense of investment and allowing utilities to identify the most cost-effective, high-performance approaches to reduce emissions. RGGI costs to ratepayers are exceptionally low, and its benefits to the public represent diverse and substantive returns-on-investment. A study by the Analysis Group found that during the 2015-2017 compliance period, RGGI led to \$1.4B in net positive economic activity regionally through investment in energy efficiency, renewable energy, bill assistance,</p>	
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	<p>and other measures to reduce GHGs. RGGI has generated over \$4B in net economic gain over its first ten years. RGGI auction proceeds have also been used to fund research, education, and job training programs. Further, energy consumers saw a net savings of \$220M on energy costs during the 2015-2017 compliance period. Over the first 10 years of the program, CO₂ emissions from RGGI power plants fell 47% regionally while electricity prices in RGGI fell 5.7%, even while prices increased in the rest of the country. The RGGI framework reduces GHGs, as well as other localized pollutants, at low cost.</p> <p>By reducing emissions of NO_x, SO₂, and other pollutants that negatively impact air quality, RGGI achieves significant co-benefits in the form of improved public health. A report from Abt Associates found that, from 2009-2014, RGGI saved 300 to 830 lives, avoided 8,200 asthma attacks, and generated \$5.7B in health savings and other benefits. Another study found that RGGI avoided 537 cases of childhood asthma.</p> <p>Proceeds from RGGI in Virginia are allocated to the CFPF. In its latest round, this fund provided \$13.6M to local and regional governments across the state. This fund awarded over \$32M in 2021. RGGI has funded critical, long-deferred investments in flood, encroachment, and subsidence mitigation projects, producing exponentially favorable, long-term returns and substantial reduction of present and future risk.</p> <p>The most recent auction has provided the state \$452M in auction proceeds, which have been reinvested in projects and programs benefit residents and businesses across the state. Funding from RGGI auction proceeds unlock investment</p>	
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	<p>opportunities that can benefit communities of all income levels, and can be directed to disadvantaged communities. By shifting Virginia’s energy system to cleaner, low-carbon, and renewable sources, the state increases energy independence and reduces its exposure to volatility in global energy markets, providing stable energy prices to its ratepayers. These investments create jobs for Virginians. RGGI led to net job creation in all nine participating states from 2015-2017, creating over 14,500 job-years in that period. Over the first 10 years of the program, RGGI created over 44,000 job-years.</p>	
<p>23. Justin M. Wilson, Mayor, City of Alexandria</p>	<p>The City Council of Alexandria urges you to keep Virginia in RGGI. In addition to driving down GHG emissions, which improves air quality and public health, Virginia’s participation brings in otherwise unavailable revenue to assist families with energy bills through weatherization funding and flood protection via projects funded by the CFPF. Flooding is the most common and costly natural disaster, and communities across Virginia are experiencing coastal, riverine and stormwater flooding more often, and with greater impacts to homes, businesses, roads, life, health and public safety, than ever before. We know that proactively investing in programs and projects to prevent flooding is a more efficient and effective use of taxpayer dollars than spending on flooding recovery, as exemplified by FEMA research showing that \$1 spent on disaster prevention saves up to \$7 in recovery costs.</p> <p>Virginia’s participation in RGGI provides the sole source of funding for the CFPF, which is currently supported in its entirety by 45% of the revenue generated by our participation in RGGI. To date, the CFPF has granted just over \$45M to communities across Virginia in support of flood resilience initiatives</p>	<p>See the responses to comments 4 and 7 for a discussion of the need to fund these types of projects, and the clearest, most effective means of obtaining and distributing funding.</p>

	<p>and efforts to reduce the impacts of flooding in these communities. But the demand far exceeds this level of investment, with over \$93M in planning and project requests submitted during Round 3 alone.</p> <p>Localities across the state are working to put the infrastructure in place that can allow our communities to adapt and become more resilient in the face of the impacts of a changing climate. This significant undertaking requires a massive financial commitment that goes far beyond the ability of any single locality to fund with their own resources. As a Commonwealth, we must take advantage of every option to plan for and accelerate this work. This includes the CFPF, which is wholly funded through Virginia's participation in RGGI.</p> <p>In recent years, Alexandria has experienced severe impacts from multiple urban flash flooding events due to intense storms caused by climate change. The Flood Action Alexandria initiative was created in 2021 to accelerate capital projects and operating programs to help mitigate the impacts of flooding caused by these storms. The creation of this initiative coincided with a doubling of the local stormwater utility fee and a shift in resources to develop the Stormwater Management 10-Year Plan to focus on flooding mitigation capital projects and related programs. The city's commitment to investing in flood related infrastructure in Alexandria is clearly reflected in this \$197M, 10-year stormwater capacity and spot improvement capital program, with \$136M of investment planned over the next five years.</p> <p>In addition to these plans, programs and projects, the city has been awarded approximately \$5.5M in CFPF grants, which have allowed us to accelerate these capital projects and bring relief to</p>	
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	<p>our community even faster than previously planned. For instance, CFPF funding has allowed the city to begin delivering smaller flood mitigation projects in the equity area of Alexandria well in advance of the FY2026 scheduled funding for the large capacity project planned for this area. In this way, we can protect people and property from flooding ahead of our existing funding schedule while reducing the burden of the stormwater utility fee on rate payers.</p> <p>The CFPF is potentially even more valuable to localities across the state that otherwise would not have the financial resources or professional expertise to even take the first steps toward resilience, including developing flood vulnerability assessments and action-oriented flood mitigation plans. Communities across Virginia need to plan for, mitigate, and build resilience to the climate change impacts being felt today. The dedicated source of funding for the CFPF provided by Virginia's participation in RGGI is critical to our ability to do the work of flood mitigation and resilience planning in our communities.</p>	
<p>24. Levar M. Stoney, Mayor, City of Richmond Virginia</p>	<p>We cannot escape the environmental impacts of climate change that are taking shape in cities across the country, that's why I'm proud of the work that has gone into developing the RVAgreen 2050 plan. This framework is Richmond's equity-centered climate action and resilience planning initiative to reduce GHG emissions 45% by 2030, achieve net zero greenhouse gas emissions by 2050 and help our community adapt to climate impacts of extreme heat, precipitation, and flooding. However, local governments alone cannot solve the climate crisis. RGGI is a commonsense, market-based, cost-effective, and critically important program that cuts harmful carbon pollution while delivering a multitude of benefits to</p>	<p>See the responses to comments 4 and 7 for a discussion of the need to fund these types of projects, and the clearest, most effective means of obtaining and distributing funding.</p>

	<p>communities across Virginia. The proceeds from RGGI will fund vital programs including community flood preparedness and mitigation efforts as well as low-income energy efficiency and housing programs. Richmond has received \$1,246,047 in RGGI CFPF funding that is increasing flood protection and improving public safety in some of the most vulnerable and underserved neighborhoods in our community. 80 low-income households in our community are receiving approximately \$720,000 in much needed health and safety repairs from the RGGI funded WDR program. The repairs will help these households qualify for weatherization services that will lower utility bills and make the homes more comfortable. I urge the board to continue Virginia's participation in RGGI.</p>	
<p>25. Chesapeake Bay Foundation</p>	<p>RGGI has a demonstrated track record of reducing carbon emissions while funding key climate mitigation needs for the state. Before our participation in RGGI, Virginia had no funding to address the significant and costly impacts of flooding across the state and our energy efficiency programs were substantially underfunded. The cap-and-trade approach of RGGI means Virginia will continually draw down carbon emissions as it moves toward the net zero goals laid out in the VCEA. RGGI provides accountability that the state is taking the necessary steps to meet VCEA objectives while providing the resources to ensure our communities are prepared to handle climate change impacts. We know that cleaning up the bay is a priority for this Administration and so we want to highlight the importance of RGGI to bay restoration.</p> <p>Reducing emissions from fossil fuel production will improve air quality but those same reductions also help improve water quality. Scientists estimate that over one-</p>	<p>DEQ agrees with the commenter that the Chesapeake Bay is one of our most important natural resources; we disagree that participating in the RGGI program is the most efficient and cost-effective means of obtaining funding for bay protection projects.</p>

	<p>third of the nitrogen that pollutes the bay comes from airborne sources. Continuing to reduce NO_x emissions from the burning of coal and gas is a key component of the roadmap to a restored bay. RGGI has a demonstrated record of reducing emissions leading to cleaner air and waters.</p> <p>Climate change impacts such as sea level rise and increased rainfall intensity are already impacting the daily lives of Virginians, but these rising waters are also increasing nutrient and sediment loads to the bay. Increases in water temperature are reducing the bay's ability to hold dissolved oxygen. The Phase III Watershed Implementation Plan estimates 9M pounds in additional nitrogen reductions will be needed throughout the watershed to keep pace with climate impacts through 2025. As we look past 2025, sea level rise and rainfall intensity will continue to increase, bringing additional pollution loads into our waters. Virginia must do its part to reduce global emissions and the RGGI cap and trade approach ensures our numbers will continue to decline in the years ahead.</p> <p>Funds from RGGI are already helping communities across the state respond to climate impacts through the CFPF. The CFPF is the only source of state funding for resilience planning and project implementation, with 100% of those funds coming from RGGI auctions. RGGI has provided more than \$200M to the CFPF since Virginia began receiving auction proceeds in 2021. As of today, nearly \$46M has been awarded to more than 40 localities. CFPF funds capacity-building initiatives that most federal grant programs do not, providing necessary planning resources that allow localities to pursue larger projects. Grants from the CFPF can also be used as a local match for federal grant programs, making</p>	
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	<p>Virginia applicants more competitive for national programs. Without a reliable, long-term funding source like RGGI, localities will be unable to complete flood resilience planning, studies, and implementation they need to address flood risk.</p> <p>CFPF also prioritizes the implementation of nature-based solutions. Major living shoreline projects, that would have otherwise not been built, will now be cleaning Virginia waters while protecting the communities around them. Our participation in RGGI supports bay restoration by funding practices that protect and enhance our waters. Without RGGI revenues localities would be forced to turn to funding sources that do not prioritize nature-based design, or worse, forego adaptation work entirely. Many of the historic approaches to water quantity have negative impacts on water quality which leads to additional financial obligations for the state. RGGI proceeds to the CFPF have an excellent return on investment to the state by prioritizing both safe communities and clean water.</p> <p>CFPF saves Virginia money on disaster response. The goal in building resilient communities is to avoid the catastrophic outcomes and costs in the aftermath of a flood disaster. A recent study from Old Dominion University estimated that sea level rise could cost the state \$79B by the end of the century without significant intervention to assist localities. This study was limited to coastal communities but, as we have all seen in Buchanan and elsewhere, climate impacts are not limited to the shoreline. RGGI proceeds are benefitting Virginia taxpayers by addressing the pressing needs of today and mitigating the potential for crushing costs in the future.</p>	
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	<p>The Clean Energy and Community Flood Preparedness Act (§ 10.1-1330) includes a strong directive for Virginia to participate in RGGI. We are concerned that any regulatory effort to remove Virginia from the program without clear legislative approval would be in contravention of the legislation, causing confusion, risking litigation, and undermining the deference otherwise due to DEQ.</p>	
<p>26. Center for Climate and Energy Solutions (C2ES)</p>	<p>Virginia's participation in RGGI is key to reaching the state's target of 100% clean electricity by 2050 under the Clean Economy Act. Without complementary policy like RGGI, compliance costs to meet this target will be higher. Nationally, RGGI is crucial to achieving net-zero economy-wide GHG emissions by midcentury, a necessary target to avoid the most catastrophic effects of climate change both in the United States and globally.</p> <p>Carbon pricing is an efficient and cost-effective way to reduce emissions because it creates accountability for environmental costs while allowing flexibility in how companies meet their obligations. Specifically with cap-and-trade programs like RGGI, policymakers can identify the proper emissions target and allow the cap to determine the most efficient price to achieve that level of abatement. Rising carbon prices increasingly unlock investments in mitigation that would have seemed uneconomical in the absence of a carbon price. Importantly, carbon pricing programs generate significant revenue that can be used to offset energy price increases for lower-income households and further support investments in technologies and programs that reduce emissions. In the case of RGGI, much of this revenue has been reinvested either in direct bill assistance for consumers or in energy efficiency measures that directly save</p>	<p>As discussed in the response to comment 7, programs to reduce carbon through direct emissions reductions and energy efficiency, and to mitigate carbon pollution through resiliency projects, are important--and expensive. Participation in RGGI is not the best means of achieving these goals in the most efficient, transparent, consumer-friendly means.</p>

	<p>households and businesses money. The benefits of implementing market-based programs rather than standalone command-and-control regulatory programs are that they provide greater compliance flexibility for covered entities and allow the market to determine the lowest-cost means of producing the greatest emissions reductions.</p> <p>Over the history of its operation, RGGI has demonstrated success in both reducing emissions in participating states while producing economic benefits and creating jobs. Between 2009-2020, RGGI states reduced their power sector emissions 50% from 2008 levels, a rate significantly higher than the nation's aggregate power sector emissions reductions of 39 percent during the same period. During the first three compliance periods, RGGI is estimated to have yielded a net benefit of \$4.7B and more than 40,000 job years to the participating states. In 2020 alone, RGGI invested \$196M across all participating states in energy efficiency, clean and renewable energy, beneficial electrification, GHG abatement, and direct bill assistance. These investments delivered more than \$37Mn to 720,000 households and 38,000 businesses in direct bill assistance in 2020 and an estimated \$2B in energy bill savings over their lifetime for 65,000 households and 800 businesses.</p> <p>Since Virginia's first auction in 2021, Virginia has received more than \$452.2M in proceeds from the quarterly sale of allowances. Half of the revenue is directed toward low-income energy efficiency programs and 45% to the CFPF. Energy efficiency programs like WAP have demonstrated histories of success in reducing customers' annual energy costs by an average of 12%, making this funding central to reducing low-income customer</p>	
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	<p>energy bills, rather than raising them. Support for community resilience is also increasingly urgent. From 2017-2021, the total costs for weather and climate-related disaster events totaled over \$788B, more than one-third of the total disaster cost of the last 43 years. With 70% of the state's population residing in coastal Virginia, funding for flood preparedness through RGGI will offer significant relief to a large portion of the state.</p>	
<p>27. Virginia League of Conservation Voters (VaLCV)</p>	<p>The VaLCV opposes removing Virginia from RGGI. Virginia's participation prevents pollution that has increased asthma rates among children, contributed to increased flooding, more frequent severe storms, rising energy costs, and deadly heat waves. At the same time, investments made from RGGI proceeds collected from pollution-emitting power plants return hundreds of millions of dollars to the state every year. These proceeds provide a market-based incentive to transition energy generation to cleaner sources while helping lower energy costs for Virginians in need and assist vulnerable localities in adapting to and mitigating flooding and sea level rise in their communities. Participation in RGGI is required by law and consistent with the official Commonwealth Clean Energy Policy (§ 45.2-1706.1) which aims to produce 30% of Virginia's electricity from renewable energy sources by 2030 and 100 percent of Virginia's electricity from carbon-free sources by 2040.</p> <p>RGGI has a proven track record of success, helping cut pollution at its source and reducing energy cost and volatility—driving our clean energy transition in Virginia. The data affirming RGGI's pollution-reduction success is clear, as the March 11 report issued by DEQ states: "RGGI has a long track record of emission reductions since the beginning of the program."</p>	<p>See the responses to comments 4 and 7 for a discussion of the need to fund these types of projects, and the clearest, most effective means of obtaining and distributing funding.</p> <p>The legal authority for this regulatory action is detailed in the response to comment 9.</p>

	<p>Comparing EPA data from 2020-2021, Virginia's RGGI program slashed energy sector air pollution by 14% in its first year. What's more, while Virginia is a relative newcomer to RGGI, in the decade-plus the program has been in operation, RGGI states have reduced climate-warming emissions reduced power plant carbon emissions by 50%, 90% faster than the rest of the country - while seeing 31% faster economic growth than non-RGGI states.</p> <p>RGGI is a core driver of the domestic clean energy economy, currently bringing good-paying jobs to Virginia. These jobs can benefit from emerging workforce development initiatives that transition those who were excluded from previous economic booms into meaningful, good-paying careers. RGGI directly incentivizes zero-carbon producers who benefit doubly from being able to sell electricity in the generation market at a more competitive price than carbon-emitting sources, and from selling their excess carbon allowances to polluters. This has led to a rapid expansion of clean energy jobs, as well as jobs in energy efficiency. The 2022 U.S. Energy and Employment Report shows the energy sector experienced positive job growth, increasing 4.0% from 2020-2021, outpacing overall U.S. employment. In Virginia, energy jobs increased by 8,330 jobs (4.9%), with 73,119 Virginians employed in energy efficiency. Of the 16,321 Virginians employed in power generation, over 60% (10,001) are employed by zero-carbon facilities.</p> <p>RGGI improves public health. Decreased air pollution results in fewer asthma attacks, premature births, and missed days of school and work. In 10 years, participating states realized \$5.7B in public health benefits thanks to RGGI. These harmful pollutants are often</p>	
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	<p>concentrated in low-wealth and marginalized communities located more closely to emission sources—causing these communities to experience higher rates of heart attacks, strokes, and asthma.</p> <p>Virginia uses RGGI proceeds to actively mitigate the impact of climate change for those most exposed to its effects, be it through flooding in the mountains, sea level rise along the coast, or rising energy costs during extreme heat events. These funds are designed to be disbursed equitably with an estimated 60% of total proceeds dedicated to helping either low-income individuals directly, or low-income communities. Since its first auction in March of 2021, RGGI has generated approximately \$452M in cumulative proceeds. Half of these funds—paid for by polluters for each ton of CO₂ their facilities emit—help provide safe, affordable and energy-efficient homes to low-income families in ways that were never possible before RGGI. Thanks to the energy efficiency investments made to date, including \$196M in 2020, consumers are on track to save \$15B on their electric bills.</p> <p>Virginians also save money over the long term by reducing our reliance on costly fossil fuels. This summer, Virginians' monthly electric bills increased by \$17-25 just to pay for the rising fuel cost associated with coal and methane gas. The RGGI-induced shift from high-cost fuels to zero-carbon sources of electricity with no fuel cost is part of the reason electricity prices have declined in RGGI states while increasing in the rest of the country. Reliance on zero-fuel-cost sources also reduces price volatility, making energy bills more predictable, in addition to more affordable. Forty-five percent of these proceeds provide flexible statewide funding dedicated to localities to plan for and prevent</p>	
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	<p>recurrent flooding through the CFPF. RGGI is the sole source of revenue for the statewide CFPF, which is the only dedicated state funding source for critical flood resilience planning and project implementation for localities, tribes, and soil and water conservation districts across Virginia. Of the \$203.5M RGGI has generated for the CFPF, nearly \$46M has been awarded to more than 40 localities. There is a massive need for this funding. If left unchecked, flooding damages are projected to cost the state \$79.1 B.</p> <p>The CFPF funds capacity-building initiatives that most federal grant programs do not, providing critical planning resources that allow localities to pursue larger project implementation requests. The CFPF can also be used as a local match for federal grant programs, making Virginia applicants more competitive for national programs. Without a reliable funding source like RGGI to keep money flowing in the CFPF, localities will be unable to complete necessary flood resilience planning to address current and future flood risk. Notably, 25% of CFPF monies are set aside for low-income geographies and the CFPF prioritizes implementation of nature-based solutions. Small and rural communities already experiencing increasing flood risk can't afford to leave this money on the table.</p> <p>Participation in RGGI is the product of a legislative mandate and the culmination of years of research and review. Starting in 2016, a workgroup with extensive stakeholder engagement produced recommendations for reducing carbon emissions from electric power facilities, concluding in its final report that it is "important and necessary that Virginia work through a regional model, like the established and successful RGGI,</p>	
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	<p>in order to both achieve lower compliance costs and address the interstate nature of the electric grid." DEQ then engaged in a multi-year process of developing regulations to regulate carbon emissions from power plants through market-based means, trading allowances through a multi-state program. The original rulemaking began in 2018 and in 2020, the General Assembly passed a law requiring Virginia's participation in RGGI. Following these new requirements, the revised final regulation took effect July 2020.</p> <p>Governor Youngkin lacks the authority to take us out of RGGI through the regulatory process. In addition to being the culmination of a multi-year regulatory endeavor supported by a data- and stakeholder-driven report, our participation in RGGI is mandated by policies the General Assembly passed in 2020. According to an official advisory opinion from the Office of the Attorney General released January 11, 2022: "The Virginia Constitution is clear: the Governor does not have the authority to single-handedly repeal or eliminate a law or regulation that has been passed by the General Assembly."</p> <p>RGGI is consistent with official state policy and has clear benefits to the environment, public health, and state economy. We must not seek to take away the best and only tool Virginia has to simultaneously address climate change-inducing pollution at its source, while helping Virginians deal with effects of climate change.</p>	
<p>28. City of Fairfax</p>	<p>The Environment and Sustainability Division urges the Administration to remain a member-state under RGGI, as a high-performance mechanism for delivery of vital services and benefits to Virginia's citizens and businesses. This market-based program provides</p>	<p>See the responses to comments 4 and 7 for a discussion of the need to fund these types of projects, and the clearest, most effective means of obtaining and distributing funding.</p>

	<p>direct, cost-effective benefits addressing energy efficiency opportunities for the vulnerable populations and addressing community resiliency.</p>	
<p>29. City of Hampton</p>	<p>Currently, proceeds from RGGI allowance auctions are the sole source of funding for the CFPF. Since March 2021, RGGI has generated more than \$203.5M to enable the CFPF to provide grants and loans to localities throughout the state in support of resilience projects. These funds have provided a meaningful source of financial support for localities throughout the state. Cities, towns and counties need substantial resources to adapt to changing realities of flooding driven by sea level rise, as well as shifting patterns of precipitation and storm events. The scale of this need is illustrated by the number of applications and awards CFPF has seen to date. To date, 76 applications have been awarded funds, while an additional 32 applications were selected for supplemental review.</p> <p>Like many localities, Hampton's existing challenges with flooding are expected to become more severe in years to come. According to modeling completed for the Virginia Coastal Resilience Master Plan, in the next forty years as much as 65% of the city's land area will be at risk of flooding from coastal events alone as a result of sea level rise. Low-lying roads and land throughout the city are already regularly underwater with nuisance tidal flooding as a result of our changing climate. Hampton has dedicated significant local resources to holistically address the increasing challenge of recurrent flooding, sea level rise, and shoreline erosion. Efforts have included completing multiple local resilience plans and identifying dozens of new implementable projects to reduce the impacts of flooding to our community now and</p>	<p>See the responses to comments 4 and 7 for a discussion of the need to fund these types of projects, and the clearest, most effective means of obtaining and distributing funding.</p>

	<p>into the future. At the same time, we must continue to invest in maintaining the city's aging infrastructure to ensure it remains functional in the face of these threats. The city's stormwater infrastructure network struggles to keep pace with increasing stormwater loads and tidal backflow. The financial burden associated with monitoring and planning for changing flooding impacts, adapting public infrastructure and lands to reduce the severity of flooding, and protecting citizens from these natural hazards far surpasses the City of Hampton's available financial resources.</p> <p>The scale of this challenge requires that localities, Planning District Commissions, the state, and the federal government come together to identify multiple pathways by which the built and natural environment will adapt. Hampton is grateful to have received 7 awards totaling more than \$9.5M from the state through the CFPF to date. This funding option has provided us with a financial tool with fewer barriers and greater opportunity for success when compared to federal-level funding opportunities. As a result, we are advancing needed projects that are aligned with the Commonwealth's stated values and goals for coastal resilience more quickly, and are able to dedicate our limited financial resources to other identified project needs.</p> <p>The City of Hampton urges the Administration to continue to build upon the success of the CFPF by either keeping Virginia enrolled in RGGI, or to otherwise ensure that there remains a dedicated source of revenue to finance the CFPF, thus continuing to serve all Virginian citizens through flood mitigation benefits.</p>	
<p>30. William Nuckols, Town of Colonial</p>	<p>As a part of my work as a Commissioner on the Planning Commission, I also head up our</p>	<p>The commenter's concerns are recognized. The responses to comments 4 and 7 provide a discussion of the need to fund these types</p>

<p>Beach Planning Commission</p>	<p>Resilience Committee, and as such I've come to know of the great disparity between the need and the ability to fund projects relating to resiliency, particularly those relating to planning and addressing persistent problems of erosion and flooding in our community. I write in support of the continuation of Virginia's participation in RGGI as the linkage between the funding made available from the RGGI auctions and the funds distributed from the state to address serious funding shortfalls for resilience projects to be both logical and appropriate. We have not yet been in a place to receive RGGI funds, not because the town does not need the funding support--quite to the contrary, our needs as a coastal town to be resilient in the face of changing conditions is great. Our lack of RGGI awards is solely because our professional staff is significantly smaller than some of the larger cities who have already been awarded funds to address their coastal resiliency issues. Our town may have not yet been in a place to request funding from the state thus far, but intend to do so if the RGGI funding continues.</p> <p>Removing Virginia from RGGI will eliminate a crucial funding stream that can be applied to address the needs of the Colonial Beach and numerous small to medium size coastal communities like ours. While there are smaller programs that can help communities such as ours, none operate at the scale of that the RGGI fund can support. Our needs are in the millions, and so far only the RGGI program is operating at a scale that can address that level of need. I find the linkage between the rationale for the RGGI collection of funds and the use of those funds as administered by DCR. The linkage between the RGGI auctions and the resulting funds raised to address strengthening Virginia's</p>	<p>of projects, and the clearest, most effective means of obtaining and distributing funding.</p>
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	<p>resilience is strong and appropriate. Terminating the RGGI program in Virginia before less affluent towns and counties have even had a chance to apply for RGGI funding support is not appropriate. The town needs both time to apply and the continuation of the increases to the fund from RGGI auctions. EO-9 poses that "benefits of RGGI have not materialized," and while that statement may be accurate in some sense, in large part it is because not enough time has passed to allow the need of impacted communities to receive the impact funds from the RGGI program in terms of shovel in the ground projects. Cutting off participation in RGGI now leaves our town, and small to mid-size communities like it, without any opportunity to realize the benefits of RGGI Don't kill the program before it matures enough to have a positive impact on communities such as ours.</p> <p>While the Governor is proposing to end Virginia's association with RGGI, neither the Director of DEQ, the Secretary of Natural and Historic Resources, nor the Governor's office have made any indications where the loss of funding from the RGGI auctions will be made up. Will there be proposals forthcoming to increase the tax burden on Virginians to made up for the loss in RGGI funds, or is the likely outcome that much needed funding for coastal resilience and flood prevention will simply dramatically shrink, leaving our people and our economy more vulnerable as a result? I fear that without RGGI there simply is no funding source available at the scale required to address the threats to Virginia from an evolving level of threats that the RGGI funds could mitigate. I ask that you please reconsider any decisions that would remove Virginia from RGGI and thereby cut off the</p>	
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	<p>funding stream that is so greatly needed to address a multitude of projects our town needs to complete to ensure the sustainability of our historic coastal community.</p>	
<p>31. Southern Environmental Law Center (SELC)</p>	<p>Virginia's emissions reduction program took years to develop over multiple administrations. In 2016 then-Governor McAuliffe issued an executive order directing the Secretary of Natural Resources to establish a work group to study and recommend methods for reducing CO₂ emissions from the electric power sector. After almost a year of public engagement, the work group submitted its recommendations. Based on those recommendations, Governor McAuliffe issued an executive directive in 2017, which instructed DEQ to develop regulations to "abate, control, or limit carbon dioxide emissions from electric power facilities" using "market-based mechanisms" that allow for the "trading of carbon dioxide allowances through a multi-state trading program."</p> <p>DEQ and the board engaged in a multi-year public regulatory process that included two rounds of public comment and multiple revisions to the proposed trading program. The board ultimately approved a version of the program in 2019, although the original program's implementation was delayed due to a budget restriction in the state's 2019 budget. This original program used a consignment model, whereby DEQ would have distributed Virginia's allowances to existing power plants in proportion to their historical emissions but would not sell those allowances directly at auction. Had this been the end of the story, future administrations could have changed course by following regulatory processes without involvement of the General Assembly. The original program had been promulgated under the board's general regulatory</p>	<p>The commenter's summary of the background of activities leading to Virginia's current participation is appreciated. Since then, Virginia's participation in the program to date has been evaluated, and it has been determined that Virginia's participation is no longer needed. As discussed elsewhere, funding for energy efficiency and resiliency programs need not be tied to participation in RGGI.</p>

	<p>authority, so in theory, the program could have been modified or repealed under the same general authority.</p> <p>But that is not the end of the story. In 2020, the General Assembly removed the budget restriction and passed a law specifically about Virginia's Emissions Reduction Program and participation in RGGI. The 2020 Clean Energy and Community Flood Preparedness Act requires Virginia to issue the Emissions Reduction Program and participate in RGGI and requires the proceeds from the sale of Virginia's allowances to be used to help low-income families reduce energy bills and localities address recurrent flooding issues. In other words, the General Assembly decided as a matter of law that Virginia would participate in RGGI. The program was no longer subject only to the board's general regulatory authority, but also the specific requirements of the 2020 law. To comply with the new law, DEQ revised the existing 2019 program. Recognizing that the program had already gone through extensive public rulemaking, and had already been delayed a year, the General Assembly expressly exempted this revision process from the APA and required DEQ to issue the revised regulation directly. This exemption meant that the revision did not require public notice and comment, nor did it require board approval. DEQ followed the requirements set forth by the General Assembly and issued a revised regulation establishing the current program in August 2020.</p> <p>Since January 2021, power plants in Virginia must account for their carbon pollution in accordance with the emissions reduction program. Knowing that the supply of these allowances steadily reduces each year, power plant owners and operators must figure out the most</p>	
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	<p>cost-effective ways to reduce their emissions over time. Virginia's program is a critical tool to address a major cause of climate change. It also complements another piece of legislation the General Assembly passed in 2020, the VCEA, which sets forth a pathway for a carbon-free electricity sector by mid-century. Virginia's participation in RGGI helps ensure Virginia fulfills the requirements of the VCEA in a sensible, cost-effective way. The program benefits all Virginians in numerous ways:</p> <ul style="list-style-type: none"> - Through its proven market-based mechanism, the program is working to drive down air pollution and improve public health; - Continued participation in RGGI will help protect customers from rising fossil fuel prices as power plant owners reduce reliance on fossil fuels; - Low-income households are getting their homes weatherized and getting the energy bill relief they need; - Highly efficient affordable-housing units are under construction to help fill the severe affordable-housing gap with units that will come with low energy bills for tenants; and - Localities have access to a dedicated state fund to help address the increasingly devastating flooding that is happening across the state. <p>Undoing the program would severely hamper efforts to reduce air pollution and improve public health, and definitively eliminate those important sources of funding.</p>	
<p>32. SELC</p>	<p>On December 8, 2021, prior to taking office, then-Governor-elect Glenn Youngkin announced his intention to withdraw Virginia from its participation in RGGI. On January 11, 2022, then-Attorney General Mark Herring issued an official advisory opinion concluding that "the Governor may not repeal or eliminate, through an executive order or other action, the enacted statutes and regulations pertaining</p>	<p>The summary of past actions relevant to Virginia's participation in RGGI is recognized. The purpose of the current regulatory action is to move the Commonwealth forward in a direction that will improve our ability to develop, fund, and implement these important programs in an efficient, cost-effective, and transparent manner.</p>

	<p>to the Commonwealth's participation in the Regional Greenhouse Gas Initiative and/or a market-based trading program like the Regional Greenhouse Gas Initiative, or do away with the requirement that electricity producers hold carbon dioxide allowances that equal the amount of their carbon dioxide emissions." As the opinion explains, the "Constitution of Virginia does not grant the Governor the power to suspend laws, and in fact, it requires the opposite that '[t]he Governor shall take care that the laws be faithfully executed.'" In addition, the opinion cites Article I, Section 7 of the Constitution of Virginia, which provides "[t]hat all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised."</p> <p>On January 15, 2022, the Governor was sworn into office. That same day, he signed EO-9. Rather than attempting to withdraw Virginia from RGGI directly by executive order--which according to former Attorney General Herring would violate Virginia's Constitution--the Governor asked the board to repeal the underlying regulation. Specifically, EO-9 asked the Director of DEQ to develop two repeal tracks for board approval. The first track (Directive 2) involved a proposal to repeal Virginia's program using emergency regulatory authority, i.e., without the normal public comment period, and the second track (Directive 3) involved initiating a full rulemaking process to make the emergency repeal permanent. EO-9 also requested that DEQ create a "report re-evaluating the costs and benefits of participation in the Regional Greenhouse Gas Initiative Inc. in view of all available data, within 30 days." On March 11, 2022, DEQ provided that report to</p>	
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	<p>the Governor, which included a draft proposed emergency regulation and a draft NOIRA for a permanent regulation.</p> <p>Attempts to repeal the underlying law failed in the 2022 General Assembly. Meanwhile, on the regulatory track, the administration took no action for nearly six months, despite the claim that repealing RGGI was so urgent it warranted an unprecedented use of the board's emergency regulatory powers. Finally, at the August 31, 2022 board meeting, Acting Secretary of Natural and Historic Resources Travis Voyles announced that the administration had abandoned the emergency regulatory approach and instead would be moving forward with plans to repeal the regulations through the normal APA process, with the goal of withdrawing Virginia from RGGI by the end of 2023. The administration subsequently published a NOIRA in the Register on September 26, 2022, which proposed the development of a regulation to repeal the program.</p>	
<p>33. SELC</p>	<p>As a policy matter, the current administration does not favor Virginia's participation in RGGI. We disagree; the benefits of Virginia's participation in RGGI are clear and backed by a long track record of success. Regardless, neither we, the administration, nor the board gets to decide this policy. The General Assembly decided Virginia's policy in 2020, when it passed the Act and thereby required Virginia's participation in RGGI. As such, it is the board's responsibility to implement this law, not contradict it, which is what repealing the regulation would do. Multiple provisions of the Act make clear that Virginia must join RGGI and that the regulation cannot simply be repealed.</p> <p>Foremost, the Act specifically requires DEQ to issue and</p>	<p>The commenter's discussion of former administration activities is appreciated. The legal authority for this regulatory action is discussed in the response to comment 9.</p>

	<p>implement the regulation establishing the program. The Act mandates that DEQ incorporate the provisions of the Act into the regulation, without any further action by the board or need to undergo regulatory review under the APA, thus giving DEQ and the board no discretion about whether to adopt the regulation. The law expressly requires it. The Act then grants DEQ the authority it had lacked previously: to sell allowances directly like every other state participating in RGGI. The very next sentence then mandates that the Director of DEQ actually use this new authority, requiring the Director to sell the allowances in the RGGI auctions. The Act goes on to require that DEQ and other agencies "prepare a joint annual written report describing the Commonwealth's participation in RGGI, the annual reduction in greenhouse gas emissions," and the use of revenues collected from RGGI auctions--further indicating the General Assembly's intent that Virginia would join RGGI. The Act is thus unequivocal. The General Assembly required the issuance of regulation and mandated that Virginia participate in RGGI. And in 2020 and 2021, agency officials did exactly what the law required. DEQ revised the program as required by statute, and Virginia began participating in RGGI. Pursuant to the General Assembly's mandate, Virginia is selling 100% of its allowances in the RGGI auctions and using the proceeds to help Virginians as specified in the statute, while power plant owners and operators are acquiring the necessary allowances to account for their carbon pollution.</p> <p>Repealing the regulation would contradict the law. Most evidently, the administration has no authority to repeal a regulatory program that the law specifically required to be issued and implemented. And without the program, numerous</p>	
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	<p>other statutory provisions will be violated. Virginia will not generate allowances for the Director to sell at auction. The state treasury will be unable to distribute funds in accordance with the statute. The applicable agencies will be unable to report on the state's participation since Virginia will not be a participant. Not only would the repeal under consideration violate the Act, any decision to do so would also amount to a constitutional violation. The board may not suspend or ignore the execution of laws, nor invade the General Assembly's legislative power, including taking actions contrary to statute, which is what repealing the regulation would do.</p> <p>Even though the text of the Act clearly establishes that Virginia must join RGGI, Governor Youngkin nevertheless takes an opposing view, suggesting in public news reports that the Act merely gave DEQ the discretion to decide whether to participate in RGGI. This argument is based on just one sentence of the Act and ignores the fact that the Act specifically mandates the issuance of this regulation, and every other portion of the Act clearly mandates that Virginia participate in RGGI. The Governor's interpretation is a nonsensical reading of the statute that renders provisions of the law meaningless and adds qualifying language to mandatory requirements where no such qualification exists. Not only is the language of the Act clear, contemporaneous statements from lawmakers and regulators clearly show an intention and expectation that the law itself required DEQ to adopt the program so that Virginia would participate in RGGI. For example, after the Act was put on the Governor's desk, then-Governor Ralph Northam issued a press release stating: "The Act establishes a carbon dioxide cap-and-trade program to reduce</p>	
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	<p>emissions from power plants, in compliance with the Regional Greenhouse Gas Initiative (RGGI). The Department of Environmental Quality will establish and operate an auction program to sell allowances into a market-based trading program." David Paylor, then Director of DEQ, made similar statements about how the Act required participation in RGGI, as did Senator Lynwood Lewis, a co-sponsor of the legislation. Moreover, a group of over 60 members of the General Assembly, most of whom were members who voted on the Act, recently sent a letter to the board reiterating that Virginia is required by law to participate in RGGI.</p> <p>The Governor's flawed interpretation is also diametrically opposed to the prior positions of DEQ, the board, and the Attorney General's Office. For example, after DEQ issued the regulations establishing the program, the Virginia Manufacturers Association (VMA) challenged the program, asking the Circuit Court for the City of Richmond to declare the program null and void. VMA argued that DEQ had "the optionality to comply with the Act by joining RGGI, another carbon trading program with an open carbon trading market, or by simply implementing the Original Trading Rule," and that therefore those discretionary decisions were not exempted from administrative process. The trade group also argued that the program was an unconstitutional tax and void due to vagueness. In defending the program, the Attorney General's Office explained repeatedly that the Act did not merely provide DEQ with discretionary authority to run a direct auction program; rather, the Act mandated that DEQ actually use such authority by selling the allowances at auction. The court agreed with the Attorney General's Office and denied the VMA</p>	
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	<p>challenge in its entirety. Similarly, the Attorney General's Office has also issued opinions concluding that the Act required DEQ to adopt and implement the Emissions Reduction Program, including selling allowances at RGGI auctions--and that this requirement could be reversed only by an act of the General Assembly, not by the Governor, DEQ or board. As these statements show, lawmakers, regulators, and the Attorney General's Office have all consistently understood that the law requires Virginia's participation in RGGI. There is simply no basis for the current administration to take an opposing view--a view that sharply contradicts the law's plain language and the well-established understanding of the law as set forth by numerous officials and lawmakers, and in official court filings. The administration may not repeal the regulation or withdraw Virginia from RGGI absent legislative consent.</p>	
<p>34. SELC</p>	<p>The administration also asserts that the state must leave RGGI because "the benefits of RGGI have not materialized" and RGGI is placing "a substantial burden" on Virginians in terms of higher electricity costs. Both assertions are disingenuous. Virginia has been part of RGGI for less than two years, so it is far too early to reach definitive conclusions about its success. Nevertheless, Virginia has already experienced substantial benefits from participating in RGGI, including reduced emissions (and corresponding improvements in public health) and hundreds of millions of new dollars in dedicated funding for flood prevention, weatherization of low-income homes, and construction of efficient affordable housing. Other RGGI states have experienced similar drops in emissions while maintaining solid economic growth, which indicates that the net benefits to Virginians will only continue to increase in the years to</p>	<p>As discussed in the response to comment 7, the costs of any carbon reduction program will be borne by the state one way or another. We suggest that these costs be managed in the most transparent way possible.</p>

	<p>come. Moreover, while we share the administration's concerns about high electricity bills for Virginians, repealing the regulation in no way fixes that problem. Those increases are due to various non-RGGI factors, most notably increases in fossil fuel costs. And, more importantly, the appropriateness of electricity rates is a question for the General Assembly and the SCC-- the body the General Assembly has put in charge of evaluating utility rates. The board and DEQ should be focusing on its charge, namely, abating air pollution. Given that DEQ has said participation in RGGI is necessary to meet the Commonwealth's emissions goals, there is no reason to repeal the regulation and withdraw from RGGI, even if the board had the authority to do so.</p> <p>Perhaps the most important benefit of participating in RGGI is that it will help drive reductions in power plant emissions in Virginia, which represent roughly 30% of the CO₂ emissions in the state. According to DEQ, "an emission reduction program or combination of programs will be required to meet the Commonwealth's climate goals of the [Virginia Clean Economy Act] and the 2045 net-zero carbon emissions goal. In the absence of any such program, emissions may not reduce sufficiently to achieve these goals." Continued participation in RGGI is thus vital to reducing emissions and ensuring that the state meets its climate goals. Moreover, meeting that net zero goal is critical for helping Virginia avoid the worst impacts of climate change. Left unmitigated, it is estimated that sea level rise will cost the state about \$56B in financial damages and lead to a \$79B decline in economic output by the end of the century. Sea level rise also could place as many as 400,000 Virginia homes and 900 miles of roads in the Hampton Roads area at risk from storm</p>	
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	<p>surges, and it would cost hundreds of billions of dollars to replace those homes and roads. Climate-related shifts in precipitation and weather are also expected to cause water shortages in roughly half of Virginia's counties, potentially imperiling agriculture, which is Virginia's largest industry, supporting almost 311,000 jobs with an annual economic impact of \$52B. All of these harms are being mitigated by Virginia's participation in RGGI, both by driving down climate changing emissions and by bringing in critical funding for flood planning and projects. Given those long-term needs and goals, it makes sense that the General Assembly would want to ensure that Virginia participated in RGGI. The entire purpose of RGGI is to reduce emissions in participant states, and it has been effective in achieving that goal. As the current administration has acknowledged, "the RGGI region has a long track record of emission reductions since the beginning of the program" The nine states that have participated in RGGI from the outset saw their power plant emissions collectively drop more than 50% between 2009-2020. That net reduction is approximately 90% more than the rest of the U.S., showing that RGGI participation is a key driver of emissions reductions from power plants. Before joining, Virginia, like the other non-RGGI states, did not see its power plant emissions decline during that period. According to DEQ's EO-9 Report, between 2010-2020 (before Virginia joined RGGI), mass emissions for the power sector remained fairly constant with no discernable trend. But ever since Virginia joined RGGI, there has been a clear shift. Since the beginning of 2021, Virginia's power plant emissions have followed the same downward trajectory as other RGGI participants. Virginia's total CO2 emissions in 2021 were over 4M tons lower than in 2020 (28.6M</p>	
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	<p>tons v. 32.8M tons), and emissions during the first half of 2022 have been even lower than the same period in 2021 (12.1M tons v. 13.6M tons). While emissions totals can fluctuate, the pattern is obvious--a long period of stagnating emissions before Virginia joined RGGI, followed by a continual year-over-year decrease in emissions after it did so. Moreover, since RGGI is structured so that the number of available carbon allowances decreases 3% year-over-year, there is every reason to expect that those trends will continue. All of this clearly indicates that RGGI helps drive emissions reductions in participating states and that Virginia's efforts to reduce emissions would be severely hampered if it left RGGI. Participation in RGGI provides substantial benefits to Virginians. It will help Virginia reduce a significant source of CO₂, help protect against the worst effects of climate change, and reduce the costs of responding to extreme weather and sea level rise. Reducing emissions also will result in better health for Virginians by reducing particulate matter and other air pollutants. RGGI auctions are bringing in hundreds of millions of dollars per year to the state, which is required to be used on weatherization, flood prevention, and other measures that directly improve the lives of Virginians.</p> <p>Carbon pollution poses a significant threat to Virginians' health, welfare and safety. According to the CDC, the burning of fossil fuels has resulted in negative impacts to air and water quality and been linked to increased incidence of asthma and cardiovascular disease. Climate change also is leading to improved survival rates for vectors like ticks and mosquitos, resulting in increased incidence of disease. Being part of RGGI will undoubtedly improve those health</p>	
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	<p>outcomes. One study estimated that in just the first six years of RGGI's existence, emissions reductions from the program resulted in at least \$5.7B in health benefits, including avoidance of 39,000 lost work/school days, 8,200+ asthma attacks, and 300–830 excess deaths. A later study identified an additional \$200+ million in children's health benefits from reduced particulate contamination.</p> <p>The sales of allowances at RGGI auctions are also netting significant revenues for the state. To date, Virginia has participated in seven RGGI auctions and has sold all of the 40+ million allowances it has placed into those auctions, receiving approximately \$452M from those sales. Virtually all of those revenues are being used to respond to critical needs for Virginians--helping low-income households to reduce energy bills and assisting localities across the state with planning for and preventing recurrent flooding. As required by the Act, 50% of the proceeds from the RGGI allowance sales are credited to an account administered by DHCD to support low-income energy efficiency programs, including programs for eligible housing developments. DHCD developed its HIEE program to distribute the proceeds to WDRP and ASNHP. The WDRP funds repairs that have caused homes or units to be deferred from WAP. It is entirely funded by Virginia's sale of allowances in the RGGI auctions. DHCD uses RGGI proceeds for the ASNHA program, which completes energy efficiency upgrades that would not have been feasible otherwise. Through two rounds of applications, DHCD has used over \$29M in proceeds from Virginia's allowance sales to help fund 36 high-efficiency affordable housing projects, representing more than 2,200 affordable housing units.</p>	
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	<p>These projects are distributed across the state.</p> <p>The Act requires another 45% of RGGI revenues to be placed in the CFPF, administered by DCR to assist localities and their residents affected by recurrent flooding, sea level rise, and flooding from severe weather events. To date, DCR has awarded a total of \$45.9M in grants across three rounds of grants to 76 different projects across Virginia.</p> <p>Repealing the program and withdrawing from RGGI would deprive citizens of hundreds of millions of dollars annually toward addressing these important causes. In most cases, RGGI revenues are the sole funding sources for those programs, so they would cease to exist if Virginia no longer participates in RGGI auctions. Leaving RGGI would thus do a grave disservice to Virginians and cause substantial harm to those vulnerable communities.</p>	
<p>35. SELC</p>	<p>The NOIRA and EO-9 Report both incorrectly claim that RGGI is placing a substantial burden on Virginians because RGGI compliance costs are driving rising electricity costs in Virginia. As an initial matter, the board may not premise a repeal based on the fear that Virginia's participation in RGGI might cause electricity rates to rise. The General Assembly expressly authorized utilities to seek to recover RGGI compliance costs from customers through a rate adjustment clause, subject to SCC approval. The board simply has no authority to second-guess the General Assembly's decision or take oversight authority away from the SCC. But moreover, the entire repeal proposal rests upon a flawed premise. RGGI is not driving increases in electricity bills. As of October 26, 2022, there is no active SCC-approved rate adjustment clause for either Dominion or Appalachian Power RGGI compliance costs. In other</p>	<p>See the response to comment 6 for further discussion of the utility structure in Virginia.</p>

	<p>words, if the administration's illegal repeal took effect immediately, customers would not save a single penny. Even if there were SCC-approved rate adjustment clauses for either utility to cover RGGI compliance costs, electricity prices began increasing long before Virginia's participation in RGGI. Since Virginia re-regulated its electric utilities in 2007, customers have seen significant increases in electricity rates--increases that far exceed RGGI compliance costs. The SCC laid this fact out in a report issued in September 2022. SCC figures clearly show that, for both Dominion and Appalachian Power, almost the entire increase in electricity costs has come from rate adjustment clauses, which are SCC-approved requests by utilities to recover costs for specific projects or compliance costs. The report also clarifies that none of these rate adjustment clause-related cost increases are caused by RGGI. Even more recent rate increases are not due to RGGI. According to the same SCC report, factors contributing to increased utility costs include inflation, pandemic recovery, supply chain limitations, and high natural gas and other commodity prices, as well as geopolitical events. RGGI was not listed as a contributing factor. Fuel factor costs add over \$35 a month to the average Dominion residential bill--about one-quarter of the total. That includes an approximately \$15 monthly increase that Dominion recently applied for (and the SCC approved). Due specifically to increased fossil fuel costs—primarily natural gas and coal, costs which have nearly doubled year over year--Dominion had under-recovered fuel costs by \$1B and sought approval to raise the fuel factor significantly to cover this significant shortfall. Notably, this shortfall is for a single year, but at Dominion's request, customers will pay it off over three years. Had</p>	
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	<p>Dominion opted to collect its under-recovery over a one-year period, as is typical, bills would have been raised by \$24 per month.</p> <p>Moreover, Dominion may seek additional rate increases next year if fossil fuel costs remain high, which they are expected to do. This means customers may face additional bill increases due to fossil fuel costs, before they have even paid off the 1-year, \$1B under-recovery. Numerous other rate adjustments are driving up customer bills, most of which are also fossil fuel-related. Dominion customers pay over \$17/month for riders specifically related to coal or gas facilities. At present, the sole RGGI-related rate adjustment has been zeroed out, but even if Dominion were to reinstate it, that amount (\$2.39/month) would pale in comparison to the fossil fuel-related charges, which total well over \$50/months. The same pattern holds true for customers of Appalachian Power. At present, they pay \$23/month for fuel factor costs, though the utility has a pending request to raise that amount to over \$40/month to address recent increases in fuel costs. If approved, that would mean that between a quarter and a third of Appalachian Power residential customer bills would be fossil fuel-related costs, not to mention another \$5+/month for coal and gas-related operations. By contrast, there are no approved RGGI-related surcharges for Appalachian Power customers currently, and less than \$4/month is attributable to clean energy or energy efficiency programs. As Appalachian Power itself acknowledges, the best way to reduce customers' bills is to increase use of renewable energy so there is less need for coal and natural gas to generate power.</p> <p>While an almost never-ending proliferation of rate adjustment clauses has undoubtedly driven</p>	
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	<p>customer electricity rates up in Virginia, RGGI is not the cause of that increase. The administration has it exactly backwards when it comes to RGGI. As explained previously, without RGGI, Virginia power plant owners failed to reduce emissions from 2010-2020. Had RGGI been in place in Virginia during this time, customers would have been far better protected from the recent rise in fossil fuel costs. Participating RGGI states, for example, saw their emissions drop by 50% between 2009-2020, meaning existing RGGI states were far less reliant on fossil fuels prior to the recent rise in fossil fuel costs. RGGI is a tool that protects customers from a major driver of rising electricity costs--fossil fuel costs--yet the administration seeks to repeal it. Moreover, though electricity prices have increased, Virginia's average retail electricity prices remain below the national average, even since joining RGGI. The average retail price of electricity across all sectors in Virginia is consistently lower than the national average over the last five years. The NOIRA states that "Virginians pay on average \$2,323 per year in non-transportation energy costs, which is higher than the national average of \$1,850." The administration simply refers to the U.S. DOE for these numbers but does not examine or explain the reasons for this difference. Are Virginians using more electricity? Are homes less efficient? Do they rely on electric heat more than other states? Are retail gas prices higher in Virginia than other states? Without understanding the cause, the administration has no basis for its misguided solution. In fact, repealing RGGI will exacerbate this problem. Continuing participation in RGGI will help lower non-transportation costs in two ways: forcing utilities to reduce reliance on fossil fuels that are currently (and likely to continue) causing significant increases in customer</p>	
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	<p>electricity costs; and providing funding to improve home efficiency and lower electricity bills.</p> <p>Moreover, the NOIRA is simply wrong in stating that RGGI operates as a direct tax in which all RGGI compliance costs are passed through directly to consumers with no incentives for the utility to change. Rather, the law permits monopoly utilities to seek recovery of compliance costs, but the utility may recover only those costs the SCC finds to be necessary to comply with the emissions reduction program, in accordance with the statutory standard. Customers thus are charged only when the utility tries to recover the costs and the SCC finds the costs necessary. Notably, although Dominion has sought to recover such costs in the past, it recently withdrew that rate adjustment request and the SCC approved that rescission, meaning that customers have not been paying any RGGI-related costs for the past several months, even though Dominion continues to participate in RGGI auctions. The data is clear. The real cause of rising electricity costs is not RGGI--utility bills are high due to fossil fuel costs and myriad anti-customer provisions in Virginia's utility code that predate RGGI. Put another way, leaving RGGI will not reduce electricity rates by a single penny. If the administration wants to work to rein in electricity prices, it should recognize that RGGI is a tool that can help protect customers from fossil fuel prices and instead focus efforts on ongoing bipartisan work to reform the ratemaking system. In the last several years and this year, many bills have been introduced that would advance fair energy utility rates and enhance the availability of customer refunds. If the administration wants to reduce Virginians' energy costs, it should focus on the fundamental problems with Virginia's utility regulation.</p>	
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<p>36. International Emissions Trading Association (IETA)</p>	<p>In more than a decade of operation, RGGI has only seen one state (New Jersey) leave the first-ever U.S. GHG cap-and-trade system. This departure occurred in close coordination with RGGI Inc., and at the end of a compliance period. RGGI faced minimal impacts from the state's departure, as New Jersey compliance entities were required to meet their compliance obligations at the end of that final period (prior to exit), and most of their allowances were retired and removed from the program. We urge DEQ to craft regulations that minimize harm to electricity consumers and limit legal challenges as the state opts to leave RGGI by the end of 2023. This approach would help to achieve Governor Youngkin's goal of lower resident's electricity bills without creating major market disruptions.</p> <p>There are estimated 24.4M allowances in circulation held by Virginia entities for their estimated compliance obligations for 2021 and through June 2022. These holdings represent more than \$320M in value to the utilities that hold them. Any move by the state to leave the program should be done to ensure these allowances still retain value until the state exits the scheme. In addition, much of the costs of those allowances has already been recovered or will be recovered from ratepayers by utilities. A path that would unilaterally scrap compliance obligations over the existing three-year period would effectively be a financial windfall for utilities, with Virginia residents bearing the brunt of this approach.</p> <p>Put simply, a DEQ decision to remove RGGI obligations would adversely impact electricity consumers, which would conflict with EO-9. Moreover, a regulatory framework that would remove obligations would also be legally</p>	<p>The commenter is correct that lowering electric bills without creating major market disruptions is essential, which is why DEQ is proceeding along the full APA regulatory path. The strategic goal is to finalize the regulation and ensure that compliance entities meet their final compliance obligations, all to coincide when the current contract with RGGI Inc., expires, and at the close of the current compliance period, at the end of 2023. This glide path has been designed to provide a smooth transition with minimal disruption to current regulatory and planning processes, and is similar to the approach taken by New Jersey.</p>
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	<p>fraught as Virginia would have acquired revenue for carbon allowance auctions without requiring entities to prove compliance with the relevant CO₂ program. As a real-life example, the Ontario Premier took a similar approach by stripping CO₂ obligations as the Canadian province left the Western Climate Initiative in 2018. Ontario did not offer refunds for allowances held, and the collective decision resulted in numerous legal challenges, many of which are still ongoing.</p> <p>IETA urges Virginia to select a path that assures consumers will experience the least impact while not imposing additional legal burdens on the state. Maintaining the RGGI program CO₂ obligations through 2023 before transitioning away from a regulated market will provide certainty to market participants and consumers in Virginia. This approach would be similar to how New Jersey exited the scheme in 2011.</p>	
<p>37. Dominion Energy</p>	<p>Dominion supports the intended action to repeal Virginia’s CO₂ Budget Trading program.</p> <p>In 2018, Dominion submitted comments to DEQ expressing concern that linkage to RGGI would result in a financial burden to customers with no real mitigation of regional GHG emissions. The company’s position is unchanged despite the fact that Virginia ultimately became a direct participant in RGGI. Indeed, publicly available data suggest that reductions in CO₂ emissions in Virginia attributable to RGGI participation most likely will be offset by emissions increases within PJM states which are not beholden to the RGGI construct. While the regional emissions benefits of RGGI are uncertain, the additional costs borne by Virginia electric customers are clear. Under applicable regulatory law, the costs of CO₂ allowance purchases are</p>	<p>Support for the proposal is appreciated. As discussed in the response to comments 4 and 6, emissions reductions may be occurring regardless of RGGI or not, yet the electric rate structure established by Virginia law does not enable utilities to defer passing RGGI costs onto customers.</p>

	<p>recoverable through utility customers' electric rates.</p> <p>The company filed its first petition for approval of Rider RGGI in November 2020, in anticipation of future compliance costs associated with approximately 19M CO₂ allowance purchases per year. While initial cost estimates relied upon an expected allowance price of \$6.84/ton, actual costs have exceeded this projection and continue to climb. Even at this initial cost projection level, typical Dominion residential customers using 1,000 kWh per month experienced a bill increase of \$2.39 beginning on January 1, 2022. The company withdrew Rider RGGI from customer bills effective July 1, 2022. Prior to this withdrawal, the company presented estimates placing CO₂ allowance prices about 65% higher than originally projected and estimating that typical residential customer bills could increase by an additional \$1.98, for total of \$4.37/month. Bill increases for commercial and industrial customers, as well as residential customers using more than 1,000 kWh/month, would be even higher. It is important to recognize that Dominion will not be relieved of its obligation to procure CO₂ allowances until Virginia officially withdraws from RGGI. RGGI compliance costs will continue to accrue in the interim, and subject to regulatory approval, be passed on to customers.</p> <p>Virginia's RPS program incentivizes utilities to invest in renewable energy to comply with binding targets for the percentage of their retail electricity sales which must be matched with RECs from qualifying resources. Compliance with the RPS entails costs from REC purchases and development of eligible energy resources. And to reiterate, RGGI compliance entails costs from CO₂ allowance purchases. Both the RPS program</p>	
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	<p>and RGGI participation thus result in costs borne by Virginia electric customers to achieve what is fundamentally the same objective - ongoing reductions in power sector CO₂ emissions.</p> <p>Judge Jagdmann of the SCC, concurring with the Commission's ruling in Case No. PUR-2020-00169, wrote that the proceeding had "raise[d] the question of the need for two separate and distinct modes for achieving carbon reduction," and noted the "potential costly duplications" that could arise. She wrote that, in light of the RPS, "it remains unclear whether the significant cost required for participation in an additional cap-and-trade program – which is expected to cost customers billions of dollars – are necessary for [utility] ratepayers to bear in order to achieve the General Assembly's carbon reduction objectives."</p> <p>Dominion is keenly aware of the need to maintain affordable electric rates and has a long record of rates below the national average as well as best in the business energy assistance programs, most notably our Energy Share Program. Since Virginia's Reregulation Act took full effect in 2008, Dominion's electric rates have remained consistently below the national average and have been very competitive among states in the DC metro area, the mid-Atlantic, and the southeast. We have also had rates well below the RGGI states' average. That said, amid economy-wide inflation and rising fuel costs, it is important to eliminate duplicative regulatory costs. Elimination of the additional RGGI compliance costs would further increase the competitiveness of the company's rates. Dominion is pursuing many projects that directly support the goal of reducing power sector CO₂ emissions and would be pursued irrespective of Virginia's status as a RGGI participant. These include</p>	
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	<p>solar and energy storage deployment, distribution grid transformation, RPS compliance, the Coastal Virginia Offshore Wind commercial project, energy efficiency programs, and license extensions for the company's zero-carbon nuclear units.</p> <p>Virginia has made steady progress toward carbon reductions in recent years, and existing statutory provisions will ensure that emissions from the electric sector continue to decline regardless of whether Virginia continues participating in RGGI. RGGI does not further this goal but instead imparts unnecessary additional costs on Virginia customers with no evidence of incremental benefits.</p>	
<p>38. Environmental Defense Fund (EDF)</p>	<p>§ 10.1-1330 requires the executive branch and agencies to implement the state's RGGI regulation. Indeed, the General Assembly ratified the RGGI regulation, with certain specified changes, when it enacted the Virginia Clean Energy and Community Flood Preparedness Act in 2020, § 10.1-1330(A). The agencies could not at that time seek to rescind a regulation ratified by the legislature, and there is no basis in the statute for revisiting the legislature's decision. On the contrary, other provisions in this section confirm an ongoing obligation to carry out the RGGI regulation. Section 10.1-1330(B) authorizes the DEQ Director to "establish, implement, and manage an auction program to sell allowances into a market-based trading program consistent with the RGGI program and this article" and then requires the Director to "seek to sell 100 percent of all allowances issued each year through the allowance auction." Thus, the statute requires the sale of allowances "each year," which assumes the state's ongoing participation in RGGI. The statute also requires allowance sale revenue to be used to fund specific programs such as flood prevention</p>	<p>The response to comment 9 addresses legal authority issues. See the response to comment 4 for a discussion of emissions reductions, and the response to comment 7 for a discussion of funding challenges and opportunities. Utility rates and structure are covered in the response to comment 6. Environmental justice issues are addressed in the response to comment 39..</p>

	<p>and low-income energy efficiency programs, § 10.1-1330(C). This allocation of funding further emphasizes that participation in RGGI is required because the legislature intended that auction revenue from participation in RGGI fund specific programs enumerated in the statute. Finally, § 10.1-1330(D) requires an annual report "describing the Commonwealth's participation in RGGI, the annual reduction in GHG emissions, the revenues collected and deposited in the interest-bearing account maintained by the Department pursuant to this article, and a description of each way in which money was expended during the fiscal year." If participation in RGGI were optional, this annual reporting requirement would be superfluous. Yet the General Assembly chose to include this reporting requirement, further indicating that Virginia's participation in RGGI is required by statute. Given the many ways the statute makes it clear that participation in RGGI is required by Virginia law, neither the board nor DEQ has the legal authority to end participation in RGGI. The agencies' authority and actions are bound by Virginia's statutory requirements--requirements that only both houses of the General Assembly and the Governor, acting in concert, may alter.</p> <p>RGGI has a long-proven record of emission reductions--a fact that DEQ acknowledged in its own report to the Governor. Continuing in this program would help Virginia achieve its stated goal of achieving a net-zero carbon economy by 2050. With unprecedented droughts, wildfires, floods and heat waves impacting communities nationwide, it's clear to Virginians that climate change is no longer a distant threat. The state has experienced eight different billion-dollar disaster events in 2021 alone. August 2022 was the hottest August recorded in North America</p>	
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	<p>and the second warmest August globally. These climate-powered disasters are a national security concern as well as an environmental one. The Hampton Roads area is home to dozens of military installations, including Naval Station Norfolk, the world's largest naval facility which supplies 46% of the regional economy. Funds brought in from RGGI auctions go towards bolstering Virginia's coastal resilience and flood preparedness, ensuring military operations can continue to be run smoothly in the Hampton Roads region. Withdrawing from RGGI means removing the only source of funds for programs that help communities build resilience in the face of flooding and other climate threats. Only the General Assembly has the authority to cut off this vital funding source.</p> <p>Virginia is ranked 10th in the nation for clean energy employment with 88,370 jobs. Clean energy industries are poised for growth as Virginia continues to invest in its clean energy economy through RGGI. Analyses of the RGGI program have shown that growing jobs in the clean energy economy, reducing pollution, and investing in workers and local communities has substantial net benefits. One analysis found that over its first three compliance periods, RGGI created nearly 16,000 job-years in the region and in that same period added \$1.4B of value to the economy. According to a new analysis of RGGI through 2017, the program has created over \$4B in net economic gains and over 44,000 job-years of employment. Virginia has received approximately \$452M in cumulative proceeds since its first auction in March 2021. Virginia Code mandates that 45% of those funds for their statewide Community Flood Preparedness Fund and 50% supports low-income energy efficiency programs. Program-wide,</p>	
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	<p>18% of 2020 RGGI investments and 14% of cumulative RGGI investments went to clean and renewable energy projects across all participating states, which are expected to return over \$600M in lifetime energy bill savings while also avoiding the release of over 1.7M short tons of CO₂. Direct bill assistance programs, also a priority investment area for RGGI, received 19% of 2020 RGGI investments and 16% of cumulative RGGI investments, and have returned over \$37M in credits or assistance to consumers. Investments from RGGI have saved money for participants on energy bills, while creating jobs and reducing carbon emissions. These investments are projected to save participants an estimated \$2B over their lifetime on energy bills, while also avoiding the emission of 6.7M short tons of CO₂.</p> <p>Virginia also stands to receive investments from the passage of the Bipartisan Infrastructure Law, which allocated about \$65M for weatherization and \$5.5M to help prevent outages and make the power grid more resilient in Virginia. The Inflation Reduction Act helps consumers by making it more affordable for Virginia families to purchase energy efficient appliances, make repairs around their homes, and save money on their utility bills each month through new tax credits and rebates. RGGI's policies work in tandem with federal investment programs. Virginia will miss out on being a leader in the clean energy economy if it goes backward on state policy at the very moment that the federal government and businesses are injecting hundreds of billions into spurring the clean energy economy. Analysis from EDF also shows that federal programs will catalyze hundreds of billions of dollars in clean energy investment from the private sector.</p>	
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	<p>As of this summer, about 1 in 6 American households were behind on utility bills, as energy prices rose to the highest level in nearly 15 years. Gas provides about 37% of electricity in the US and the price of gas has tripled since the middle of last year. The U.S. Energy Information Administration also forecast in the September report that average residential electricity prices for this year would be 7.5% higher than in 2021, largely due to high natural gas prices.²⁴ Virginians have the 10th highest average monthly residential electricity bills in the country. In 2022, Virginians paid on average \$148.15 per month for residential electricity – \$11 above the national average. In 2022, Virginia’s electricity price was 13.53 cents/kWh compared to 12.02 in 2020. Renewables like solar panels can deliver power to 650 homes for one hour at \$31-111 a megawatt-hour. By comparison, natural gas peaking plants deliver power at \$122-162 a megawatt-hour. In Virginia in 2020, natural gas accounted for 61% of Virginia’s utility-scale electricity net generation, nuclear supplied 29%, renewables, mostly biomass, provided 6%, and coal fueled less than 4%. There are many factors that contribute to the price of wholesale electricity, but the cost of fuel for fossil-fuel generators is an important driver. As noted by the EIA: "Wholesale prices are especially tied to natural gas prices because natural gas-fired units are often the most expensive (marginal) generators dispatched to supply power. The natural gas price at the Henry Hub averaged \$8.14/MMBtu in May 2022, 180% higher year on year, according to the EIA, which expects the price of natural gas delivered to electric generators to average \$8.81/MMBtu this most recent summer, a jump of 124% from summer 2021."</p>	
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	<p>Rising natural gas prices is one reason Dominion and Appalachian Power customers should expect a cost increase. In September 2022, the SCC approved the increase for Dominion, which went into effect provisionally on July 1. According to estimates, the average residential customer, defined as a household using 1,000 kWh of electricity per month, will see their monthly bill increase by \$14.93. Dominion says this is due to the increase in its fuel factor. It is clear that RGGI is not the driver of the rising electric prices we have seen in Virginia and elsewhere--rather, it is our current, fossil-fuel dependent system that is one of the major drivers. Cleaning up our grid by deploying generation that does not have volatile fuel prices, like wind and solar, is a critical part of the solution to clear our air, protect our climate, and benefit consumers. If the administration is concerned about customer costs, we recommend that it develop a comprehensive plan that achieves emission reductions to decarbonize the power sector and moves the state to cost-effective, clean energy.</p> <p>RGGI is the sole source of revenue for the statewide CFPF, which is the only state funding source for critical flood resilience planning and project implementation for localities, tribes, and soil and water conservation districts. RGGI has generated \$203.5M for the CFPF since Virginia started receiving auction proceeds in 2021. Of this, nearly \$46M has been awarded to more than 40 localities. The CFPF funds capacity-building initiatives that most federal grant programs do not, providing critical planning resources that allow localities to pursue larger project implementation requests. The CFPF can also be used as a local match for federal grant programs, making Virginia applicants more competitive for national programs.</p>	
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	<p>Without this reliable long-term funding source, localities will be unable to complete flood resilience planning they need to address flood risk. Twenty-five percent of CFPF monies are set aside for low-income geographies and the CFPF prioritizes implementation of nature-based solutions. Pulling Virginia out of RGGI would strip away funding that local governments need, harming under-resourced communities that do not have the capacity to address flood risk on their own.</p> <p>Across the RGGI region, CO₂ emissions have dropped dramatically, thanks to fuel switching, improved energy efficiency, and growing renewable energy output. A report from The Acadia Center says emissions from the plants covered by RGGI are down 47% since 2009, when the program launched--outpacing the rest of the nation by 90%. Even while cutting emissions, the gross domestic product of RGGI states still grew by 47%, faster than the rest of the country, which grew by 31%. In Virginia, the data is clear that RGGI reduces emissions: RGGI cut Virginia power-plant carbon emissions by 13% in its first year. In 2020, carbon emissions in RGGI-covered units reached 32,755,842 short tons of CO₂ and declined to 28,623,530 short tons of CO₂ in 2021 even while demand increased. As carbon pollution from power plants decreases, Virginia is seeing co-benefits from the reduction of co-pollutant emissions like NO_x and SO₂: in-state SO₂ emissions fell by 13% and in-state NO_x emissions fell by 19% between 2020 and 2021. The Youngkin administration has even admitted the importance of RGGI in a recent report, concluding that RGGI "has a long track record of emission reductions since the beginning of the program."</p>	
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	<p>Participation in a carbon market with an overall cap on emissions, like RGGI, provides a high degree of certainty and durability that emissions reductions will be achieved year-over-year. As stated by DEQ, "an emission reduction program or combination of programs will be required to meet the Commonwealth's climate goals of the [VCEA] and the 2045 net-zero carbon emissions goal. In the absence of any such program, emissions may not reduce sufficiently to achieve these goals."</p> <p>Since the beginning of the program through 2020, RGGI has avoided more than 49.5M short tons of carbon emissions in participating states. By remaining in RGGI, Virginia will be able to reduce overall emissions by an additional 30% from 2020-2030. Participating in RGGI means that Virginia can achieve its clean energy economy set forth in the VCEA, which requires that Virginia transition its utilities to renewable energy by 2050. Participation in RGGI gives Virginia the greatest certainty that the state will reach its emission reduction goals. A declining limit on GHG emissions, alongside other essential emission reduction regulations, provide the most reliable pathway for Virginia to meet its goal of net-zero emissions by 2045. Meeting this target is essential for Virginia to avoid the worst impacts of climate change, such as coastal flooding, displacement of up to 400,000 homes due to sea level rise, and billions of dollars to repair and replace homes and roads.</p> <p>Virginia currently has 10 cities and counties not meeting national health-based standards for ground-level ozone, impacting 2.3M Virginians. When carbon pollution is reduced, there are often significant reductions of other health-harming pollution, including ground-level ozone and soot.</p>	
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	<p>Power plants, transportation, industrial, and other sources contribute to emissions that impact air quality. According to EPA data, the power plants in Virginia covered by RGGI were responsible for 1,228 short tons of SO_x and 6,125 short tons of NO_x pollution in 2021. As RGGI reduces carbon pollution across the region, communities will also benefit from declining levels of soot and smog. DEQ's analysis of the final RGGI rule showed reductions of NO_x, SO₂, and PM_{2.5}, amounting to tens of millions in monetized benefits over the life of the program. A study found that reduced levels of soot pollution due to RGGI from 2009-2014 benefited children's health, including avoiding cases of asthma, preterm births, cases of autism spectrum disorder and more harmful health impacts. The avoided costs of these health impacts on children are estimated at \$191-350M.</p> <p>The Administration should consider the environmental justice impacts of its plan to roll back RGGI and the emission reductions that would be lost as a result. As previously noted by DEQ: "[n]ew laws passed by the General Assembly and signed by the Governor established that it is the policy of the Commonwealth to advance environmental justice. Further, DEQ's statement of policy (§10.1-1183, Code of Virginia) was amended to make environmental justice an explicit part of DEQ's mission."</p> <p>Virginians, like others across the country, are increasingly concerned about climate change and expect their leaders to act. A 2022 poll from Christopher Newport University showed that about 67% of Virginia voters want to stay in the RGGI program. Virginia joined RGGI after a lengthy round of public comment periods and public meetings where hundreds of</p>	
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	<p>concerned Virginians showed their support for reducing carbon emissions. Once the public comment period ended, the Virginia General Assembly held a vote that catalyzed RGGI into law. The State Senate voted 22-18 and the House of Delegates voted 51-47 to successfully pass the legislation. Recently, 61 state legislators, more than a third of the General Assembly, signed onto a letter addressed to the Board opposing Gov. Glenn Youngkin's proposed withdrawal of Virginia from RGGI.</p>	
<p>39. New Virginia Majority</p>	<p>In our effort to secure environmental justice for people-of-color, immigrant communities, working-class families, women, and all Virginians alike, we focus our environmental policy efforts on state-level initiatives that shift Virginia toward an equitable 100% clean and renewable energy plan, a just transition, and targeted support for low-income individuals and people of color to obtain credentials, post-secondary education, or workforce training in environmental, renewable energy, or related fields. Therefore, we oppose this regressive proposed action to repeal Virginia's participation in RGGI even though this participation is mandated by state law. We support the continued implementation of RGGI as an important piece of state environmental and climate law.</p> <p>An effective state-level policy response to the climate crises requires rapidly eliminating GHGs from the electricity sector. Alongside recent federal climate mitigation investments in both the Infrastructure Investment and Jobs Act and the Inflation Reduction Act, RGGI enables Virginia to effectively decrease the state's dependence on fossil fuel generation and meet goals set in the state Clean Energy Policy. In addition to supporting mitigation of adverse climate change impacts statewide and regionally, RGGI supports</p>	<p>We appreciate the commenter's concerns, and agree that effective state level policy is needed to address carbon pollution in a fiscally responsible and equitable manner. . Indeed, it is people-of-color, immigrant communities, working-class families, women, and all Virginians alike who are disproportionately affected by unnecessary increases in electricity costs. The lack of transparency in the RGGI process, and the limitations on protecting public health and welfare from the effects of climate change forced on Virginia by that process impedes Virginia's ability to best serve all of its citizens.</p>

	<p>reduction in public health and environmental justice outcomes associated with the pollution from fossil fuel generation facilities, particularly respiratory and cardiovascular diseases. Increasing investments in energy efficiency through RGGI is also fiscally responsible given that investment in energy efficiency is one of the most affordable policy strategies for decreasing GHGs from the electricity sector and generating energy savings for residential customers. Beyond crucial executive orders and budgetary requirements passed to date, the U.S. still lacks codified federal law that outlines explicit clean energy standards or stands up nationally binding clean electricity targets. Virginia's participation in RGGI provides a climate policy that can help zero-out the state's electricity GHGs from public utility service providers fossil fuel powered plants.</p> <p>Household energy bills continue to rise, especially as a result of the increasing costs of non-renewable energy sources, specifically natural gas. This rise is predicted to increase beyond 2022. RGGI supports the growth of increasingly affordable renewable energy resources, which can help decrease the costs of household electricity, most burdensome to households with incomes at or below 50-100% of the Federal Poverty Level. Additionally, advancing legislative utility regulatory reforms that have been introduced to-date as opposed to repealing RGGI is the most effective approach to reducing energy costs concerns outlined in the NOIRA as the premise for repeal. These reforms include retiring cost recovery mechanisms that are uneconomical for customers, removing unnecessary restrictions on the issuance of customer refunds, and restoring the SCC's authority to adjust electricity</p>	
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	<p>rates when utilities earn above their authorized profits.</p>	
<p>40. Virginia Manufacturers Association (VMA)</p>	<p>Regulations should maintain an appropriate balance between environmental protection and economic development, be based on exemplary science, consider cost-benefit analysis and comparative risk assessments in the regulatory process, and allow for flexible and performance-based approaches. Energy policies should ensure sustainable economic growth in manufacturing, with an emphasis on reliable supply at affordable prices. Tax policies should lower the overall effective tax rate on manufacturers. RGGI does not meet any of these public policy tests. VMA ardently supports this rulemaking to repeal RGGI.</p> <p>RGGI levies a direct, unnecessary tax on all Virginians. RGGI membership comes at a high cost and an uncertain benefit. Utilities must purchase an allowance for each ton of carbon emitted. The SCC has approved the pass-through of the allowance costs directly to residential and commercial ratepayers. Customers have no opt-out opportunity. As a result, all Virginians that use electricity must bear the cost of the RGGI program, which is substantial. EO-9 estimates that ratepayers must pay between \$1-1.2B over the next four years. Our membership shoulders a substantial proportion of RGGI costs due to the commercial rate structure and electricity requirements to run a manufacturing facility. These facilities are the backbone of Virginia's economy, providing the jobs that fuel the state's economy. Virginia is highly ranked as a competitive southern state for manufacturing. RGGI participation jeopardizes this position. Increased energy costs inflate Virginia manufacturers' cost of operation, a burden not shared by most of the states with which Virginia</p>	<p>Support for the proposal is appreciated. As discussed elsewhere, participation in RGGI is not the most effective means of controlling carbon pollution, nor is it the most consumer-friendly approach.</p>

	<p>manufacturers compete. When compared to non-RGGI states, Virginia's competitive advantage is threatened. Cost and regulatory burden is a constant consideration, as we compete for new businesses and existing manufacturers decide whether to stay.</p> <p>RGGI is an unnecessary, duplicative regulatory program in Virginia. Virginia is strongly committed to expanding the role of renewable energy in power generation. Virginia's electric utilities are moving rapidly to expand generation from renewable resources. Virginia is already among the nation's leading states in this effort. Manufacturers have and are expected to continue to explore innovative ways to reduce carbon footprints. In fact, the VCEA establishes the state's climate goals. The VCEA is a comprehensive law to directly address the state's energy policies and to legislate change. The VCEA sets a 2045 net zero carbon emissions goal for the state's economy. To achieve this goal, the VCEA requires fossil fuel electric generating unit shutdowns and adds incentives for renewable generation. The VCEA also establishes an energy efficiency standard to achieve energy efficiency savings annually. The Act requires utility participation in a RPS program with annual goals for sale of renewable energy. DOE projects that Virginia is on schedule to meet the 2045 net-zero goal. RGGI is an ineffective solution to climate goals. In comparison to the VCEA, RGGI does not mandate or even incentivize utilities to make generation changes. RGGI does not cap utility emissions with a state budget. It does have a RGGI cumulative regional cap for all RGGI allowances, which is the only true cap in the program. As a result, the Virginia RGGI budget does not operate as a not-to-exceed cap to curtail emissions.</p>	
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	<p>This costly pass-through revenue program is unnecessary to promote the continued growth of renewable energy generation in the state.</p> <p>Virginia does not need RGGI to invest in strategic energy policies, infrastructure, and resilience programs. Virginia has and continues to effectively develop and implement direct, cost-effective programs to address the reported effects of climate change in Virginia. RGGI, Inc. promotes the reinvestment of auction revenue in state programs addressing resiliency, energy efficiency, low-income communities, and other beneficial interests. However, the dollars that Virginia's citizens and businesses spend on RGGI would be much better spent directly on resiliency programs and initiatives with a tangible impact on communities. VMA supports legislative efforts to address these needs outside of the RGGI construct. A direct funding program is greatly preferable to RGGI.</p> <p>The CFPA directs most of the RGGI auction proceeds to assist with flooding from severe weather events and energy efficiency programs. However, using the RGGI platform comes at a cost. Fees are higher with no benefit to Virginians. RGGI, Inc., charges a fee to administer the program, and DEQ collects an additional charge to cover the program expenses and administrative costs. Virginia's utilities also must employ environmental professionals to undertake detailed, comprehensive compliance efforts required for RGGI participation. Aside from costs, Virginia loses control over its own money. RGGI states conduct a RGGI program review every 3-4 years, which results in revisions to the RGGI model rule that sets the program rules. That review can substantially impact the allowance costs of the program, not to mention the fundamental rules of</p>	
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	<p>participation. Virginia has only one vote among the RGGI states in this review process.</p> <p>In addition, on an implementation level, outside influences affect the costs of RGGI to Virginians. RGGI allowance costs are often driven higher by private market brokers and entities that purchase allowances to sell, often at a profit, or retire them. For example, in 2021, Virginia received \$227M in revenue from RGGI. However, only a little over \$129M of that total was attributed to compliance entities, such as Dominion or other utilities, that purchased the allowances for compliance. The 2021 RGGI compliance year illustrates the influence of third-party entities on the RGGI program and how third-party stakeholders increase the amount of the direct tax that Virginians pay for RGGI. In summary, exiting RGGI will restore the state's independence. Virginia will be able to deliberately target resiliency and energy policy goals and address them without administrative fees, outside influences and with certainty.</p> <p>Virginia's carbon emissions are already rapidly dropping, without regard to RGGI. There are many reasons for this trend. First, conversion and retirement of coal-fired generation to natural gas and renewable generation has directly impacted Virginia's carbon footprint. DEQ documented the energy transition that took hold in 2011-2012 with a series of coal-fired plant retirements and fuel conversions. These power sector changes contributed to declining carbon emissions at a CO₂ emissions rate of 43% lower per unit of electricity between 2010-2020. This decline is faster than the nation as a whole and comparable to the RGGI states. These statistics illustrate that carbon emissions can be addressed without a costly regional carbon trading program.</p>	
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	<p>Citizens and businesses are becoming more energy efficient. Virginia is already among the nation's leaders in reducing CO₂ emissions. This trend began prior to RGGI membership. These data suggest that RGGI is not needed to achieve Virginia's climate goals.</p> <p>Carbon emissions are not a regional problem, they are a global problem. VMA has consistently articulated that regulating GHG emissions on a regional basis does not make sense. CO₂ does not stop at the borders of RGGI states but coalesces in the atmosphere across states and internationally. Unlike CO₂ emissions, RGGI requirements are confined to state borders. Concepts such as leakage cut against a regional model. For example, a Regional Transmission Organization, such as PJM, may dispatch less expensive electric generating units with higher CO₂ emissions from a power generating plant located in a non-RGGI state in place of an electric generating unit with lower CO₂ emissions on the other side of the state border in a RGGI state. The result is that RGGI states may become net importers of electricity from lower cost non-RGGI assets. Recent data supports this result. Using EPA 2019 emissions data, three out of the five top states importing electricity from out of state were RGGI states (Maryland, Delaware, and Massachusetts). Delaware had the lowest statewide annual CO₂ emissions of any state in 2019, which was likely influenced by importing electricity into the state to satisfy customer demand. A regional approach is not the solution to a global problem, which is best left to a consistent federal approach.</p> <p>RGGI does not incentivize Virginia utilities to shift generation away from carbon-emitting assets, unlike other carbon reduction initiatives. In Virginia, customers bear increased</p>	
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	<p>costs associated with RGGI, rather than utilities. For example, the SCC approved that RGGI compliance costs would be passed through to customers in a RGGI Rider. The RGGI Rider appeared on residential and commercial bills as a direct cost. With customers paying the RGGI Rider, the RGGI program does not incentivize Virginia utilities to shift their generation mix away from fossil fuels. RGGI is better suited to other RGGI states with more deregulated markets than in Virginia. In short, Virginia's energy market structure is not a conducive compliment to the RGGI regulatory approach.</p>	
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Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

The board is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, (iii) the potential impacts of the regulation, and (iv) the agency's regulatory flexibility analysis stated in that section of this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Karen G. Sabasteanski, Department of Environmental Quality, P.O. Box 1105, Richmond VA 23218, phone 804-659-1973, fax 804-659-4178, email karen.sabasteanski@deq.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between the existing VAC Chapter(s) and the proposed regulation. If the existing VAC Chapter(s) or

sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
9VAC5-140-6010	N/A	Purpose of the regulation is described.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6020	N/A	Terms defined.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6030	N/A	Measurements, abbreviations, and acronyms used in the regulation are described.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6040	N/A	Entities to which the regulation applies are described.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6050	N/A	Standard requirements for permitting, monitoring, recordkeeping, liability, etc., are explained.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6060	N/A	Computation of time is described.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6070	N/A	Severability is established.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6080	N/A	Authorization and responsibilities of the CO ₂ authorized account representative are explained.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6090	N/A	The role of the CO ₂ authorized alternate account representative is described.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6100	N/A	Changing the CO ₂ authorized account representatives and the CO ₂ authorized alternate account representative; changes in the owners and operators are delineated.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6110	N/A	The elements of an account certificate of representation are provided.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6120	N/A	Objections concerning the CO ₂ authorized account representative are addressed.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6130	N/A	Delegation by CO ₂ authorized account representatives and CO ₂	Repealed in accordance with the directives of EO-9.

		authorized alternate account representatives is explained.	
9VAC5-140-6140	N/A	CO ₂ budget permit requirements are provided.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6150	N/A	Submission of CO ₂ budget permit applications.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6160	N/A	Information requirements for CO ₂ budget permit applications are established.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6170	N/A	Compliance certification reports are explained.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6180	N/A	Actions on compliance certifications are described.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6190	N/A	The Virginia CO ₂ Budget Trading Program base budgets are listed.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6200	N/A	How to handle undistributed and unsold CO ₂ allowances is found in this section.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6210	N/A	Allowance allocations are provided.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6220	N/A	CO ₂ allowance tracking system accounts are established.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6230	N/A	Establishment of accounts is described.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6240	N/A	The CO ₂ allowance tracking system responsibilities of CO ₂ authorized account representatives are described.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6250	N/A	How the recordation of allowance allocations is to be accomplished.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6260	N/A	Compliance requirements are established.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6270	N/A	Banking requirements are described.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6280	N/A	Management of account errors is explained.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6290	N/A	How to close general accounts.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6300	N/A	How to submit CO ₂ allowance transfers.	Repealed in accordance with the directives of EO-9.

9VAC5-140-6310	N/A	The recordation of allowance transfers is explained.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6320	N/A	Notification of allowance transfers is explained.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6325	N/A	Life-of-the-unit contractual arrangements are described.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6330	N/A	General requirements for monitoring, reporting, and recordkeeping.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6340	N/A	The initial certification and recertification procedures for a monitoring system are delineated.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6350	N/A	Out-of-control periods are addressed.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6360	N/A	Notifications are described.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6370	N/A	Recordkeeping and reporting requirements are explained.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6380	N/A	Petitions for approval to apply an alternative to any acid rain requirement are provided.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6390	N/A	Reserved.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6400	N/A	Reserved.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6410	N/A	The purpose of the requirements for allowance auctions is provided.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6420	N/A	General requirements for the auction notice.	Repealed in accordance with the directives of EO-9.
9VAC5-140-6430	N/A	[repealed section]	[already repealed]
9VAC5-140-6440	N/A	Program monitoring and review requirements.	Repealed in accordance with the directives of EO-9.
	*9VAC5-140-6445	Transition to repeal.	Affected facilities must place the allowances needed to meet their remaining compliance obligation into their compliance account in COATS as soon as practicable but no later than March 1, 2024, in order that they can be deducted from the account to meet the full control period obligation. This section

			<p>will be repealed once all affected sources have met their full compliance obligation. Needed in order that the transition away from the program is conducted in such a way as to minimize disruption and enable affected facilities to meet their compliance obligations without introducing uncertainty to the market.</p>
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Office of Regulatory Management
Economic Review Form

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	Part VII of 9VAC5-140
VAC Chapter title(s)	Regulation for Emissions Trading
Action title	Repeal CO ₂ Budget Trading Program as required by Executive Order 9 (Revision A22)
Date this document prepared	

Cost Benefit Analysis

Table 1a must be completed for all actions. Tables 1b and 1c must be completed for actions (or portions thereof) where the agency is exercising discretion, including those where some of the changes are mandated by state or federal law or regulation. Tables 1b and 1c are not needed if **all** changes are mandated, and the agency is not exercising any discretion. In that case, enter a statement to that effect.

- (1) Direct Costs & Benefits: Identify all specific, direct economic impacts (costs and/or benefits), anticipated to result from the regulatory change. (A direct impact is one that affects entities regulated by the agency and which directly results from the regulatory change itself, without any intervening steps or effects. For example, the direct impact of a regulatory fee change is the change in costs for these regulated entities.) When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo. One bullet has been provided, add additional bullets as needed.
- (2) Quantitative Factors:
 - (a) Enter estimated dollar value of total (overall) direct costs described above.
 - (b) Enter estimated dollar value of total (overall) direct benefits described above.
 - (c) Enter the present value of the direct costs based on the worksheet.
 - (d) Enter the present value of the direct benefits based on the worksheet.
- (3) Benefits-Costs Ratio: Calculate d divided by c OR enter it from the worksheet.
- (4) Net Benefit: Calculate d minus c OR enter it from the worksheet.
- (5) Indirect Costs & Benefits: Identify all specific, indirect economic impacts (costs and/or benefits), anticipated to result from the regulatory change. (An indirect impact is one that results from responses to the regulatory change, but which are not directly required by the regulation. Indirect impacts of a regulatory fee change on regulated entities could include a change in the prices they charge, changes in their operating procedures or employment levels, or decisions to enter or exit the regulated profession or market. Indirect impacts also include responses by other entities that have close economic ties to the regulated entities, such as suppliers or partners.) If there are no indirect costs or benefits, include a specific statement to that effect.

- (6) Information Sources: Describe the sources of information used to determine the benefits and costs, including the source of the Quantitative Factors. If dollar amounts are not available, indicate why they are not.
- (7) Optional: Use this space to add any further information regarding the data provided in this table, including calculations, qualitative assessments, etc.

Table 1a: Costs and Benefits of the Proposed Changes (Primary Option)

<p>(1) Direct Costs & Benefits</p>	<ul style="list-style-type: none"> • Repeal the CO₂ Budget Trading Program. <p>Direct Costs: No direct costs are being added as a result of this proposed change; rather, the current costs of the program will be rectified by means of the repeal.</p> <p>Direct Benefits: This is discussed in greater detail in the "Virginia Carbon Trading Rule and Regional Greenhouse Gas Initiative (RGGI) Participation Costs and Benefits" report provided to the Governor. Major issues are summarized below.</p> <ol style="list-style-type: none"> 1. Residential consumers will directly benefit from repeal of the program due to the removal of pass along costs from the regulated entities. Dominion Energy, the utility with the largest customer base in the state, had been passing down the costs of participation to consumers at a monthly "recovery rate" of \$2.39 per month, which equates to \$28.68 per year per household. 2. Non-residential consumers will likewise benefit from a reduction in the cost of electricity--the typical industrial customer bill was raised by \$1,554 per month. 3. In a filing before the State Corporation Commission, Dominion Energy stated that RGGI will cost ratepayers between \$1 billion and \$1.2 billion over the next four years; leaving the program will save those costs. 3. The 27 facilities currently subject to this program (fossil fuel-fired electric generating facilities) will no longer be required to buy or sell allowances at auction. This means that the costs associated with participating in the program will no longer be passed down to consumers of all classes (local partners, families, small businesses, etc.; that is, every purchaser of electricity in the Commonwealth). <ul style="list-style-type: none"> • Add transition section. <p>Direct Costs: No direct costs are being added as a result of this proposed change.</p>
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	Direct Benefits: No direct benefits are being added as a result of this proposed change.		
(2) Quantitative Factors	Estimated Dollar Amount	Present Value	
Direct Costs	(a) None.	(c) None.	
Direct Benefits	(b) Will depend on multiple factors such as the overall cost of electricity, demand, the price of allowances, etc. This cannot be predicted, but it is reasonable to assume there will be tangible direct benefits.	(d)	
(3) Benefits-Costs Ratio		(4) Net Benefit	
(5) Indirect Costs & Benefits	An indirect benefit of enabling the state to make its own choices regarding the generation of electricity that is not subject to decisions made by a consensus organization of other states will likely be realized. The transition language being added at 9VAC5-140-6445 is needed in order that the repeal be implemented without disruption to affected facilities or the market. These effects cannot be quantified, but can be reasonably expected.		
(6) Information Sources	Virginia Carbon Trading Rule and Regional Greenhouse Gas Initiative (RGGI) Participation Costs and Benefits, a Report to the Honorable Glenn Youngkin, Governor, March 11, 2022; Report of the Virginia Secretary of Natural and Historic Resources and Virginia Secretary of Commerce and Trade, Modeling Decarbonization: Report Summary And Policy Brief for Virginia Governor’s Office Administration and Policymakers (Chapter 1194, 2020), to the General Assembly of Virginia, Virginia Department of Energy, December 14, 2021; Virginia 2022 State Energy Plan		
(7) Optional			

Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

This table addresses current requirements and the implications of not making any changes. In other words, describe the costs and benefits of maintaining the current regulatory requirements as is.

(1) Direct Costs & Benefits	<ul style="list-style-type: none"> • Repeal the CO₂ Budget Trading Program: <u>All</u> changes are mandated, and the agency is not exercising any discretion.
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(2) Quantitative Factors	Estimated Dollar Amount	Present Value	
Direct Costs	(a) N/A	(c) N/A	
Direct Benefits	(b) N/A	(d) N/A	
(3) Benefits-Costs Ratio	N/A	(4) Net Benefit	N/A
(5) Indirect Costs & Benefits			
(6) Information Sources			
(7) Optional			

Table 1c: Costs and Benefits under an Alternative Approach

This table addresses an alternative approach to accomplishing the objectives with different requirements. These alternative approaches may include the use of reasonably available alternatives in lieu of regulation, or information disclosure requirements or performance standards instead of regulatory mandates.

(1) Direct Costs & Benefits	<ul style="list-style-type: none"> • Repeal the CO₂ Budget Trading Program: <u>All</u> changes are mandated, and the agency is not exercising any discretion. 		
(2) Quantitative Factors	Estimated Dollar Amount	Present Value	
Direct Costs	(a) N/A	(c) N/A	
Direct Benefits	(b) N/A	(d) N/A	
(3) Benefits-Costs Ratio	N/A	(4) Net Benefit	N/A
(5) Indirect Costs & Benefits			

(6) Information Sources	
(7) Optional	

Impact on Local Partners

- (1) Describe the direct costs and benefits (as defined on page 1) for local partners in terms of real monetary costs and FTEs. Local partners include local or tribal governments, school divisions, or other local or regional authorities, boards, or commissions. If local partners are not affected, include a specific statement to that effect and a brief explanation of the rationale.
- (2) Quantitative Factors:
 - (a) Enter estimated dollar value of total (overall) direct costs described above.
 - (b) Enter estimated dollar value of total (overall) direct benefits described above.
- (3) Indirect Costs & Benefits: Describe any indirect benefits and costs (as defined on page 1) for local partners that are associated with all significant changes. If there are no indirect costs or benefits, include a specific statement to that effect.
- (4) Information Sources: describe the sources of information used to determine the benefits and costs, including the source of the Quantitative Factors. If dollar amounts are not available, indicate why they are not.
- (5) Assistance: Identify the amount and source of assistance provided for compliance in both funding and training or other technical implementation assistance.
- (6) Optional: Use this space to add any further information regarding the data provided in this table, including calculations, qualitative assessments, etc.

Note: If any of the above information was included in Table 1, use the same information here.

Table 2: Impact on Local Partners

(1) Direct Costs & Benefits	See Table 1.
(2) Quantitative Factors	Estimated Dollar Amount
Direct Costs	(a) See Table 1.
Direct Benefits	(b) See Table 1.
(3) Indirect Costs & Benefits	See Table 1.

(4) Information Sources	See Table 1.
(5) Assistance	
(6) Optional	Since every individual, organization, and business purchases electricity, the effects will be roughly similar or proportional for each sector of electricity users. Local or tribal governments, school divisions, local or regional authorities, boards, and commissions will, therefore, likely experience a decrease in the cost of electricity.

Economic Impacts on Families

- (1) Describe the direct costs and benefits (as defined on page 1) to a typical family of three (average family size in Virginia according to the U. S. Census) arising from any proposed regulatory changes that would affect the costs of food, energy, housing, transportation, healthcare, and education. If families are not affected, include a specific statement to that effect and a brief explanation of the rationale.
- (2) Quantitative Factors:
 - (a) Enter estimated dollar value of direct costs.
 - (b) Enter estimated dollar value of direct benefits.
- (3) Indirect Costs & Benefits: Describe any indirect costs and benefits (as defined on page 1) to a typical family of three that are most likely to result from the proposed changes.
- (4) Information Sources: describe the sources of information used to determine the benefits and costs, including the source of the Quantitative Factors. If dollar amounts are not available, indicate why not.
- (5) Optional: Use this space to add any further information regarding the data provided in this table, including calculations, qualitative assessments, etc.

Note: If any of the above information was included in Table 1, use the same information here.

Table 3: Impact on Families

(1) Direct Costs & Benefits	See Table 1.
(2) Quantitative Factors	Estimated Dollar Amount
Direct Costs	(a) See Table 1.
Direct Benefits	(b) See Table 1.

(3) Indirect Costs & Benefits	See Table 1.
(4) Information Sources	
(5) Optional	Since every individual, organization, and business purchases electricity, the effects will be roughly similar or proportional for each sector of electricity users. Families, therefore, will likely experience a decrease in the cost of electricity.

Impacts on Small Businesses

- (1) Describe the direct costs and benefits (as defined on page 1) for small businesses. For purposes of this analysis, “small business” means the same as that term is defined in § 2.2-4007.1. If small businesses are not affected, include a specific statement to that effect and a brief explanation of the rationale.
- (2) Quantitative Factors:
 - (a) Enter estimated dollar value of direct costs.
 - (b) Enter estimated dollar value of direct benefits.
- (3) Indirect Costs & Benefits: Describe the indirect benefits and costs (as defined on page 1) for small businesses that are most likely to result from the proposed changes.
- (4) Alternatives: Add a qualitative discussion of any equally effective alternatives that would make the regulatory burden on small business more equitable compared to other affected business sectors, and how those alternatives were identified.
- (5) Information Sources: describe the sources of information used to determine the benefits and costs, including the source of the Quantitative Factors. If dollar amounts are not available, indicate why not.
- (6) Optional: Use this space to add any further information regarding the data provided in this table, including calculations, qualitative assessments, etc.

Note: If any of the above information was included in Table 1, use the same information here.

Table 4: Impact on Small Businesses

(1) Direct Costs & Benefits	See Table 1.
(2) Quantitative Factors	Estimated Dollar Amount
Direct Costs	(a) See Table 1.
Direct Benefits	(b) See Table 1.

(3) Indirect Costs & Benefits	See Table 1.
(4) Alternatives	See Table 1.
(5) Information Sources	
(6) Optional	Since every individual, organization, and business purchases electricity, the effects will be roughly similar or proportional for each sector of electricity users. Small businesses, therefore, will likely experience a decrease in the cost of electricity. Note that the primary regulated entities, Dominion Energy and AEP, are not small businesses.

Changes to Number of Regulatory Requirements

For each individual VAC Chapter amended, repealed, or promulgated by this regulatory action, list (a) the initial requirement count, (b) the count of requirements that this regulatory package is adding, (c) the count of requirements that this regulatory package is reducing, (d) the net change in the number of requirements. This count should be based upon the text as written when this stage was presented for executive branch review. Five rows have been provided, add or delete rows as needed.

Table 5: Total Number of Requirements

Chapter number	Number of Requirements			
	Initial Count	Additions	Subtractions	Net Change
9VAC5-140-6010	1	0	1	-1
9VAC5-140-6020	0	0	0	0
9VAC5-140-6030	0	0	0	0
9VAC5-140-6040	1	0	1	-1
9VAC5-140-6050	7	0	7	-7

9VAC5-140-6060	3	0	3	-3
9VAC5-140-6070	1	0	1	-1
9VAC5-140-6080	6	0	6	-6
9VAC5-140-6090	2	0	2	-2
9VAC5-140-6100	1	0	1	-1
9VAC5-140-6110	2	0	2	-2
9VAC5-140-6120	3	0	3	-3
9VAC5-140-6130	5	0	5	-5
9VAC5-140-6140	2	0	2	-2
9VAC5-140-6150	1	0	1	-1
9VAC5-140-6160	1	0	1	-1
9VAC5-140-6170	3	0	3	-3
9VAC5-140-6180	0	0	0	0
9VAC5-140-6190	3	0	3	-3
9VAC5-140-6200	2	0	2	-2
9VAC5-140-6210	11	0	11	-11

9VAC5-140-6220	1	0	1	-1
9VAC5-140-6230	3	0	3	-3
9VAC5-140-6240	2	0	2	-2
9VAC5-140-6250	3	0	3	-3
9VAC5-140-6260	6	0	6	-6
9VAC5-140-6270	1	0	1	-1
9VAC5-140-6280	0	0	0	0
9VAC5-140-6290	0	0	0	0
9VAC5-140-6300	1	0	1	-1
9VAC5-140-6310	3	0	3	-3
9VAC5-140-6320	3	0	3	-3
9VAC5-140-6330	4	0	4	-4
9VAC5-140-6340	5	0	5	-5
9VAC5-140-6350	2	0	2	-2
9VAC5-140-6360	1	0	1	-1
9VAC5-140-6370	4	0	4	-4

9VAC5-140-6380	0	0	0	0
9VAC5-140-6390	1	0	1	-1
9VAC5-140-6400	4	0	4	-4
9VAC5-140-6410	1	0	1	-1
9VAC5-140-6420	0	0	0	0
9VAC5-140-6430	1	0	1	-1
9VAC5-140-6435	0	0	0	0
9VAC5-140-6440	1	0	1	-1
9VAC5-140-6445	0	0	0	0

REGULATION FOR EMISSIONS TRADING (9VAC5140)

Repeal CO₂ Budget Trading Program as required by Executive Order 9 (Revision A22)
Part VII

~~CO₂ Budget Trading Program~~
Article 1

~~CO₂ Budget Trading Program General Provisions~~

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

~~Article 1~~

~~CO₂ Budget Trading Program General Provisions~~

~~This part establishes the Virginia component of the CO₂ Budget Trading Program, which is designed to reduce anthropogenic emissions of CO₂, a greenhouse gas, from CO₂ budget sources in a manner that is protective of human health and the environment and is economically efficient.~~

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

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

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

~~C. Terms defined:~~

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

~~"Acid Rain emission limitation" means, as defined in 40 CFR 72.2, a limitation on emissions of sulfur dioxide (SO₂) or nitrogen oxides (NO_x) under the Acid Rain Program under Title IV of the CAA.~~

~~"Acid Rain Program" means a multistate SO₂ and NO_x air pollution control and emission reduction program established by the administrator under Title IV of the CAA and 40 CFR Parts 72 through 78.~~

~~"Adjustment for banked allowances" means an adjustment applied to the Virginia CO₂ 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 CO₂ Budget Trading Program, but not including accounts opened by participating states.~~

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

~~"Allocate" or "allocation" means the determination by the department of the number of CO₂ allowances recorded in the CO₂ allowance account of a CO₂ budget unit.~~

~~"Allocation year" means a calendar year for which the department allocates CO₂ allowances pursuant to Article 5 (9VAC5-140-6190 et seq.) of this part. The allocation year of each CO₂ allowance is reflected in the unique identification number given to the allowance pursuant to 9VAC5-140-6250 C.~~

~~"Allowance auction" or "auction" means an auction in which the department or its agent offers CO₂ allowances for sale.~~

REGULATION FOR EMISSIONS TRADING (9VAC5140)

~~"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.~~

~~"CO₂ allowance" means a limited authorization by the department or participating state under the CO₂ Budget Trading Program to emit up to one ton of CO₂, subject to all applicable limitations contained in this part.~~

~~"CO₂ allowance deduction" or "deduct CO₂ allowances" means the permanent withdrawal of CO₂ allowances by the department or its agent from a COATS compliance account to account for the number of tons of CO₂ emitted from a CO₂ 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 CO₂ allowances as provided by this part.~~

~~"CO₂ Allowance Tracking System" or "COATS" means the system by which the department or its agent records allocations, deductions, and transfers of CO₂ allowances under the CO₂ Budget Trading Program. The tracking system may also be used to track CO₂ allowance prices and emissions from affected sources.~~

~~"CO₂ 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 CO₂ allowances.~~

~~"CO₂ allowance transfer deadline" means midnight of March 1 occurring after the end of the relevant control period and each relevant interim control period, or if that March 1 is not a business day, midnight of the first business day thereafter and is the deadline by which CO₂ allowances shall be submitted for recordation in a CO₂ budget source's compliance account for the source to meet the CO₂ requirements of 9VAC5-140-6050 G for a control period and each interim control period immediately preceding such deadline.~~

~~"CO₂ allowances held" or "hold CO₂ allowances" means the CO₂ 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.~~

REGULATION FOR EMISSIONS TRADING (9VAC5140)

~~"CO₂-authorized account representative" means, for a CO₂-budget source and each CO₂ budget unit at the source, the natural person who is authorized by the owners and operators of the source and all CO₂-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 CO₂-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 CO₂ allowances held in the general account. If the CO₂-budget source is also subject to the Acid Rain Program, CSAPR-NO_x-Annual Trading Program, CSAPR-NO_x-Ozone Season Trading Program, CSAPR-SO₂-Group 1 Trading Program, or CSAPR-SO₂-Group 2 Trading Program, then for a CO₂-Budget Trading Program compliance account, this natural person shall be the same person as the designated representative as defined in the respective program.~~

~~"CO₂-authorized alternate account representative" means, for a CO₂-budget source and each CO₂-budget unit at the source, the alternate natural person who is authorized by the owners and operators of the source and all CO₂-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 CO₂-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 CO₂ allowances held in the general account. If the CO₂-budget source is also subject to the Acid Rain Program, CSAPR-NO_x-Annual Trading Program, CSAPR-NO_x-Ozone Season Trading Program, CSAPR-SO₂-Group 1 Trading Program, or CSAPR-SO₂-Group 2 Trading Program then, for a CO₂-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.~~

~~"CO₂-budget emissions limitation" means, for a CO₂-budget source, the tonnage equivalent, in CO₂ emissions in a control period or an interim control period of the CO₂ allowances available for compliance deduction for the source for a control period or an interim control period.~~

~~"CO₂-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 CO₂-budget source or CO₂-budget unit that specifies the CO₂-Budget Trading Program requirements applicable to the CO₂-budget source, to each CO₂-budget unit at the CO₂-budget source, and to the owners and operators and the CO₂-authorized account representative of the CO₂-budget source and each CO₂-budget unit.~~

~~"CO₂-budget source" means a source that includes one or more CO₂-budget units.~~

~~"CO₂-Budget Trading Program" means a multistate CO₂ 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 CO₂ from CO₂-budget sources.~~

~~"CO₂-budget unit" means a unit that is subject to the CO₂-Budget Trading Program requirements under 9VAC5-140-6040.~~

~~"CO₂-cost containment reserve allowance" or "CO₂-CCR allowance" means an allowance that has been sold at an auction for the purpose of containing the cost of CO₂ allowances. CO₂-CCR allowances offered for sale at an auction are separate from and additional to CO₂ allowances allocated from the Virginia CO₂-Budget Trading Program base and adjusted budgets. CO₂-CCR allowances are subject to all applicable limitations contained in this part.~~

REGULATION FOR EMISSIONS TRADING (9VAC5140)

~~"CO₂ cost containment reserve trigger price" or "CCR trigger price" means the minimum price at which CO₂ CCR allowances are offered for sale by the department or its agent at an auction. The CCR trigger price in calendar year 2021 shall be \$13. The CCR trigger price in calendar year 2022 shall be \$13.91. Each calendar year thereafter, the CCR trigger price shall be 1.07 multiplied by the CCR trigger price from the previous calendar year, rounded to the nearest whole cent, as shown in Table 140-1A.~~

Table 140-1A CO ₂ CCR Trigger Price	
2021	\$13.00
2022	\$13.91
2023	\$14.88
2024	\$15.92
2025	\$17.03
2026	\$18.22
2027	\$19.50
2028	\$20.87
2029	\$22.33
2030	\$23.89

~~"CO₂ emissions containment reserve allowance" or "CO₂ ECR allowance" means a CO₂ 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.~~

~~"CO₂ emissions containment reserve trigger price" or "ECR trigger price" means the price below which CO₂ allowances will be withheld from sale by the department or its agent at an auction. The ECR trigger price in calendar year 2021 shall be \$6.00. Each calendar year thereafter, the ECR trigger price shall be 1.07 multiplied by the ECR trigger price from the previous calendar year, rounded to the nearest whole cent, as shown in Table 140-1B.~~

Table 140-1B CO ₂ ECR Trigger Price	
2021	\$ 6.00
2022	\$ 6.42
2023	\$ 6.87
2024	\$ 7.35
2025	\$ 7.86
2026	\$8.41
2027	\$ 9.00

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-	2028	\$ 9.63
-	2029	\$10.30
-	2030	\$11.02

~~"CO₂ offset allowance" means a CO₂ allowance that is awarded to the sponsor of a CO₂ 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 CO₂ from CO₂ 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 CO₂ 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 CO₂ budget unit under 9VAC5-140-6040 on the date the unit commences commercial operation, the date the unit becomes a CO₂ 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 CO₂ 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 CO₂ budget unit under 9VAC5-140-6040 on the date of commencement of operation, the date the unit becomes a CO₂ 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 CO₂ budget source under Article 6 (9VAC5-140-6220 et seq.) of this part, in which CO₂ allowances available for use by the source for a control period and each interim control period are held for the purpose of meeting the CO₂ requirements of 9VAC5-140-6050 C.~~

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

REGULATION FOR EMISSIONS TRADING (9VAC5140)

- a. A flow monitoring system, consisting of a stack flow rate monitor and an automated DAHS and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour;
 - b. A NO_x emissions rate (or NO_x diluent) monitoring system, consisting of a NO_x pollutant concentration monitor, a diluent gas (CO₂ or O₂) monitor, and an automated DAHS and providing a permanent, continuous record of NO_x concentration, in parts per million (ppm), diluent gas concentration, in percent CO₂ or O₂, and NO_x emissions rate, in pounds per million British thermal units (lb/MMBtu);
 - c. A moisture monitoring system, as defined in 40 CFR 75.11(b)(2) and providing a permanent, continuous record of the stack gas moisture content, in percent H₂O;
 - d. A CO₂ monitoring system, consisting of a CO₂ pollutant concentration monitor (or an O₂ monitor plus suitable mathematical equations from which the CO₂ concentration is derived) and an automated DAHS and providing a permanent, continuous record of CO₂ emissions, in percent CO₂; and
 - e. An O₂ monitoring system, consisting of an O₂ concentration monitor and an automated DAHS and providing a permanent, continuous record of O₂, in percent O₂.
- ~~"Control period" means a three-calendar-year time period. The fifth control period is from January 1, 2021, to December 31, 2023, inclusive, which is the first control period of Virginia's participation in the CO₂ Budget Trading Program. The first two calendar years of each control period are each defined as an interim control period, beginning on January 1, 2021.~~
- ~~"Cross State Air Pollution Rule (CSAPR) NO_x Annual Trading Program" means a multistate NO_x air pollution control and emission reduction program established in accordance with Subpart AAAAA of 40 CFR Part 97 and 40 CFR 52.38(a), including such a program that is revised in a SIP revision approved by the administrator under 40 CFR 52.38(a)(3) or (4) or that is established in a SIP revision approved by the administrator under 40 CFR 52.38(a)(5), as a means of mitigating interstate transport of fine particulates and NO_x.~~
- ~~"Cross State Air Pollution Rule (CSAPR) NO_x Ozone Season Trading Program" means a multistate NO_x air pollution control and emission reduction program established in accordance with Subpart 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_x.~~
- ~~"Cross State Air Pollution Rule (CSAPR) SO₂ Group 1 Trading Program" means a multistate SO₂ 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 SO₂.~~
- ~~"Cross State Air Pollution Rule (CSAPR) SO₂ Group 2 Trading Program" means a multistate SO₂ 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~~

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~~approved by the administrator under 40 CFR 52.39(i), as a means of mitigating interstate transport of fine particulates and SO₂.~~

~~"Department" means the Virginia Department of Environmental Quality.~~

~~"Excess emissions" means any tonnage of CO₂ emitted by a CO₂ budget source during an interim control period or a control period that exceeds the CO₂ budget emissions limitation for the source.~~

~~"Excess interim emissions" means any tonnage of CO₂ emitted by a CO₂ budget source during an interim control period multiplied by 0.50 that exceeds the CO₂ budget emissions limitation for the source.~~

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

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

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

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

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

~~"Life-of-the-unit contractual arrangement" means either:~~

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

~~(1) For the life of the unit;~~

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

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

~~b. Any energy conversion or energy tolling agreement that has a primary term of 20 years or more and pursuant to which the purchaser is required to deliver fuel to the CO₂ budget source or CO₂ budget unit and is entitled to receive all of the nameplate capacity and associated energy generated by such source or unit for the entire contractual period. Such agreements shall be subject to 9VAC5-140-6325. Such purchaser shall not be considered an "owner" as defined under this section.~~

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

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~~this value shall be reported, in accordance with 40 CFR Part 75, using the maximum potential flow rate and either the maximum CO₂ concentration in percent CO₂ or the minimum O₂ concentration in percent O₂.~~

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

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

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

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

~~"Non-CO₂ 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 CO₂ budget unit or a CO₂ 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 CO₂ budget unit;~~
- ~~b. Any holder of a leasehold interest in a CO₂ 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 CO₂ budget unit;~~
- ~~c. Any purchaser of power from a CO₂ 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 CO₂ allowances held in the general account and who is subject to the binding agreement for the CO₂ authorized account representative to represent that person's ownership interest with respect to the CO₂ allowances.~~

~~"Participating state" means a state that has established a corresponding regulation as part of the CO₂ Budget Trading Program.~~

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

~~"Recordation," "record," or "recorded" means, with regard to CO₂ allowances, the movement of CO₂ allowances by the department or its agent from one COATS account to another for purposes of allocation, transfer, or deduction.~~

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~~"Reserve price" means the minimum acceptable price for each CO₂ 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 CO₂ allowances, the unique identification number assigned to each CO₂ allowance by the department or its agent under 9VAC5-140-6250 C.~~

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

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

- ~~a. In person;~~
- ~~b. By United States Postal Service; or~~
- ~~c. By other means of dispatch or transmission and delivery.~~

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

~~"Ton" or "tonnage" means any short ton, or 2,000 pounds. For the purpose of determining compliance with the CO₂ requirements of 9VAC5-140-6050 C, total tons for an interim control period or a control period shall be calculated as the sum of all recorded hourly emissions, or the tonnage equivalent of the recorded hourly emissions rates, in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons. A short ton is equal to 0.9072 metric tons.~~

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

~~"Undistributed CO₂ allowances" means CO₂ 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 CO₂ allowances" means CO₂ 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 CO₂ Budget Trading Program adjusted budget" means an adjusted budget determined in accordance with 9VAC5-140-6210 and is the annual amount of CO₂ tons available in Virginia for allocation in a given allocation year, in accordance with the CO₂ Budget Trading Program. CO₂ CCR allowances offered for sale at an auction are separate from and additional to CO₂ allowances allocated from the Virginia CO₂ Budget Trading Program adjusted budget.~~

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~~"Virginia CO₂ Budget Trading Program base budget" means the budget specified in 9VAC5-140-6190. CO₂-CCR allowances offered for sale at an auction are separate from and additional to CO₂ allowances allocated from the Virginia CO₂ Budget Trading Program base budget.~~

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

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

- ~~Btu – British thermal unit.~~
- ~~CAA – federal Clean Air Act.~~
- ~~CCR – cost containment reserve.~~
- ~~GEMS – Continuous Emissions Monitoring System.~~
- ~~COATS – CO₂ Allowance Tracking System.~~
- ~~CO₂ – carbon dioxide.~~
- ~~DAHS – Data Acquisition and Handling System.~~
- ~~H₂O – water.~~
- ~~lb – pound.~~
- ~~LME – low mass emissions.~~
- ~~MMBtu – million British thermal units.~~
- ~~MW – megawatt.~~
- ~~MWe – megawatt electrical.~~
- ~~MWh – megawatt hour.~~
- ~~NO_x – nitrogen oxides.~~
- ~~O₂ – oxygen.~~
- ~~ORIS – Office of Regulatory Information Systems.~~
- ~~QA/QC – quality assurance/quality control.~~
- ~~ppm – parts per million.~~
- ~~SO₂ – sulfur dioxide.~~

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

~~A. Any fossil fuel-fired unit that serves an electricity generator with a nameplate capacity equal to or greater than 25 MWe shall be a CO₂ budget unit, and any source that includes one or more such units shall be a CO₂ budget source, subject to the requirements of this part.~~

~~B. Exempt from the requirements of this part is any fossil fuel CO₂ budget source located at or adjacent to and physically interconnected with a manufacturing facility that, prior to January 1, 2020, and in every subsequent calendar year, met either of the following requirements:~~

- ~~1. Supplies less than or equal to 10% of its annual net electrical generation to the electric grid; or~~
- ~~2. Supplies less than or equal to 15% of its annual total useful energy to any entity other than the manufacturing facility to which the CO₂ budget source is interconnected.~~

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

$$\text{(ES – EP) / EG} \times 100$$

~~Where:~~

~~ES = electricity sales to the grid from the CO₂ budget source~~

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~~EP = electricity purchases from the grid by the CO₂ budget source and the manufacturing facility to which the CO₂ budget source is interconnected~~

~~EG = electricity generation~~

~~Such exempt CO₂ budget source shall have an operating permit containing the applicable restrictions under this subsection. An application for such operating permit shall be submitted to the department no later than January 1, 2022.~~

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

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

~~1. The CO₂ authorized account representative of each CO₂ budget source required to have an operating permit pursuant to 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation) and each CO₂ budget unit required to have an operating permit pursuant to 9VAC5-85 shall:~~

~~a. Submit to the department a complete CO₂ 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 CO₂ budget permit application and issue or deny a CO₂ budget permit.~~

~~2. The owners and operators of each CO₂ budget source required to have an operating permit pursuant to 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation) and each CO₂ budget unit required to have an operating permit pursuant to 9VAC5-85 for the source shall have a CO₂ budget permit and operate the CO₂ budget source and the CO₂ budget unit at the source in compliance with such CO₂ budget permit.~~

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

~~1. The owners and operators and, to the extent applicable, the CO₂ authorized account representative of each CO₂ budget source and each CO₂ 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 CO₂ requirements under subsection C of this section.~~

~~C. CO₂ requirements shall be as follows.~~

~~1. The owners and operators of each CO₂ budget source and each CO₂ budget unit at the source shall hold CO₂ allowances available for compliance deductions under 9VAC5-140-6260, as of the CO₂ allowance transfer deadline, in the source's compliance account in an amount not less than the total CO₂ emissions that have been generated as a result of combusting fossil fuel for an interim control period or control period from all CO₂ budget units at the source, less the CO₂ 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 CO₂ budget source and each CO₂ budget unit at the source shall hold CO₂ allowances available for compliance deductions under 9VAC5-140-6260, as of the CO₂ allowance transfer deadline, in the source's compliance account in an amount not less than the total CO₂ emissions that have been generated as a result of combusting fossil fuel for the interim control period from all CO₂ budget units at the source~~

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~~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 CO₂ emitted in excess of the CO₂ 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 CO₂ budget unit shall be subject to the requirements under subdivision 1 of this subsection starting on the later of January 1, 2021, or the date on which the unit commences operation.~~

~~6. CO₂ 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 CO₂ allowance shall not be deducted, to comply with the requirements under subdivision 1 or 2 of this subsection, for a control period that ends prior to the year for which the CO₂ allowance was allocated.~~

~~8. A CO₂ allowance under the CO₂ Budget Trading Program is a limited authorization by the department to emit one ton of CO₂ in accordance with the CO₂ Budget Trading Program. No provision of the CO₂ Budget Trading Program, the CO₂ budget permit application, or the CO₂ 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 CO₂ allowance under the CO₂ Budget Trading Program does not constitute a property right.~~

~~D. The owners and operators of a CO₂ budget source that has excess emissions in a control period shall:~~

~~1. Forfeit the CO₂ 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 CO₂ budget source and each CO₂ 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 CO₂ authorized account representative for the source and each CO₂ 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 CO₂ 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 CO₂ Budget Trading Program.~~

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~~d. Copies of all documents used to complete a CO₂ budget permit application and any other submission under the CO₂ Budget Trading Program or to demonstrate compliance with the requirements of the CO₂ Budget Trading Program.~~

~~2. The CO₂ authorized account representative of a CO₂ budget source and each CO₂ budget unit at the source shall submit the reports and compliance certifications required under the CO₂ 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 CO₂ Budget Trading Program that occurs prior to the date that the revision takes effect.~~

~~2. Any provision of the CO₂ Budget Trading Program that applies to a CO₂ budget source, including a provision applicable to the CO₂ authorized account representative of a CO₂ budget source, shall also apply to the owners and operators of such source and of the CO₂ budget units at the source.~~

~~3. Any provision of the CO₂ Budget Trading Program that applies to a CO₂ budget unit, including a provision applicable to the CO₂ authorized account representative of a CO₂ budget unit, shall also apply to the owners and operators of such unit.~~

~~G. No provision of the CO₂ Budget Trading Program, a CO₂ budget permit application, or a CO₂ budget permit shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the CO₂ authorized account representative of the CO₂ budget source or CO₂ budget unit from compliance with any other provisions of applicable state and federal law or regulations.~~

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

~~A. Unless otherwise stated, any time period scheduled, under the CO₂ 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 CO₂ 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 CO₂ Budget Trading Program, falls on a weekend or a state or federal holiday, the time period shall be extended to the next business day.~~

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

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

Article 2

CO₂ Authorized Account Representative for CO₂ Budget Sources

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

Article 2

CO₂ Authorized Account Representative for CO₂ Budget Sources

~~A. Except as provided under 9VAC5-140-6090, each CO₂ budget source, including all CO₂ budget units at the source, shall have one and only one CO₂ authorized account representative,~~

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~~with regard to all matters under the CO₂-Budget Trading Program concerning the source or any CO₂-budget unit at the source.~~

~~B. The CO₂-authorized account representative of the CO₂-budget source shall be selected by an agreement binding on the owners and operators of the source and all CO₂-budget units at the source and must act in accordance with the account certificate of representation under 9VAC5-140-6110.~~

~~C. Upon receipt by the department or its agent of a complete account certificate of representation under 9VAC5-140-6110, the CO₂-authorized account representative of the source shall represent and, by his representations, actions, inactions, or submissions, legally bind each owner and operator of the CO₂-budget source represented and each CO₂-budget unit at the source in all matters pertaining to the CO₂-Budget Trading Program, notwithstanding any agreement between the CO₂-authorized account representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CO₂-authorized account representative by the department or a court regarding the source or unit.~~

~~D. No CO₂-budget permit shall be issued, and no COATS account shall be established for a CO₂-budget source, until the department or its agent has received a complete account certificate of representation under 9VAC5-140-6110 for a CO₂-authorized account representative of the source and the CO₂-budget units at the source.~~

~~E. Each submission under the CO₂-Budget Trading Program shall be submitted, signed, and certified by the CO₂-authorized account representative for each CO₂-budget source on behalf of which the submission is made. Each such submission shall include the following certification statement by the CO₂-authorized account representative: "I am authorized to make this submission on behalf of the owners and operators of the CO₂-budget sources or CO₂-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 CO₂-budget source or a CO₂-budget unit only if the submission has been made, signed, and certified in accordance with subsection E of this section.~~

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

~~A. An account certificate of representation may designate one and only one CO₂-authorized alternate account representative who may act on behalf of the CO₂-authorized account representative. The agreement by which the CO₂-authorized alternate account representative is selected shall include a procedure for authorizing the CO₂-authorized alternate account representative to act in lieu of the CO₂-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 CO₂-authorized alternate account representative shall be deemed to be a representation, action, inaction, or submission by the CO₂-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 "CO₂-authorized account representative" is used in this part, the term shall be construed to include the CO₂-authorized alternate account representative.~~

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

A. ~~The CO₂-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 CO₂-authorized account representative or CO₂-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 CO₂-authorized account representative and the owners and operators of the CO₂-budget source and the CO₂-budget units at the source.~~

B. ~~The CO₂-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 CO₂-authorized alternate account representative or CO₂-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 CO₂-authorized alternate account representative and the owners and operators of the CO₂-budget source and the CO₂-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 CO₂-budget source or a CO₂-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 CO₂-authorized account representative and any CO₂-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 CO₂-budget source or a CO₂-budget unit, including the addition of a new owner or operator, the CO₂-authorized account representative or CO₂-authorized alternate account representative shall submit a revision to the account certificate of representation amending the list of owners and operators to include the change.~~

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

A. ~~A complete account certificate of representation for a CO₂-authorized account representative or a CO₂-authorized alternate account representative shall include the following elements in a format prescribed by the department or its agent:~~

1. ~~Identification of the CO₂-budget source and each CO₂-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 CO₂-authorized account representative and any CO₂-authorized alternate account representative;~~

3. ~~A list of the owners and operators of the CO₂-budget source and of each CO₂-budget unit at the source;~~

4. ~~The following certification statement by the CO₂-authorized account representative and any CO₂-authorized alternate account representative: "I certify that I was selected as the~~

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~~CO₂ authorized account representative or CO₂ authorized alternate account representative, as applicable, by an agreement binding on the owners and operators of the CO₂ budget source and each CO₂ budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CO₂ Budget Trading Program on behalf of the owners and operators of the CO₂ budget source and of each CO₂ 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 CO₂ authorized account representative and any CO₂ authorized alternate account representative and the dates signed.~~

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

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

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

~~B. Except as provided in 9VAC5-140-6100 A or B, no objection or other communication submitted to the department or its agent concerning the authorization, or any representation, action, inaction, or submission of the CO₂ authorized account representative shall affect any representation, action, inaction, or submission of the CO₂ authorized account representative or the finality of any decision or order by the department or its agent under the CO₂ 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 CO₂ authorized account representative, including private legal disputes concerning the proceeds of CO₂ allowance transfers.~~

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

~~A. A CO₂ authorized account representative may delegate, to one or more natural persons, his authority to make an electronic submission to the department or its agent under this part.~~

~~B. A CO₂ authorized alternate account representative may delegate, to one or more natural persons, his authority to make an electronic submission to the department or its agent under this part.~~

~~C. To delegate authority to make an electronic submission to the department or its agent in accordance with subsections A and B of this section, the CO₂ authorized account representative or CO₂ 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 CO₂ authorized account representative or CO₂ authorized alternate account representative;~~

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- ~~2. The name, address, email address, telephone number, and facsimile transmission number of each such natural person, referred to as the "electronic submission agent";~~
- ~~3. For each such natural person, a list of the type of electronic submissions under subsection A or B of this section for which authority is delegated to him; and~~
- ~~4. The following certification statement by such CO₂ authorized account representative or CO₂ 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 CO₂ authorized account representative or CO₂ 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 CO₂ authorized account representative or CO₂ 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 CO₂ authorized account representative or CO₂ 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 CO₂ authorized account representative or CO₂ authorized alternate account representative submitting such notice of delegation.~~

~~F. A CO₂ authorized account representative may delegate, to one or more natural persons, his authority to review information in the CO₂ allowance tracking system under this part.~~

~~G. A CO₂ authorized alternate account representative may delegate, to one or more natural persons, his authority to review information in the CO₂ allowance tracking system under this part.~~

~~H. To delegate authority to review information in the CO₂ allowance tracking system in accordance with subsections F and G of this section, the CO₂ authorized account representative or CO₂ 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 CO₂ authorized account representative or CO₂ authorized alternate account representative;~~
- ~~2. The name, address, email address, telephone number, and facsimile transmission number of each such natural person, referred to as the "reviewer";~~
- ~~3. For each such natural person, a list of the type of information under subsection F or G of this section for which authority is delegated to him; and~~
- ~~4. The following certification statement by such CO₂ authorized account representative or CO₂ authorized alternate account representative: "I agree that any information that is~~

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~~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 CO₂ authorized account representative or CO₂ 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 CO₂ authorized account representative or CO₂ 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 CO₂ authorized account representative or CO₂ authorized alternate account representative as appropriate. The superseding notice of delegation may replace any previously identified reviewer, add a new reviewer, or eliminate entirely any delegation of authority.~~

~~Article 3~~

~~Permits~~

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

~~Article 3~~

~~Permits~~

~~A. Each CO₂ 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 CO₂ budget permit shall contain all applicable CO₂ Budget Trading Program requirements and shall be a complete and distinguishable portion of the permit under subsection A of this section.~~

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

~~For any CO₂ budget source, the CO₂ authorized account representative shall submit a complete CO₂ budget permit application under 9VAC5-140-6160 covering such CO₂ budget source to the department by the later of January 1, 2021, or 12 months before the date on which the CO₂ budget source, or a new unit at the source, commences operation.~~

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

~~A complete CO₂ budget permit application shall include the following elements concerning the CO₂ budget source for which the application is submitted, in a format prescribed by the department:~~

- ~~1. Identification of the CO₂ 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 CO₂ budget unit at the CO₂ budget source; and~~
- ~~3. The standard requirements under 9VAC5-140-6050.~~

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Article 4

Compliance Certification

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

Article 4

Compliance Certification

~~A. For each control period in which a CO₂ budget source is subject to the CO₂ requirements of 9VAC5-140-6050 C, the CO₂ authorized account representative of the source shall submit to the department by March 1 following the relevant control period, a compliance certification report. A compliance certification report is not required as part of the compliance obligation during an interim control period.~~

~~B. The CO₂ 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 CO₂ budget unit at the source;~~
- ~~2. At the CO₂ authorized account representative's option, the serial numbers of the CO₂ 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 CO₂ authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the CO₂ budget units at the source in compliance with the CO₂ Budget Trading Program, whether the source and each CO₂ 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 CO₂ Budget Trading Program, including:~~

- ~~1. Whether the source was operated in compliance with the CO₂ 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 CO₂ emissions to the unit, in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part;~~
- ~~3. Whether all the CO₂ 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~~

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~~method was used to determine emissions when a change mandated the need for monitor recertification.~~

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

~~A. The department or its agent may review and conduct independent audits concerning any compliance certification or any other submission under the CO₂ 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 CO₂ allowances from or transfer CO₂ 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

CO₂ Allowance Allocations

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

Article 5

CO₂ Allowance Allocations

~~A. The Virginia CO₂ Budget Trading Program base budget shall be as follows:~~

~~1.~~

~~For 2021, the Virginia CO₂ Budget Trading Program base budget is 27.16 million tons.~~

~~2. For 2022, the Virginia CO₂ Budget Trading Program base budget is 26.32 million tons.~~

~~3. For 2023, the Virginia CO₂ Budget Trading Program base budget is 25.48 million tons.~~

~~4. For 2024, the Virginia CO₂ Budget Trading Program base budget is 24.64 million tons.~~

~~5. For 2025, the Virginia CO₂ Budget Trading Program base budget is 23.80 million tons.~~

~~6. For 2026, the Virginia CO₂ Budget Trading Program base budget is 22.96 million tons.~~

~~7. For 2027, the Virginia CO₂ Budget Trading Program base budget is 22.12 million tons.~~

~~8. For 2028, the Virginia CO₂ Budget Trading Program base budget is 21.28 million tons.~~

~~9. For 2029, the Virginia CO₂ Budget Trading Program base budget is 20.44 million tons.~~

~~10. For 2030, the Virginia CO₂ Budget Trading Program base budget is 19.60 million tons.~~

~~B.~~

~~For 2031 and each succeeding calendar year, the Virginia CO₂ Budget Trading Program base budget is 19.60 million tons unless modified as a result of a program review and future regulatory action.~~

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

~~A. The department will retire undistributed CO₂ allowances at the end of each control period.~~

~~B. The department will retire unsold CO₂ allowances at the end of each control period.~~

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

~~A. The department will allocate the Virginia CO₂ Budget Trading Program base budget CO₂ allowances to the Virginia Auction Account.~~

~~B. For allocation years 2021 through 2030, the Virginia CO₂ Budget Trading Program adjusted budget shall be the maximum number of allowances available for allocation in a given allocation year, except for CO₂ CCR allowances.~~

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~~G.~~

~~In the event that the CCR is triggered during an auction, the department will allocate CO₂ CCR allowances, separate from and additional to the Virginia CO₂ 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 CO₂ allowances. The department will allocate CO₂ CCR allowances as follows:~~

~~1.~~

~~On or before January 1, 2021, and each year thereafter, the department will allocate CO₂ CCR allowances equal to the quantity in Table 140-5A.~~

Table 140-5A CO ₂ CCR Allowances from 2021 Forward	
2021	2.716 million tons
2022	2.632 million tons
2023	2.548 million tons
2024	2.464 million tons
2025	2.380 million tons
2026	2.296 million tons
2027	2.212 million tons
2028	2.128 million tons
2029	2.044 million tons
2030 and each year thereafter	1.960 million tons

~~2. CCR allowances allocated for a calendar year will be automatically transferred to the Virginia Auction Account to be auctioned. Following each auction, all CO₂ CCR allowances sold at auction will be transferred to winning bidders' accounts as CO₂ CCR allowances.~~

~~3. Unsold CO₂ CCR allowances will remain in the Virginia Auction Account to be re-offered for sale at auction within the same calendar year. CO₂ CCR allowances remaining unsold at the end of the calendar year in which they were originated will be made unavailable for sale at future auctions.~~

~~D. In the event that the ECR is triggered during an auction, the department will authorize its agent to withhold CO₂ allowances as needed. The department will further authorize its agent to convert and transfer any CO₂ allowances that have been withheld from any auction into the Virginia ECR account. The ECR withholding is for the purpose of additional emission reduction in the event of lower than anticipated emission reduction costs. The department's agent will withhold CO₂ ECR allowances as follows:~~

~~1. If the condition in 9VAC5-140-6420 C 1 is met at an auction, then the maximum number of CO₂ 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 CO₂ ECR allowances that have been withheld from any prior auction in that calendar year. Any CO₂ ECR allowances withheld from an auction will be transferred into the Virginia ECR account.~~

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

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

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

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

Where:

TABA is the adjustment for banked allowances quantity in tons.

TA, adjustment, is the total quantity of allowances of vintage years prior to 2021 held in general and compliance accounts, including compliance accounts established pursuant to the CO₂ Budget Trading Program but not including accounts opened by participating states, as reflected in the CO₂ Allowance Tracking System on March 15, 2021.

TAE, adjustment emissions, is the total quantity of 2018, 2019, and 2020 emissions from all CO₂ budget sources in all participating states, reported pursuant to CO₂ Budget Trading Program as reflected in the CO₂ Allowance Tracking System on March 15, 2021.

RS% is Virginia budget divided by the regional budget.

F. CO₂ Budget Trading Program adjusted budgets for 2021 through 2025 shall be determined as follows: on April 15, 2021, the department will determine the Virginia CO₂ Budget Trading Program adjusted budgets for the 2021 through 2025 allocation years by the following formula:

$$AB = BB - TABA$$

Where:

AB is the Virginia CO₂ Budget Trading Program adjusted budget.

BB is the Virginia CO₂ Budget Trading Program base budget.

TABA is the adjustment for banked allowances quantity in tons.

G. The department or its agent will publish the CO₂ trading program adjusted budgets for the 2021 through 2025 allocation years.

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Article 6

~~CO₂ Allowance Tracking System~~

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

Article 6

~~CO₂ Allowance Tracking System~~

~~A. Consistent with 9VAC5-140-6230 A, the department or its agent will establish one compliance account for each CO₂ budget source. Allocations of CO₂ allowances pursuant to Article 5 (9VAC5-140-6190 et seq.) of this part and deductions or transfers of CO₂ 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 CO₂ allowances pursuant to Article 7 (9VAC5-140-6300 et seq.) of this part will be recorded in the general account in accordance with this article.~~

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

~~A. Upon receipt of a complete account certificate of representation under 9VAC5-140-6110, the department or its agent will establish an allowance account and a compliance account for each CO₂ budget source for which an account certificate of representation was submitted.~~

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

~~1. Any person may apply to open a general account for the purpose of holding and transferring CO₂ allowances. An application for a general account may designate one and only one CO₂ authorized account representative and one and only one CO₂ authorized alternate account representative who may act on behalf of the CO₂ authorized account representative. The agreement by which the CO₂ authorized alternate account representative is selected shall include a procedure for authorizing the CO₂ authorized alternate account representative to act in lieu of the CO₂ 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 CO₂ authorized account representative and any CO₂ authorized alternate account representative;~~

~~b. At the option of the CO₂ authorized account representative, organization name and type of organization;~~

~~c. A list of all persons subject to a binding agreement for the CO₂ authorized account representative or any CO₂ authorized alternate account representative to represent their ownership interest with respect to the CO₂ allowances held in the general account;~~

~~d. The following certification statement by the CO₂ authorized account representative and any CO₂ authorized alternate account representative: "I certify that I was selected as the CO₂ authorized account representative or the CO₂ authorized alternate account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CO₂ allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities~~

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- ~~under the CO₂ 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 CO₂ authorized account representative and any CO₂ 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 CO₂ authorized account representative shall be as follows:
- a. Upon receipt by the department or its agent of a complete application for a general account under subdivision 1 of this subsection:
- (1) ~~The department or its agent will establish a general account for the person for whom the application is submitted.~~
- (2) ~~The CO₂ authorized account representative and any CO₂ 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 CO₂ allowances held in the general account in all matters pertaining to the CO₂ Budget Trading Program, notwithstanding any agreement between the CO₂ authorized account representative or any CO₂ authorized alternate account representative and such person. Any such person shall be bound by any order or decision issued to the CO₂ authorized account representative or any CO₂ authorized alternate account representative by the department or its agent or a court regarding the general account.~~
- (3) ~~Any representation, action, inaction, or submission by any CO₂ authorized alternate account representative shall be deemed to be a representation, action, inaction, or submission by the CO₂ authorized account representative.~~
- b. ~~Each submission concerning the general account shall be submitted, signed, and certified by the CO₂ authorized account representative or any CO₂ authorized alternate account representative for the persons having an ownership interest with respect to CO₂ allowances held in the general account. Each such submission shall include the following certification statement by the CO₂ authorized account representative or any CO₂ authorized alternate account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CO₂ 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.~~

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~~3. Changing CO₂ authorized account representative and CO₂ authorized alternate account representative, and changes in persons with ownership interest, shall be accomplished as follows:~~

- ~~a. The CO₂ 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 CO₂ authorized account representative, or the previous CO₂ 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 CO₂ authorized account representative and the persons with an ownership interest with respect to the CO₂ allowances in the general account.~~
- ~~b. The CO₂ 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 CO₂ authorized account representative, or the previous CO₂ 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 CO₂ authorized account representative and the persons with an ownership interest with respect to the CO₂ allowances in the general account.~~
- ~~c. In the event a new person having an ownership interest with respect to CO₂ 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 CO₂ authorized account representative and any CO₂ 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 CO₂ allowances in the general account, including the addition or deletion of persons, the CO₂ authorized account representative or any CO₂ 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 CO₂ allowances in the general account to include the change.~~

~~4. Objections concerning CO₂ authorized account representative shall be governed as follows:~~

- ~~a. Once a complete application for a general account under subdivision 1 of this subsection has been submitted and received, the department or its agent will rely on the application unless and until a superseding complete application for a general account under subdivision 1 of this subsection is received by the department or its agent.~~
- ~~b. Except as provided in subdivisions 3 a and 3 b of this subsection, no objection or other communication submitted to the department or its agent concerning the authorization, or any representation, action, inaction, or submission of the CO₂ authorized account representative or any CO₂ authorized alternate account~~

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~~representative for a general account shall affect any representation, action, inaction, or submission of the CO₂ authorized account representative or any CO₂ authorized alternate account representative or the finality of any decision or order by the department or its agent under the CO₂ 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 CO₂ authorized account representative or any CO₂ authorized alternate account representative for a general account, including private legal disputes concerning the proceeds of CO₂ allowance transfers.~~

~~5. Delegation by CO₂ authorized account representative and CO₂ authorized alternate account representative shall be accomplished as follows:~~

~~a. A CO₂ authorized account representative may delegate, to one or more natural persons, his authority to make an electronic submission to the department or its agent provided for under this article and Article 7 (9VAC5-140-6300 et seq.) of this part.~~

~~b. A CO₂ 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 CO₂ authorized account representative or CO₂ 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 CO₂ authorized account representative or CO₂ authorized alternate account representative;~~

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

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

~~(4) The following certification statement by such CO₂ authorized account representative or CO₂ 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 CO₂ authorized account representative or CO₂ 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 CO₂ authorized account representative or CO₂ 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~~

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~~superseding notice of delegation by such CO₂ authorized account representative or CO₂ 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 CO₂ authorized account representative or CO₂ authorized alternate account representative submitting such notice of delegation.~~

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

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

~~Following the establishment of a COATS account, all submissions to the department or its agent pertaining to the account, including submissions concerning the deduction or transfer of CO₂ allowances in the account, shall be made only by the CO₂ authorized account representative for the account.~~

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

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

- ~~1. In each CO₂ budget source's allowance account, the CO₂ allowances allocated to those sources by the department prior to being auctioned; and~~
- ~~2. In each CO₂ budget source's compliance account, the allowances purchased at auction by CO₂ budget units at the source under 9VAC5-140-6210 A.~~

~~B. Each year the department or its agent will record CO₂ 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 CO₂ allowances were previously allocated to the compliance account. Each year, the department or its agent will also record CO₂ 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 CO₂ allowances were previously allocated to an allocation set aside.~~

~~C. Serial numbers for allocated CO₂ allowances shall be managed as follows. When allocating CO₂ allowances to and recording them in an account, the department or its agent will assign each CO₂ allowance a unique identification number that will include digits identifying the year for which the CO₂ allowance is allocated.~~

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

~~A. CO₂ allowances that meet the following criteria are available to be deducted for a CO₂ budget source to comply with the CO₂ requirements of 9VAC5-140-6050 C for a control period or an interim control period.~~

- ~~1. The CO₂ 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 CO₂ allowances are held in the CO₂ budget source's compliance account as of the CO₂ allowance transfer deadline for that control period or interim control period or are transferred into the compliance account by a CO₂ allowance transfer correctly submitted~~

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~~for recordation under 9VAC5-140-6300 by the CO₂ allowance transfer deadline for that control period or interim control period.~~

~~3. For CO₂ offset allowances generated by other participating states, the number of CO₂ offset allowances that are available to be deducted in order for a CO₂ budget source to comply with the CO₂ requirements of 9VAC5-140-6050 C for a control period or an interim control period shall not exceed 3.3% of the CO₂ budget source's CO₂ emissions for that control period, or may not exceed 3.3% of 0.50 times the CO₂ budget source's CO₂ emissions for an interim control period, as determined in accordance with this article and Article 8 (9VAC5-140-6330 et seq.) of this part.~~

~~4. The CO₂ 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 CO₂ allowance transfers submitted for recordation in the CO₂ budget source's compliance account by the CO₂ allowance transfer deadline for a control period or an interim control period, the department or its agent will deduct CO₂ allowances available under subsection A of this section to cover the source's CO₂ 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 CO₂ allowances deducted equals the number of tons of total CO₂ emissions, or 0.50 times the number of tons of total CO₂ emissions for an interim control period, determined in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part, from all CO₂ budget units at the CO₂ budget source for the control period or interim control period; or~~

~~2. If there are insufficient CO₂ allowances to complete the deductions in subdivision 1 of this subsection, until no more CO₂ allowances available under subsection A of this section remain in the compliance account.~~

~~C. Identification of available CO₂ allowances by serial number and default compliance deductions shall be managed as follows:~~

~~1. The CO₂ authorized account representative for a source's compliance account may request that specific CO₂ 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 CO₂ allowances for an interim control period or a control period from the CO₂ budget source's compliance account, in the absence of an identification or in the case of a partial identification of available CO₂ allowances by serial number under subdivision 1 of this subsection, as follows: Any CO₂ allowances that are available for deduction under subdivision 1 of this subsection. CO₂ allowances shall be deducted in chronological order (i.e., CO₂ allowances from earlier allocation years shall be deducted before CO₂ allowances from later allocation years). In the event that some, but not all, CO₂ allowances from a particular allocation year are to be deducted, CO₂ 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 CO₂ budget source's compliance account a number of CO₂ allowances equal to three times the number of the source's excess~~

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~~emissions. In the event that a source has insufficient CO₂ 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 CO₂ allowance deduction required under subdivision 1 of this subsection shall not affect the liability of the owners and operators of the CO₂ budget source or the CO₂ 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 CO₂ 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 CO₂ 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 CO₂ budget source had excess emissions and the concomitant deduction of CO₂ allowances from that CO₂ 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 CO₂ allowances resulting from the department's original determination that the relevant CO₂ budget source has had excess emissions. Should the department's determination of the existence or extent of the CO₂ 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 CO₂ budget source a number of CO₂ allowances equaling the number of CO₂ allowances deducted which are attributable to the difference between the original and final quantity of excess emissions. Should such CO₂ budget source's compliance account no longer exist, the CO₂ allowances will be provided to a general account selected by the owner or operator of the CO₂ 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 CO₂ Budget Trading Program and make appropriate adjustments of the information in the submissions.~~

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~~2. The department may deduct CO₂ allowances from or transfer CO₂ allowances to a source's compliance account based on information in the submissions, as adjusted under subdivision 1 of this subsection.~~

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

~~Each CO₂ allowance that is held in a compliance account or a general account will remain in such account unless and until the CO₂ allowance is deducted or transferred under 9VAC5-140-6180, 9VAC5-140-6260, 9VAC5-140-6280, or Article 7 (9VAC5-140-6300 et seq.) of this part.~~

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

~~The department or its agent may, at its sole discretion and on its own motion, correct any error in any COATS account. Within 10 business days of making such correction, the department or its agent will notify the CO₂ authorized account representative for the account.~~

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

~~A. A CO₂ 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 CO₂ allowance transfer of all CO₂ 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 CO₂ allowances, the department or its agent may notify the CO₂ 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 CO₂ allowances into the account under 9VAC5-140-6300 or a statement submitted by the CO₂ 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

CO₂ Allowance Transfers

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

Article 7

CO₂ Allowance Transfers

~~The CO₂ authorized account representatives seeking recordation of a CO₂ allowance transfer shall submit the transfer to the department or its agent. To be considered correctly submitted, the CO₂ 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 CO₂ allowance to be transferred;~~
- ~~3. The printed name and signature of the CO₂ authorized account representative of the transferor account and the date signed;~~
- ~~4. The date of the completion of the last sale or purchase transaction for the allowance, if any; and~~
- ~~5. The purchase or sale price of the allowance that is the subject of a sale or purchase transaction under subdivision 4 of this section.~~

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

~~A. Within five business days of receiving a CO₂ allowance transfer, except as provided in subsection B of this section, the department or its agent will record a CO₂ allowance transfer by moving each CO₂ 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 CO₂ allowance identified by serial number in the transfer.~~

~~B. A CO₂ allowance transfer into or out of a compliance account that is submitted for recordation following the CO₂ allowance transfer deadline and that includes any CO₂ allowances that are of allocation years that fall within a control period prior to or the same as the control period to which the CO₂ allowance transfer deadline applies will not be recorded until after completion of the process pursuant to 9VAC5-140-6260 B.~~

~~C. Where a CO₂ allowance transfer submitted for recordation fails to meet the requirements of subsection A of this section, the department or its agent will not record such transfer.~~

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

~~A. Within five business days of recordation of a CO₂ allowance transfer under 9VAC5-140-6310, the department or its agent will notify each party to the transfer. Notice will be given to the CO₂ authorized account representatives of both the transferor and transferee accounts.~~

~~B. Within 10 business days of receipt of a CO₂ allowance transfer that fails to meet the requirements of 9VAC5-140-6310 A, the department or its agent will notify the CO₂ authorized account representatives of both accounts subject to the transfer of (i) a decision not to record the transfer and (ii) the reasons for such nonrecordation.~~

~~C. Nothing in this section shall preclude the submission of a CO₂ allowance transfer for recordation following notification of nonrecordation.~~

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

~~A. A power purchaser entered into a life-of-the-unit contractual arrangement as described in subdivision b of the definition of "life-of-the-unit contractual arrangement" with a CO₂ budget source or unit shall be responsible for acquiring and transferring all allowances to the CO₂ budget source or unit that are necessary for demonstrating compliance with the CO₂ budget trading program.~~

~~B. The CO₂ budget source or unit shall provide a copy of the energy conversion or energy tolling agreement to the department within six months of July 10, 2020. If such agreement is subject to third-party disclosure restrictions, the CO₂ budget source or unit shall provide purchaser within 10 days prior written notice of its intention to disclose the agreement to the department and request confidential treatment from the public disclosure of such agreement. The department will grant a request for confidential treatment pursuant to applicable statutory and regulatory requirements addressing confidential information.~~

~~C. The CO₂ budget source or unit shall be responsible for compliance with and otherwise be subject to all other requirements of this part and the CO₂ budget trading program.~~

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Article 8

Monitoring, Reporting, and Recordkeeping

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

Article 8

Monitoring, Reporting, and Recordkeeping

~~A. The owners and operators, and to the extent applicable, the CO₂ authorized account representative of a CO₂ 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 CO₂ 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 "CO₂ budget unit," "CO₂ 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 CO₂ budget unit who monitor a non-CO₂ budget unit pursuant to the common, multiple, or bypass stack procedures in 40 CFR 75.72(b)(2)(ii), or 40 CFR 75.16 (b)(2)(ii)(B) pursuant to 40 CFR 75.13, for purposes of complying with this part, shall monitor and report CO₂ mass emissions from such non-CO₂ budget units according to the procedures for CO₂ budget units established in this article.~~

~~B. The owner or operator of each CO₂ budget unit shall meet the following general requirements for installation, certification, and data accounting:~~

- ~~1. Install all monitoring systems necessary to monitor CO₂ 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 CO₂ emissions under this part. This may require systems to monitor CO₂ concentration, stack gas flow rate, O₂ 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 CO₂ budget unit, except for a CO₂ budget unit under subdivision 2 of this subsection, shall comply with the requirements of this section by January 1, 2021.~~
- ~~2. The owner or operator of a CO₂ budget unit that commences commercial operation July 1, 2021, shall comply with the requirements of this section by (i) January 1, 2022, or (ii) the earlier of 90 unit operating days after the date on which the unit commences commercial operation or 180 calendar days after the date on which the unit commences commercial operation.~~
- ~~3. For the owner or operator of a CO₂ 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~~

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~~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 CO₂ 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 CO₂ concentration, CO₂ emissions rate, stack gas moisture content, fuel flow rate, heat input, and any other parameter required to determine CO₂ 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 CO₂ 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. CO₂ budget units subject to an Acid Rain emissions limitation or CSAPR NO_x Ozone Season Trading Program that qualify for the optional SO₂, NO_x, and CO₂ (for Acid Rain) or NO_x (for CSAPR NO_x Ozone Season Trading Program) emissions calculations for low mass emissions (LME) units under 40 CFR 75.19 and report emissions for such programs using the calculations under 40 CFR 75.19, shall also use the CO₂ emissions calculations for LME units under 40 CFR 75.19 for purposes of compliance with these regulations.~~

~~b. CO₂ budget units subject to an Acid Rain emissions limitation that do not qualify for the optional SO₂, NO_x, and CO₂ (for Acid Rain) or NO_x (for CSAPR NO_x Ozone Season Trading Program) emissions calculations for LME units under 40 CFR 75.19 shall not use the CO₂ emissions calculations for LME units under 40 CFR 75.19 for purposes of compliance with these regulations.~~

~~c. CO₂ budget units not subject to an Acid Rain emissions limitation shall qualify for the optional CO₂ emissions calculation for LME units under 40 CFR 75.19, provided that they emit less than 100 tons of NO_x annually and no more than 25 tons of SO₂ annually.~~

~~3. The owner or operator of a CO₂ 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 CO₂ 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 CO₂ budget unit shall operate the unit so as to discharge, or allow to be discharged, CO₂ emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this article and 40 CFR Part 75.~~

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~~3. No owner or operator of a CO₂ budget unit shall disrupt the CEMS, any portion thereof, or any other approved emissions monitoring method, and thereby avoid monitoring and recording CO₂ 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 CO₂ 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 CO₂ authorized account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with 9VAC5-140-6340 D 3 a.~~

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

~~A. The owner or operator of a CO₂ 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 CO₂ 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 CO₂ 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 CO₂ budget unit shall comply with the following initial certification and recertification procedures for a CEMS and an excepted monitoring system under Appendix D of 40 CFR Part 75 and under 9VAC5-140-6330 B 1. The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology in 40 CFR 75.19 or that qualifies to use an alternative monitoring system under Subpart E of 40 CFR Part 75 shall comply with the procedures in subsection E or F of this section, respectively.~~

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

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~~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 CO₂ 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, CO₂ or O₂ monitors, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that the administrator or the department determines to significantly change the flow or concentration profile, the owner or operator shall recertify the CEMS according to 40 CFR 75.20(b). Examples of changes that require recertification include replacement of the analyzer, change in location or orientation of the sampling probe or site, or change of flow rate monitor polynomial coefficients.~~

~~3. The approval process for initial certifications and recertification shall be as follows: subdivisions 3 a through 3 d of this subsection apply to both initial certification and recertification of a monitoring system under 9VAC5-140-6330 B 1. For recertifications, replace the words "certification" and "initial certification" with the word "recertification," replace the word "certified" with "recertified," and proceed in the manner prescribed in 40 CFR 75.20(b)(5) and (g)(7) in lieu of subdivision 3 e of this subsection.~~

~~a. The CO₂ 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 CO₂ 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 CO₂ Budget Trading Program for a period not to exceed 120 days after receipt by the department of the complete certification application for the monitoring system or component thereof under subdivision 3 b of this subsection. Data measured and recorded by the provisionally certified monitoring system or component thereof, in accordance with the requirements of 40 CFR Part 75, will be considered valid quality-assured data, retroactive to the date and time of provisional certification, provided that the department does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of receipt of the complete certification application by the department.~~

~~d. The department will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under subdivision 3 b of this subsection. In the event the department does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of 40 CFR Part 75 and is included in the certification application will be deemed certified for use under the CO₂ Budget Trading Program.~~

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~~(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 CO₂ authorized account representative shall submit the additional information required to complete the certification application. If the CO₂ 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 CO₂ 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 CO₂ mass emissions using a CO₂ pollutant concentration monitor and a flow monitor, the maximum potential concentration of CO₂ and the maximum potential flow rate of the unit under Section 2.1 of Appendix A of 40 CFR Part 75;~~

~~(2) The CO₂ 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~~

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~~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 CO₂ authorized account of each unit for which the owner or operator intends to use an alternative monitoring system approved by the administrator and, if applicable, the department under Subpart E of 40 CFR Part 75 shall comply with the applicable notification and application procedures of 40 CFR 75.20(f).~~

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

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

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

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

~~The CO₂ authorized account representative for a CO₂ budget unit shall submit written notice to the department and the administrator in accordance with 40 CFR 75.61.~~

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

~~A. The CO₂ authorized account representative shall comply with all recordkeeping and reporting requirements in this section, the applicable recordkeeping and reporting requirements under 40 CFR 75.73, and the requirements of 9VAC5-140-6080 E.~~

~~B. The owner or operator of a CO₂ budget unit shall submit a monitoring plan in the manner prescribed in 40 CFR 75.62.~~

~~C. The CO₂ authorized account representative shall submit an application to the department within 45 days after completing all CO₂ 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 CO₂ authorized account representative shall submit quarterly reports, as follows:~~

~~1. The CO₂ authorized account representative shall report the CO₂ mass emissions data for the CO₂ budget unit, in an electronic format prescribed by the department unless otherwise prescribed by the department for each calendar quarter.~~

~~2. The CO₂ 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 CO₂~~

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~~budget unit, or group of units using a common stack, and shall include all of the data and information required in Subpart G of 40 CFR Part 75, except for opacity, heat input, NO_x, and SO₂ provisions.~~

~~3. The CO₂ 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 CO₂ 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 CO₂ emissions; and~~

~~c. The CO₂ concentration values substituted for missing data under Subpart D of 40 CFR Part 75 do not systematically underestimate CO₂ emissions.~~

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

~~A. Except as provided in subsection C of this section, the CO₂ authorized account representative of a CO₂ 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 CO₂ budget unit that is not subject to an Acid Rain emissions limitation shall meet the following requirements.~~

~~1. The CO₂ authorized account representative of a CO₂ 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 CO₂ authorized account representative of a CO₂ 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 CO₂ authorized account representative of a CO₂ 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 GEMS required under the common stack provisions of 40 CFR 75.72 or a CO₂ concentration GEMS 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.~~

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

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

~~Article 9~~

~~Auction of CO₂ CCR and ECR Allowances~~

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

~~Article 9~~

~~Auction of CO₂ CCR and ECR Allowances~~

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

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

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

- ~~1. The number of CO₂ allowances offered for sale at the auction, not including any CO₂ CCR allowances;~~
- ~~2. The number of CO₂ CCR allowances that will be offered for sale at the auction if the condition of subdivision B 1 of this section is met;~~
- ~~3. The minimum reserve price for the auction;~~
- ~~4. The CCR trigger price for the auction;~~
- ~~5. The maximum number of CO₂ allowances that may be withheld from sale at the auction if the condition of subdivision D 1 of this section is met; and~~
- ~~6. The ECR trigger price for the auction.~~

~~B. The department's agent will follow these rules for the sale of CO₂ CCR allowances:~~

- ~~1. CO₂ CCR allowances shall only be sold at an auction in which total demand for allowances, above the CCR trigger price, exceeds the number of CO₂ allowances available for purchase at the auction, not including any CO₂ CCR allowances.~~
- ~~2. If the condition of subdivision 1 of this subsection is met at an auction, then the number of CO₂ CCR allowances offered for sale by the department or its agent at the auction shall be equal to the number of CO₂ CCR allowances in the Virginia Auction Account at the time of the auction.~~
- ~~3. After all of the CO₂ CCR allowances in the Virginia Auction Account have been sold in a given calendar year, no additional CO₂ 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 CO₂ CCR allowances are sold, the reserve price for the auction shall be the CCR trigger price.~~
- ~~5. If the condition of subdivision 1 of this subsection is not satisfied, no CO₂ CCR allowances shall be offered for sale at the auction, and the reserve price for the auction shall be equal to the minimum reserve price.~~

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

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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 CO₂ ECR allowances from an auction.~~

~~1. CO₂ 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 CO₂ 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 CO₂ ECR allowances that have been withheld from any prior auction in that calendar year. Any CO₂ ECR allowances withheld from an auction will be transferred into the Virginia ECR Account.~~

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

Article 10

Program Monitoring and Review

~~In conjunction with the CO₂ Budget Trading Program program monitoring and review process, the department will evaluate impacts of the program specific to Virginia, including economic, energy, and environmental impacts and impacts on vulnerable and environmental justice and underserved communities. The department will, in evaluating the impacts on environmental justice communities, including low income, minority, and tribal communities, develop and implement a plan to ensure increased participation of environmental justice communities in the review.~~

9VAC5-140-6445. Transition to repeal.

Notwithstanding this section, Part VII shall be repealed effective December 31, 2023. Affected facilities shall place the allowances needed to meet their remaining compliance obligation into their compliance account in the CO₂ Allowance Tracking System (COATS) as soon as practicable but no later than March 1, 2024, in order that they can be deducted from the account to meet the full control period obligation. This section shall be repealed once all affected sources have met their full compliance obligation.