



Commonwealth of Virginia

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Andrew R. Wheeler
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March 11, 2022

Via email: andrew.wheeler@governor.virginia.gov

The Honorable Andrew S. Wheeler
Secretary of Natural and Historic Resources
1111 East Broad Street
Fourth Floor
Richmond, VA 23219

Re: EO-9

Dear Secretary Wheeler:

Governor Youngkin's Executive Order (EO) 9, signed on January 15, directs the Department of Environmental Quality to coordinate with you in completing the following by February 14:

1. Provide [the Governor] a full report re-evaluating the costs and benefits of participation in the Regional Greenhouse Gas Initiative Inc. in view of all available data;
2. Develop a proposed emergency regulation for the State Air Pollution Control Board's consideration to repeal Part VII of 9VAC5-140;
3. Take all necessary steps to 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; and
4. Notify the Regional Greenhouse Gas Initiative Inc. (RGGI Inc.) of the review and the Governor's intent to withdraw from RGGI, whether by legislative or regulatory action.

Pursuant to EO-9, therefore, enclosed for your review are the following:

- A draft report re-evaluating the costs and benefits of participation in RGGI in view of all available data (Item 1);
- A draft emergency regulation (Item 2), along with a brief description of the process for promulgating an emergency regulation under Va. Code §2.2-4011, including a draft letter to the Attorney General asking for his approval as required by that statute (Item 3);
- A brief description of the process and timetable for turning an emergency regulation into a permanent regulation under the Administrative Process Act, including a draft Notice of Intended Regulatory Action (NOIRA) to commence that process (Item 3); and
- A draft letter for your signature notifying RGGI, Inc., of the Governor's intent of withdrawing the Commonwealth from the RGGI program (Item 4).

Please let me know if you have any questions. My staff and I would be glad to brief this report with you at your convenience.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael S. Rolband".

Michael S. Rolband

**VIRGINIA CARBON TRADING RULE AND
REGIONAL GREENHOUSE GAS INITIATIVE
(RGGI) PARTICIPATION**

COSTS AND BENEFITS

*A Report to the Honorable Glenn Youngkin, Governor
Commonwealth of Virginia*

Department of Environmental Quality
in coordination with
The Secretary of Natural and Historic Resources

MARCH 11, 2022

TABLE OF CONTENTS

| | |
|--|----|
| EXECUTIVE SUMMARY | 3 |
| SECTION 1 – Electricity Rate Impacts | 5 |
| SECTION 2 – Allowance Prices and Auction Revenue | 7 |
| SECTION 3 – Power Sector GHG Emissions Trends | 9 |
| SECTION 4 – Other Information | 13 |
| Program Impact Analyses | 14 |
| Program Proceeds Investment | 15 |
| SECTION 5 – Conclusion | 16 |

LIST OF FIGURES

| | |
|---|----|
| FIGURE 1. Average Virginia Electricity Rates by Sector | 5 |
| FIGURE 2. RGGI Auction Clearing Prices 2010-2021 | 8 |
| FIGURE 3. Total Virginia Power Sector CO2 Emissions and Generation | 10 |
| FIGURE 4. Virginia Power Sector Emission Rate and Power Generation Trends | 10 |
| FIGURE 5. Power Sector Emissions by Fuel Type 2010-2020 | 11 |
| FIGURE 6. Power Generation by Type | 11 |
| FIGURE 7. Quarterly Emissions Comparison (2018-2021) | 13 |
| FIGURE 8. RGGI Region CO2 Emission Reductions | 13 |
| FIGURE 9. CO2 Emissions Reduction Predictions, VCEA Study | 14 |

LIST OF TABLES

| | |
|--|----|
| TABLE 1. Auction Results Summary | 8 |
| TABLE 2. Distribution of Funding | 9 |
| TABLE 3. Changes to Power Generation Sources in Virginia (2010-2020) | 12 |

EXECUTIVE SUMMARY

On July 10, 2020, Virginia formally adopted the [CO₂ Budget Trading Program](#) (Part VII of 9VAC5-140) for the power sector to implement a carbon emissions trading and reduction program as authorized by the [Clean Energy and Community Flood Preparedness Act](#) (Article 4 of Chapter 1219 of the 2020 Acts of Assembly). The rule allowed for full participation in the Regional Greenhouse Gas Initiative (RGGI) to reduce carbon dioxide (CO₂) emissions and make emissions allowances available for sale through an auction program that power producers use for compliance purposes. Proceeds from allowance sales are returned to Virginia to fund climate mitigation and resilience programs. Adoption of the rule was the result of a 3-year process that produced a program based on a consignment auction approach, and then transitioned into a full auction program as authorized by the General Assembly in 2020. Virginia began full participation in RGGI on January 1, 2021, and participated in five quarterly auctions to date.

On January 15, 2022, Governor Youngkin issued [Executive Order 9 \(2022\)](#) (EO-9) to re-evaluate Virginia's participation in RGGI and immediately begin the regulatory process to end its participation. The re-evaluation is based on new information that points to higher costs for residential and industrial ratepayers due to participation in RGGI, and that the benefits of RGGI participation have not been realized. Most of this cost increase information come from the State's largest regulated utility, Dominion Energy, in rate increase filings before the State Corporation Commission to recover the costs of compliance with the carbon-trading rule that includes the cost of purchasing emissions allowances to cover their CO₂ emissions.

This report serves as the required program re-evaluation in light of all available data regarding the costs and benefits of the carbon-trading rule and participation in RGGI. However, the availability of new information is limited since Virginia has just completed its first year of participation. The focus of the evaluation will be on the program areas of ratepayer impacts, allowance prices, and emissions trends. It will also look at the various analyses performed on RGGI and related clean power programs such as the Virginia Clean Economy Act (VCEA). The report also refers to the recently submitted [annual report](#) to the Governor and General Assembly on the Virginia Clean Energy and Community Flood Preparedness Act.

Our review of the data in the report provides the following high level conclusions regarding RGGI:

- Because of the captive nature of their ratepayers, the ability for power-generators to fully pass on costs to consumers, and the fact that the Code of Virginia dedicates RGGI proceeds to grants programs, participation in RGGI is in effect a direct carbon tax on all households and businesses;
- 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;
- Carbon emissions rates have been reduced in Virginia by over 50% in the past 10 years, prior to the Commonwealth's participation in RGGI.

Summary of Findings

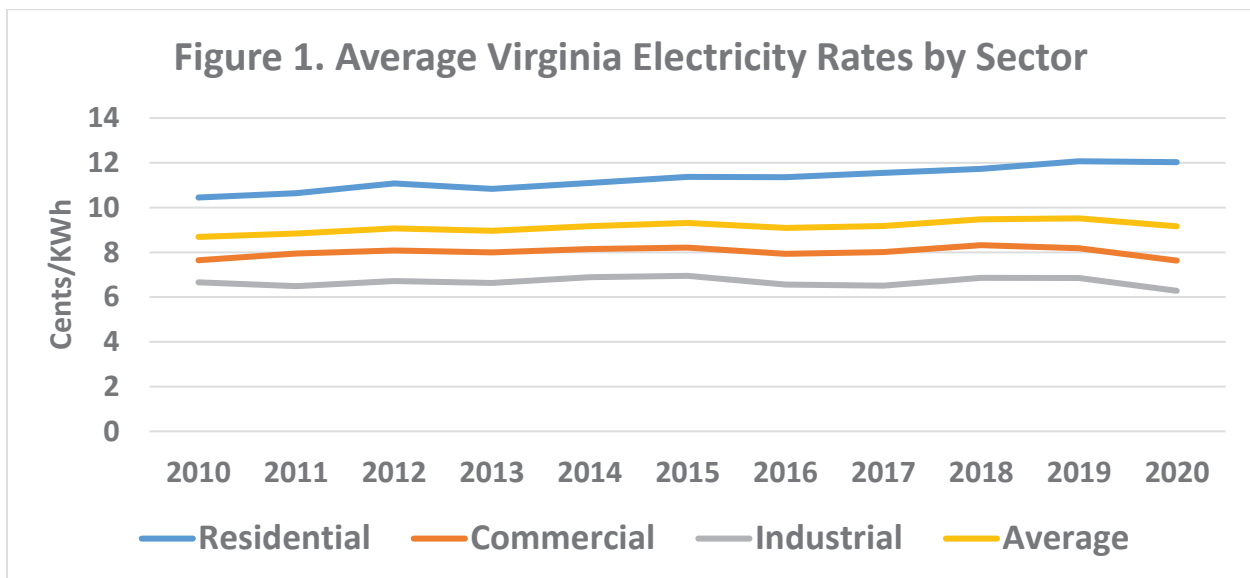
- Participation in RGGI in effect operates as a direct tax on households and businesses because all fees paid to the RGGI Board are passed through to utility-captive ratepayers.

- In addition, consumers are unable to avoid the pass through of these costs because they do not have the opportunity to switch electric providers – Dominion and other providers are monopolies in most regions of Virginia.
- The imposition of the RGGI “carbon tax” fails to offer any incentive to change behavior. Current law allows power generators, such as Dominion Energy, to pass on all their costs, essentially bearing no cost for the carbon credits.
- Other states return the RGGI proceeds to consumers through rebates, while Virginia has opted to use the proceeds for separate and unrelated grant programs resulting in an effective tax increase on all ratepayers.
- The original RGGI approach, prior to enactment, was designed to return the proceeds to the ratepayers in order to offset the costs of the program to the consumer, but this was not how Virginia implemented the program.
- The costs of compliance with the trading rule and participation in RGGI have materialized in higher electricity rates as identified in the filings before the State Corporation Commission by Dominion Energy.
- Emission allowance prices have increased over time and substantially in the last year and are expected to continue increasing which will increase the tax on ratepayers.
- Lastly, without and prior to RGGI, electricity generation has increased while CO₂ per MWh has almost been cut in half in Virginia over the last ten years.
- RGGI is a bad construct that taxes consumers without providing incentives for change to the electricity producers.

SECTION 1 – ELECTRICITY RATE IMPACTS

One of the main concerns with participation in RGGI identified in EO-9 is the environmental compliance cost of RGGI on Virginia ratepayers. EO-9 states that the RGGI environmental compliance cost will increase “a typical” residential customer bill by \$2.39 per month, and a typical industrial customer bill by \$1,554 per month. EO-9 also states that Dominion Energy projects that RGGI will cost ratepayers between \$1 billion and \$1.2 billion over the next four years.

For background purposes, the historical trends of electricity rates from 2010 to 2020 are presented in Figure 1 below. These data show a gradual increase in all sector rates until 2020 where rates decline. Residential rates are the highest, followed by commercial with the industrial sector having the lowest average rates.



Source: Energy Information Administration

The first three-year control period for Virginia “CO₂ Budget Sources” began on January 1, 2021 and extends through December 31, 2023. Under each RGGI participating state’s CO₂ Budget Trading Program, each “CO₂ budget source” is required to provide one CO₂ allowance for each ton of CO₂ emitted during the preceding three-year control period. Virginia utility law (Code of Virginia 56-585.1 A 4) allows Dominion and Appalachian Power (“CO₂ Budget Sources” under the CO₂ Budget Trading Program) to recover environmental compliance costs associated with participating in RGGI through new rate adjustment clauses.

On November 9, 2020, Dominion Energy filed a petition with the Virginia State Corporation Commission (SCC) to establish a new RGGI rate adjustment clause (“Rider RGGI”) to recover \$168,260,000 in “projected” RGGI compliance costs for the rate year of August 1, 2021 to July 31, 2022 (i.e., Case No. PUR-2020-00169), including:

- \$129,960,000 for the purchase of 19 million allowances at \$6.84 per allowance), and
- \$38,330,000 of financing costs and a 9.2% rate of return associated with the purchase of 19 million allowances.

On August 4, 2021, the Commission issued an [Order](#) approving the Rider RGGI for initial year cost recovery starting on September 1, 2021 of \$167.76 million (projected quantity and prices of allowances), 9.2% rate of return on projected allowance purchases, and finance costs associated with projected allowance purchases). As such, “the charge for service under Virginia Electric and Power Company's Filed Rate Schedules, as well as applicable energy charges specified in any special rates, contracts or incentives approved by the State Corporation Commission pursuant to Virginia Code § 56-235.2 shall be increased by 0.2393 cents per kilowatt-hour.” The approved Rider RGGI explains the increase in a monthly residential customer electric bill and a monthly industrial customer electric bill of \$2.39 and \$1,554. The [Order](#) approving the Rider RGGI states, “RGGI is expected to cost Dominion’s Virginia jurisdictional ratepayers approximately \$3 billion [excluding finance costs] through 2045.” The Order also states that any projected environmental compliance costs such as projected quantity and/or price of allowances and associated ROE and finance costs are to be trued-up in future Rider RGGI proceedings.

On August 24, 2021, a Petition for Reconsideration or Clarification ("Petition") was filed with the Commission. On November 17, 2021, the Commission issued its Order on Reconsideration, and elected not to modify the August 6, 2021 Order approving the Rider RGGI, with the exception of revised effective dates of the Rider RGGI:

- The first Rider RGGI tariff sheet is effective for usage on and after September 1, 2021 and reflects a rate of zero; and
- The next Rider RGGI tariff sheet is effective for usage on and after January 1, 2022, and reflects the 0.2393 cents per kilowatt-hour rate approved in the Rider RGGI Approval Order.

In December 2021, Dominion Energy filed a petition with the Commission for a revision of rate adjustment clause, “Rider RGGI” pursuant to § 56-585.1 A 5 e of the Code of Virginia (i.e., Case No. PUR-2021-0028). Dominion Energy withdrew the petition on January 10, 2022. The total environmental compliance cost recovery (i.e., revenue requirement) requested in the withdrawn Rider RGGI Petition for the Rate Year beginning September 1, 2022, was \$323,411,000. It assumed an average price of \$10.53 per allowance for the period of October 2021 through December 2023, a 9.35% ROE of allowances purchases, and finance costs associated with the allowance purchases. The withdrawn proposed petition for a revised rate adjustment clause would increase the approved Rider RGGI by 0.198 cents per kilowatt-hour, increasing the total Ride RGGI to 0.437 cents per kilowatt-hour.

Prices and quantities of allowances affect compliance costs, therefore, impact rate ratepayers. Data available on RGGI compliance costs are projected costs, because the actual quantity of allowance purchases and actual prices were not known at the time the new Rider RGGI was approved by the Commission.

Also, the second RGGI Program Review was completed in December 2017, resulting in the [2017 Model Rule](#), which was the foundation for the final rule subsequently adopted by Virginia as Part VII of 9VAC5-140 in accordance with the Clean Energy and Community Flood Preparedness Act. Resulting program modifications included changes to the Cost Containment Reserve (CCR) size and trigger price. The proposed CCR size from 2021 onwards will be 10% of the regional cap. The CCR trigger price will be \$13.00 in 2021, and rise at 7% per year, ensuring that the CCR will only trigger if emission reduction costs are higher than projected.

In response to electricity rate concerns resulting from program compliance, four participating RGGI states, including Delaware, Maryland, Maine, and New Hampshire use a percentage of their allowance proceeds for direct bill assistance to mitigate the costs impact on ratepayers. In addition, North Carolina is seriously considering joining the RGGI program using the consignment approach modeled on the previous Virginia rule.

On February 2, 2021, the RGGI states, which include Virginia, released a statement announcing the plan for the Third Program Review to consider further updates to their programs, and in Summer 2021 the states released a preliminary timeline for conducting the Third Program Review, which will include a REMI macroeconomic analysis and bill impact analysis which may provide new information of future program costs and benefits.

The main conclusions of this section are as follows:

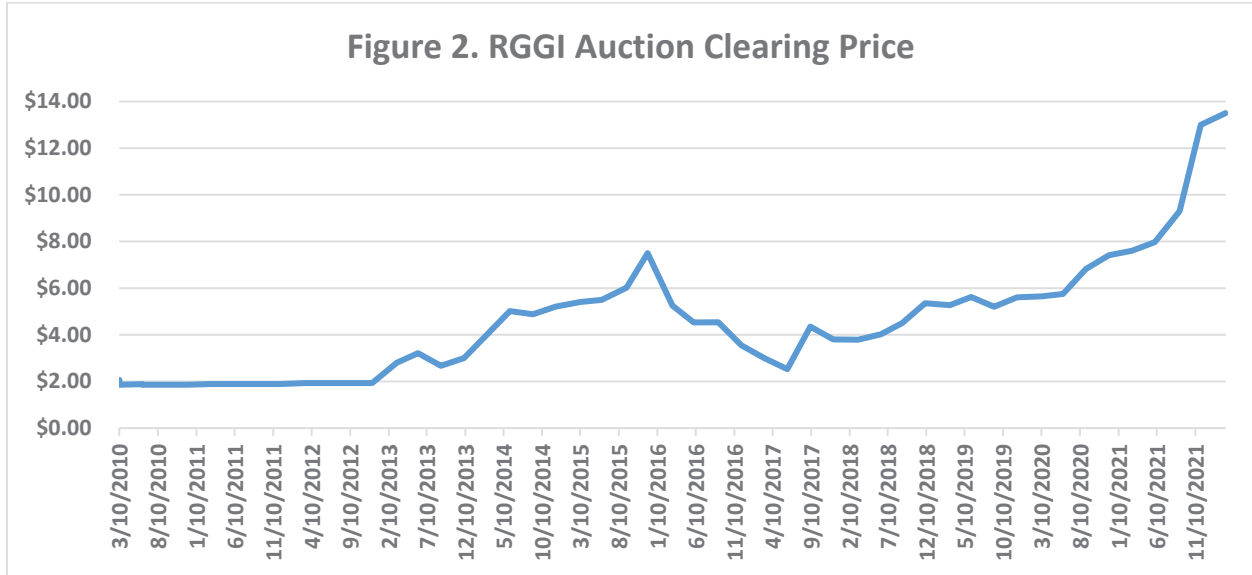
- The compliance costs of RGGI program participation have submitted by Dominion Energy and approved by the SCC, and have begun to impact electricity rates.
- These costs are and will continue to be directly related to the cost of allowances, along with other charges allowed under current law and regulations.
- Allowance prices have varied significantly in the past, and future prices will continue to vary.
- The social cost of carbon as required by VCEA has not been fully incorporated in the SCC process to date, but will be going forward, and may change future cost/benefit analyses.
- Four other RGGI participating states (and prospectively a fifth) provide bill assistance to customers using some of their auction proceeds.

SECTION 2 – ALLOWANCE PRICES AND AUCTION REVENUE

A central feature of any cap and trade program to reduce climate or criteria pollutant emissions is the concept of an emissions “allowance.” An allowance usually represents the emission of one ton of pollution. These allowances are either sold or given to regulated entities for compliance or other purposes. As such, the allowance has value that is determined by the market through supply and demand. Reductions are achieved by gradually lowering the amount of allowances available in the market over time. RGGI operates under the concept where the allowances are allocated to the participating states and then sold through auctions. The proceeds are then returned to the states to support climate related programs.

Concern was raised in EO-9 about the rising cost of RGGI allowances and the resulting impact on electricity rates as described in more detail in Section 1 of this report. Therefore a review of allowance prices has been performed. Figure 2 shows the values of the RGGI auction clearing prices from 2010-2021. As shown in the figure, clearing prices have been volatile over time. Until 2014, prices remained below \$4.00. From 2014 to 2017, the price rose to a high of \$7.50 before falling to a low of \$2.53. Since 2017, prices have risen steadily until experiencing a large jump in Auction 54, where the clearing price rose to the cost containment reserve (CCR) trigger level of \$13.00. The cost containment reserve is a safeguard function of the RGGI program that sets a ceiling for allowance prices. Auction 54 is only the second time in the history of the program where the CCR has been triggered. The allowance price again increased slightly in Auction 55 to \$13.50, an all-time high for the program, but did not trigger the updated CCR level

of \$13.91 for 2022.



Source: Regional Greenhouse Gas Initiative Website

On the flip side of allowance prices is the proceeds generated by their sale that will go to support climate related mitigation and resilience programs. Thus far, Virginia has raised \$301 million from the sale of allowances.

RGGI, Inc., administers quarterly auctions on behalf of the RGGI states where it offers allowances for sale to compliance entities and other groups. Virginia first participated in Auction 51, which was held on March 3, 2021, and the Commonwealth has participated in four additional auctions for a total of five. A summary of auction results is available in Table 1, and a distribution of funds raised from auctions is shown in Table 2.

It should be noted that RGGI, Inc., receives a small portion (0.3%) of Virginia's quarterly auction proceeds to fund its annual operating budget. Virginia's total payment to RGGI, Inc. for 2021 was \$592,920.08. The payment due to RGGI Inc. for 2022 is \$638,237.81.

Table 1: 2021 Auction Results Summary

| | Allowances Sold | Allowance Price | Allowance Proceeds |
|--------------------|-----------------|-----------------|--------------------|
| Auction #51 | 5,735,509 | \$7.60 | \$43,589,868.40 |
| Auction #52 | 5,698,446 | \$7.97 | \$45,416,614.62 |
| Auction #53 | 5,698,445 | \$9.30 | \$52,995,538.50 |
| Auction #54 | 6,587,274 | \$13.00 | \$85,634,562.00 |
| Auction #55 | 5,497,712 | \$13.50 | \$74,219,112.00 |
| Total | 29,217,386 | | \$301,855,695.52 |

The Clean Energy and Community Flood Preparedness Act provides that 45% and 50% of the proceeds generated from the auctions be used to fund the Virginia Community Flood

Preparedness Fund (CFPF) and the Housing Innovations in Energy Efficiency (HIEE) program, respectively. Administered by the Department of Housing and Community Development (DHCD), the CFPF helps localities across the Commonwealth reduce the impacts of flooding by implementing flood prevention and protection projects. Administered by the Department of Conservation and Recreation (DCR), the HIEE program makes energy efficiency upgrades to new and existing residential buildings to reduce energy bills for low-income Virginians. DEQ receives 3% of auction revenues to cover administrative expenses related to running the program and to carry out statewide climate change planning and mitigation activities. In partnership with the Virginia Department of Energy, DHCD receives 2% of the proceeds to administer and implement the HIEE program.

Table 2: Distribution of Funding

| | RGGI | DHCD | DCR | DEQ | DHCD Admin |
|--------------|--------------|------------------|------------------|----------------|-------------------|
| #51 | \$148,230.02 | \$21,720,819.19 | \$19,548,737.27 | \$1,303,249.15 | \$868,832.77 |
| #52 | \$148,230.02 | \$22,634,192.30 | \$20,379,773.07 | \$1,358,051.54 | \$905,367.69 |
| #53 | \$148,230.02 | \$26,423,654.24 | \$23,781,288.82 | \$1,585,419.25 | \$1,056,946.17 |
| #54 | \$148,230.02 | \$42,743,165.99 | \$38,468,849.39 | \$2,564,589.96 | \$1,709,726.64 |
| #55* | \$159,559.45 | \$37,029,776.28 | \$33,326,798.65 | \$2,221,786.58 | \$1,481,191.05 |
| Total | \$75,2479.53 | \$150,551,608.00 | \$135,505,447.20 | \$9,033,096.48 | \$6,022,064.32 |

* Preliminary estimates

More information on the low-income energy efficiency and resiliency programs funded by auction proceeds can be found in the previously mentioned annual report on the Clean Energy and Community Flood Preparedness Act.

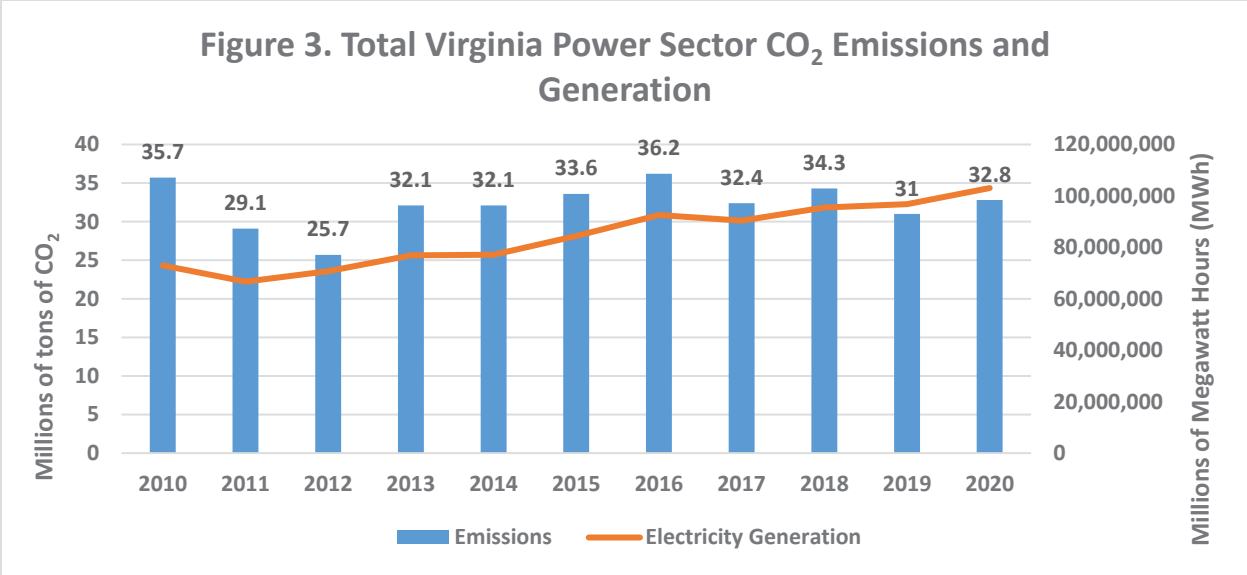
The main conclusions of this section are as follows:

- Allowance prices have varied widely over time.
- Allowance prices have increased sharply since 2020.
- Auction proceeds to Virginia for climate related programs have also increased based on these prices.
- Future allowance prices have been and will continue to be hard to predict.

SECTION 3 – POWER SECTOR GHG EMISSIONS TRENDS

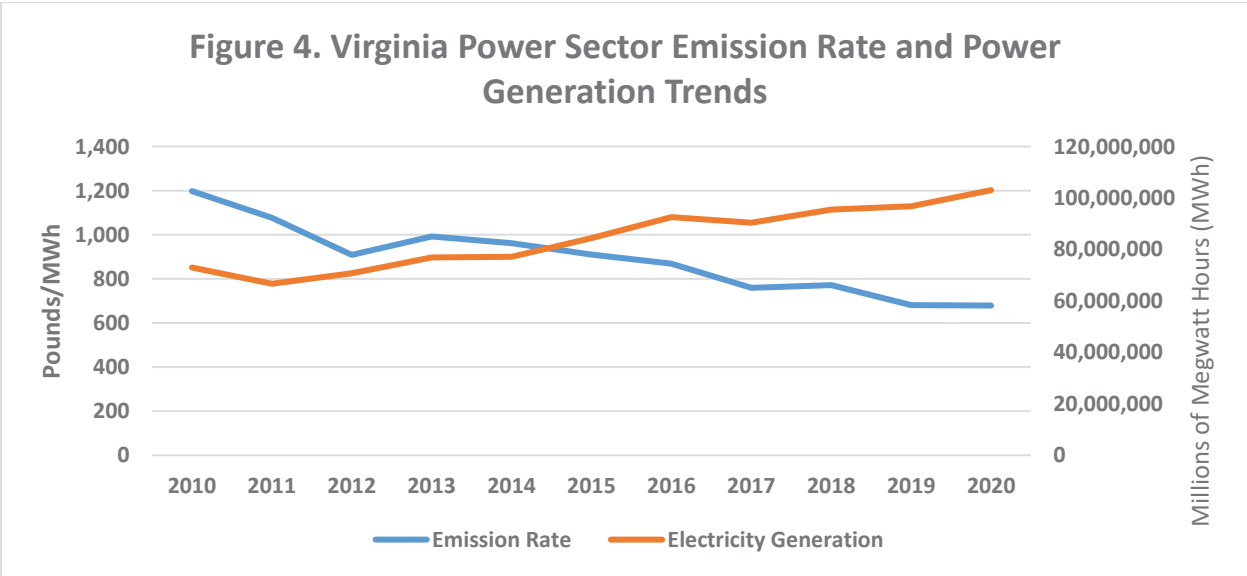
As mentioned earlier, emission reductions are the principle purpose and rationale of the carbon-trading rule and RGGI program. This is accomplished through setting emissions budgets and reducing them over time to achieve the desired reduction goal. It is too early to determine the impact of the program on emissions since 2021 is Virginia’s first participation year.

However, to begin to assess this impact, the recent emission trends of the Virginia power sector must be evaluated. Emissions of CO₂ from the power sector are estimated and tracked by both the federal Environmental Protection Agency (EPA) and the DEQ. The recent trends in sector emissions are provided in Figure 3 below. It can be seen from the data that these emissions have fluctuated over the past 10 years with no discernable trend. During this period the average annual power sector emissions total in Virginia was 33.3 million tons.



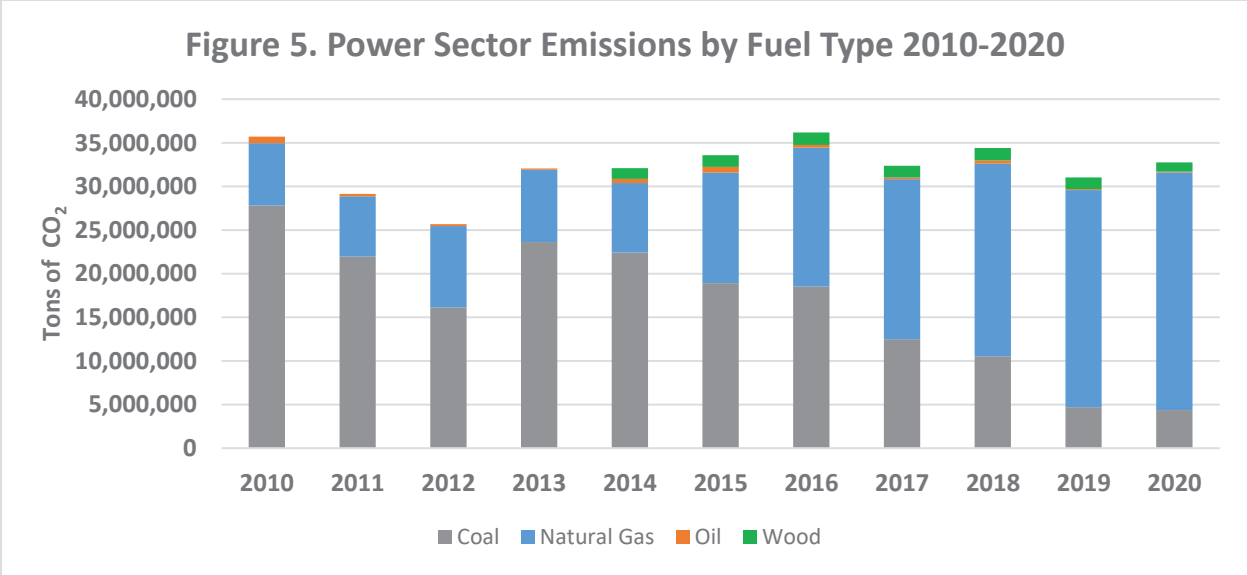
Source: EPA Air Markets Program Data and Energy Information Administration

While mass emissions have remained fairly constant, the overall state emission rate, which is the amount of CO₂ emissions produced by a set amount of electricity, has steadily and significantly been reduced. This trend is documented in Figure 4 where the statewide emission rate in 2010 was just under 1,200 lbs. per MWh that has then decreased to 679 lbs./MWh, which represents a 43% reduction in this average rate of CO₂ emissions per unit of electricity.



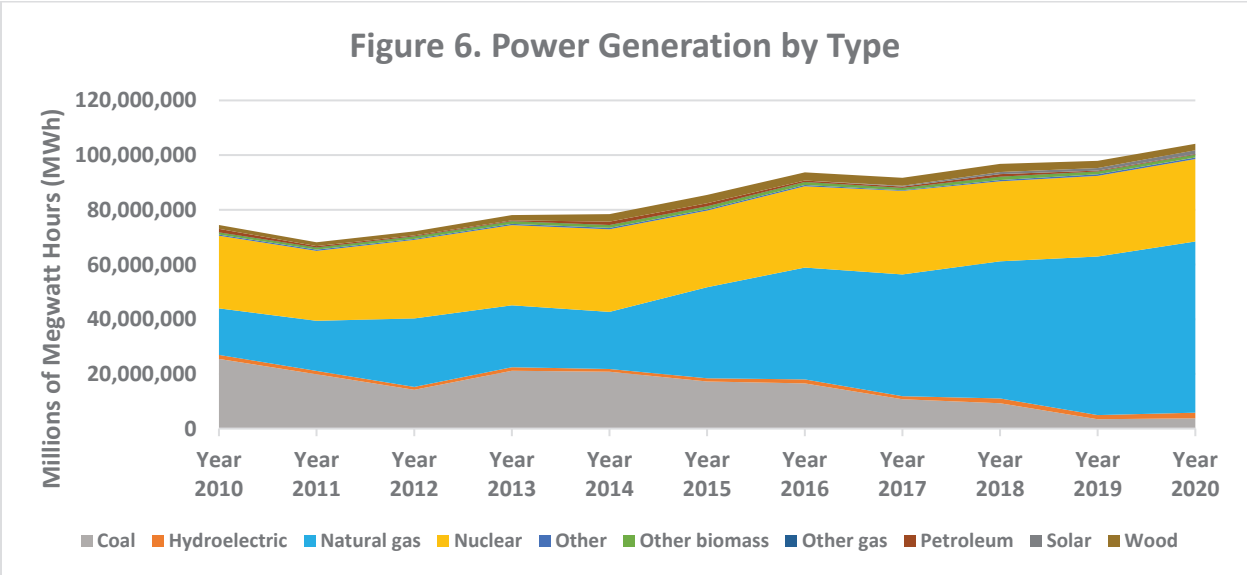
Source: Energy Information Administration

Given this mix of mass and emissions rate data and trends, a further data analysis is presented below in Figure 5 that shows that a major shift has occurred in the Virginia power sector where electricity generation from coal has been replaced by cleaner generation sources of natural gas and more recently renewable energy generation sources. Also during the same time, in-state electricity generation has increased by about 30%, which has led to the mass emissions levels remaining relatively constant.



Source: EPA Air Markets Program Data

A similar analysis of electricity generation by type is presented in Figure 6 that again shows the decrease in coal generation, increase in natural gas generation, and the introduction of renewable generation into the mix.



Source: Energy Information Administration

While these overall emissions and generation trends have occurred in the Virginia power sector, a number of source specific changes have occurred in Virginia’s mix of power generation that will influence current and future emissions and generation trends. These changes, identified as new sources, closures and fuel conversions, are presented below in Table 3. From 2010 to 2020, six coal facilities closed, while five large combined cycle natural gas facilities have opened. Three coal facilities converted to biomass (wood) and one converted to gas.

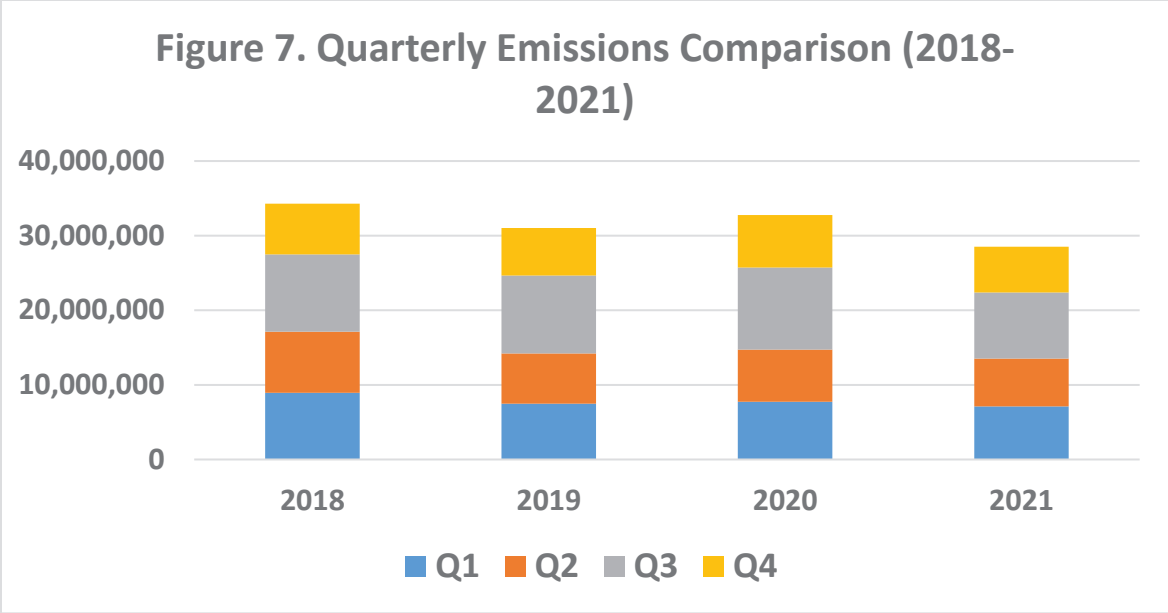
Table 3: Changes to Power Generation Sources in Virginia (2010-2020)

| Plant Name | Change In Operation/Fuel | Year |
|------------------------------------|---|-------------|
| Bear Garden Generating Station | Gas facility began operating | 2011 |
| Potomac River | Coal facility permanently closed | 2012 |
| Virginia City Hybrid Energy Center | Coal/biomass facility began operating | 2012 |
| Hopewell Power Station | Converted to biomass (wood) from coal | 2013 |
| NOVEC Halifax County Biomass Plant | Biomass facility began operating | 2013 |
| Southampton Power Station | Converted to biomass (wood) from coal | 2013 |
| Altavista Power Station | Converted to biomass (wood) from coal | 2014 |
| Bremo Power Station | Converted to gas from coal | 2014 |
| Chesapeake Energy Center | Coal facility permanently closed | 2014 |
| Warren County Power Station | Gas facility began operating | 2014 |
| Clinch River | Coal unit 3 retired, units 1 and 2 converted to gas | 2015 |
| Glen Lyn | Coal facility permanently closed | 2015 |
| Portsmouth Genco LLC | Coal facility permanently closed | 2015 |
| Brunswick County Power Station | Gas facility began operating | 2016 |
| Panda Stonewall Power Project | Gas facility began operating | 2017 |
| Bellemeade Power Station | Gas facility permanently closed | 2018 |
| Bremo Power Station | Gas facility permanently closed | 2018 |
| Chesterfield Power Station | Coal units 3 and 4 permanently closed | 2018 |
| Greensville County Power Station | Gas facility began operating | 2018 |
| Mecklenburg Power Station | Coal facility permanently closed | 2018 |
| Possum Point Power Station | Gas units 3 and 4 retired | 2018 |
| City Point Energy Center | Coal facility permanently closed | 2019 |
| Yorktown Power Station | Coal units 1 and 2 retired | 2019 |
| Possum Point Power Station | Oil unit 5 retired | 2020 |

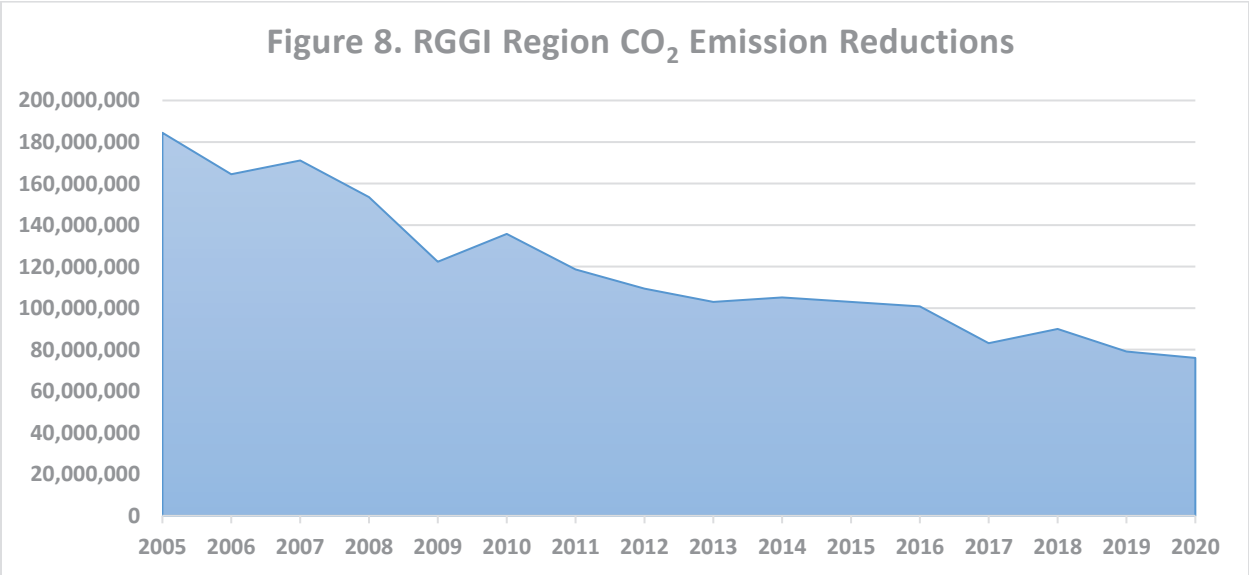
Source: PJM Generation Deactivations, EPA Air Markets Program Data tool

The carbon-trading rule and the RGGI program are designed to reduce regional CO₂ emissions over time by setting descending annual emission budgets to meet established reduction goals. The Virginia trading rule has established a starting emissions budget for 2021 of 27.6 million tons, which is then reduced annually at a consistent rate to 19.6 million tons in 2030. This is consistent with the RGGI goal of a 30% reduction between 2020 and 2030. However, since this is a regional trading program, the actual emissions reductions during this period may vary by state.

An analysis of control year 2021 emissions to date has been performed to see if any initial impact of the RGGI program can be seen in the Virginia power sector. To do so, the quarterly emissions data for 2021 have been compared the same data for past years. The results of this analysis are provided below in Figure 7. While there has been a decrease in emissions for 2021 as compared to prior years, this cannot be directly or solely attributed to RGGI participation.



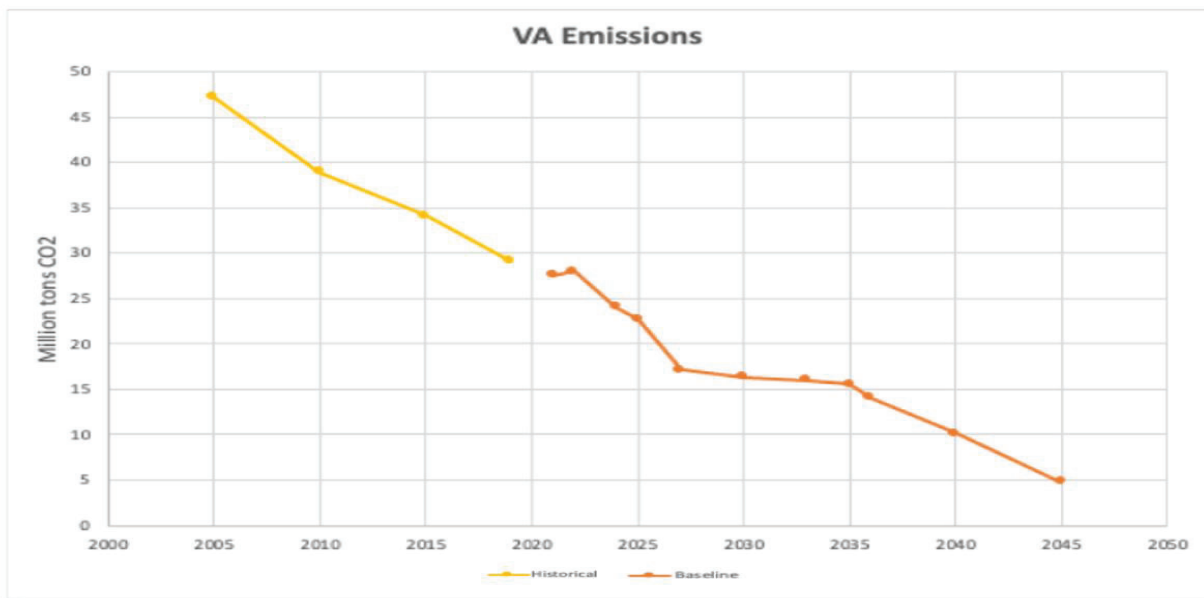
While the emissions data and impact of RGGI participation by Virginia is limited and inconclusive, the RGGI region has a long track record of emission reductions since the beginning of the program. This is shown in Figure 8 below where CO₂ emissions have decreased in the RGGI participating states by 59% from 2005 to 2020. Note that Virginia is not included in these data.



To assess the future of the power sector and predicted emissions reductions we must turn to modeling efforts that have been completed. A recently completed study and report completed by the Virginia Department of Energy, in consultation with the DEQ on the Virginia Clean Economy Act (VCEA) – Achieving Clean Electricity Generation at Least Cost to the Ratepayers by 2045. This [study and report](#) shows that the combination of participation in RGGI along with the specific mandates of the VCEA including the closure of most of the remaining coal and biomass electric generating facilities in Virginia, along with specific renewable energy

generation targets and standards, is expected to lead to a carbon free power sector in the 2045-2050 timeframe. This supports the requirements of both the VCEA and statutory goal of net-zero carbon emissions economy-wide by 2045. The CO₂ emissions reduction predictions of the study are provided in Figure 9.

Figure 9. CO₂ Emissions Reduction Predictions, VCEA Study



The main conclusions of this section are as follows:

- 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.
- Average emission rates have substantially decreased during the same time and in-state electricity generation has increased.
- There is insufficient data to determine the impact of the trading rule and RGGI in reducing CO₂ emissions, since 2021 has been the first year of Virginia’s participation in the program.
- The DOE study of the Virginia power sector indicates that 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.

SECTION 4 – OTHER INFORMATION

Program Impact Analyses

As part of the regulatory process for the carbon-trading rule, a number of power sector and economic analyses were performed to determine the impact of the rule on generation, emissions, power prices, and allowance prices.

Prior to enactment of the Clean Energy and Community Flood Preparedness Act (CECFPA) in 2020 and subsequent carbon trading rule based on full auction participation, DEQ developed and

the SAPCB approved a trading rule that operated under a consignment auction approach. Under the consignment auction rule, Virginia's RGGI allowance budget was to be distributed directly to regulated sources on a pro rata basis according to a formula based on a source's historical CO₂ emissions. The regulated sources would then have been required to consign those allowances to the RGGI auction, with proceeds from the sale of the allowances at auction paid back to the regulated sources. The intention was that proceeds from consigned allowances would then flow to the ratepayers pursuant to a SCC process, thereby mitigating the cost of the RGGI program to ratepayers to the maximum extent. Two early analyses of the consignment auction approach indicated that electricity prices in Virginia would increase only nominally while consumer bills would actually go down. However, the CECFPA was enacted before the consignment rule could go into effect. The results of these analyses from 2017 and 2018 can be found at the following links.

November 2017

1. [Policy Scenario 1](#)
2. [Policy Scenario 2](#)
3. [Reference Case 1](#)
4. [Reference Case 2](#)
5. A bill [analysis](#)

November 2018

1. IPM [reference case results](#)
2. IPM [policy case results](#)
3. A [bill analysis presentation](#)
4. A [co-benefits analysis](#)

Also prior to Virginia becoming a full participant in RGGI, several economic impact analyses of the original CO₂ trading rule were completed by Virginia Department of Planning and Budget (DPB). This iteration of the rule implemented a consignment auction approach in lieu of a traditional auction approach in order to comply with as-then current state law. As required by § 2.2-4007.04 of the Administrative Process Act, DPB considered the economic impacts of the [proposed](#), [revised proposed](#), and [final](#) rule. These analyses considered a number of fiscal impact studies that were conducted as part of the regulatory development process. Note that the final regulation, which adopted the traditional auction approach, was exempt from the APA and therefore not subject to DPB review.

While these analyses informed the regulatory process at the time, they did not evaluate the rule in its current form. The IPM modeling also consistently underestimated allowance prices given the current price.

An independent comprehensive [report](#) on RGGI: Background, Impacts, and Selected Issues was published by the Congressional Research Service in 2019.

Finally, a more current [study and report](#) on the current and future power sector in Virginia has been performed to evaluate the combined impacts of the RGGI and VCEA programs as previously described in Section 3. However, this report does not assess the cost impact of the programs in detail.

Program Proceeds Investment

The RGGI program publishes [annual reports](#) on the investment of proceeds by its member states.

SECTION 5 - CONCLUSION

In conclusion, the results of this re-evaluation of the costs and benefits of the RGGI program on Virginia are as follows:

- RGGI operates as a direct tax on households and businesses because all fees paid to the RGGI Board are passed through to the ratepayers per Virginia Legislation. Since the utilities are allowed to increase their rates due to the costs associated with their required participation in the RGGI auction process, there is little correlation to emission reductions. By design the utilities are not penalized for failure to meet RGGI CO₂ emissions since they can pass on the costs to the ratepayers.
- Consumers are unable to avoid the pass through of these costs because they do not have the opportunity to switch electric providers – Dominion and other providers are monopolies in most regions of Virginia.
- Other states participating in the RGGI program designed their systems to provide rebates to their ratepayers, in Virginia the program operates as a hidden tax in which the legislature then disburses the funds through grant programs. Virginia consumers were originally told that the program would not increase their energy bills.
- The original RGGI auction approach was designed to return the proceeds to the ratepayers but this was not how Virginia implemented the program. The original analysis, conducted prior to the adoption of RGGI by the legislature, showed little impact on electricity prices to the consumer because of the anticipated return of the proceeds to the ratepayers.
- The costs of compliance with the trading rule and participation in RGGI are materializing in higher electricity rates for all ratepayers, as identified in the Dominion rate case filings. The first of these rate increase requests by Dominion Energy has been approved and went into effect on January 1. Future rate increases due to RGGI are expected and will be tied to the allowance prices which are difficult to predict.
- RGGI emissions allowance prices have increased over time and substantially in the last year. In fact, in Auction 54, the clearing price rose from \$9.30 to the cost containment reserve trigger level of \$13.00. The allowance price rose again slightly in Auction 55 to \$13.50, an all-time high for the program. Future allowance price predictions will continue to be uncertain, but by design will continue to increase.
- In Virginia over the last 10 years energy generation has increased substantially while the CO₂ mass emissions has remained fairly constant. This is due to fuel switching and efficiencies, which is signified by the decreased emission rate. In 2010 the state produced 1,200 lbs/month of CO₂ per MWh compared to 679 lbs/CO₂ per MWh in 2020, prior to RGGI taking effect. Overall, CO₂ emissions in Virginia have fallen substantially since 2005, demonstrating that Virginia has been reducing their CO₂ emissions without regard to RGGI.
- RGGI is a bad construct that taxes consumers without providing incentives for change to the electricity producers. The program was not implemented in the way it was originally sold, and simply results in increased pricing to consumers out of the marketplace.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY**

**PROCESS FOR ADDRESSING EO-9
EMERGENCY REGULATION AND REPEAL
CO₂ EMISSIONS TRADING PROGRAM (PART VII OF 9VAC5-140)**

[Executive Order 9 \(2022\)](#) (EO-9) (**Attachment A**) requires that DEQ in coordination with the Secretary develop an emergency regulation to repeal the CO₂ Emissions Trading Program regulation that enables Virginia to participate in the Regional Greenhouse Gas Initiative (RGGI), and begin the process for making the emergency regulation permanent. **Attachment B** shows the [general process](#) for doing so - in sum:

- in accordance with [§ 2.2-4011](#) A of the Administrative Process Act (APA) (**Attachment C**), the department consults with the Office of Attorney General to establish the nature of the emergency and requests the approval of the Attorney General in writing (**Attachment D**) to proceed with the emergency regulation;
- the State Air Pollution Control Board adopts the emergency regulation and submits it via Town Hall for executive review; and
- the emergency regulation becomes effective on approval by the Governor and submittal to the Registrar for publication.

In accordance with § 2.2-4011 C of the APA, an emergency regulation is effective for 18 months (24 months if an extension is requested). For an emergency regulation to become permanent, it must undergo the full regulatory adoption process during those 18 months. Thus, a Notice of Intended Regulatory Action (NOIRA) is usually issued concurrently with the emergency regulation. **Attachment E** describes this process and the schedule on which it must proceed. A draft proposed emergency regulation (**Attachment F**) and NOIRA for the permanent regulation (**Attachment G**) are provided.

EO-9 also requires DEQ in coordination with the Secretary to provide the Governor, "a full 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," a draft of which will be provided separately. Finally, EO-9 directs the Secretary or DEQ to, ". . . notify the Regional Greenhouse Gas Initiative Inc. (RGGI Inc.) of the review and the Governor's intent to withdraw from RGGI, whether by legislative or regulatory action." A draft letter providing this notification for the Secretary's signature is provided at **Attachment H**.



*Commonwealth of Virginia
Office of the Governor*

Executive Order

NUMBER NINE (2022)

PROTECTING RATEPAYERS FROM THE RISING COST OF LIVING DUE TO THE REGIONAL GREENHOUSE GAS INITIATIVE

By virtue of the authority vested in me as Governor, I hereby issue this Executive Order to re-evaluate Virginia's participation in the Regional Greenhouse Gas Initiative and immediately begin regulatory processes to end it.

Importance of the Initiative

Reliable and affordable access to electricity is imperative to the health and safety of all Virginians. Our hospitals, schools, businesses, and homes all rely on this essential service. And the unpredictable and rising cost of electricity poses a significant and immediate threat to our Commonwealth and its citizens. In 2019, alone, over 100,000 Virginian households required Energy Assistance with a cost of \$46 million to the Commonwealth.

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.

Directive

Accordingly, by virtue of the authority vested in me as the Chief Executive Officer of the Commonwealth, and pursuant to Article V of the Constitution and the laws of Virginia, I hereby direct the Director of the Department of Environmental Quality, in coordination with the Secretary of Natural and Historic Resources, to take the following actions in accordance with the provisions and requirements of § 10.1-1300, et seq. and § 2.2-4000, et seq. of the *Code of Virginia*:

1. Provide me a full 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.
2. During this same period, develop a proposed emergency regulation for the State Air Pollution Control Board's consideration to repeal 9VAC5-140.
3. During this same period, take all necessary steps to 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*.
4. During this same period, notify the Regional Greenhouse Gas Initiative Inc. (RGGI Inc.) of the review and the Governor's intent to withdraw from RGGI, whether by legislative or regulatory action.

Effective Date

This Executive Order shall be effective upon its signing and shall remain in force and effect unless amended or rescinded by further executive order or directive.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 15th day of January 2022.



A handwritten signature in black ink, appearing to read "Glenn Youngkin".

Glenn Youngkin, Governor

Attest:

A handwritten signature in black ink that reads "Kelly Thomasson" followed by a long horizontal flourish.

Kelly Thomasson, Secretary of the Commonwealth

Emergency regulations:

Information especially for state agencies

An emergency regulation is:

--Promulgated if (1) there is an "emergency situation" or (2) legislation requires a regulation to be promulgated within 280 days.

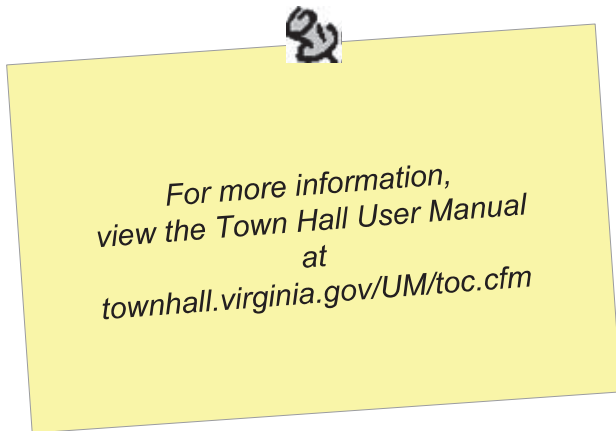
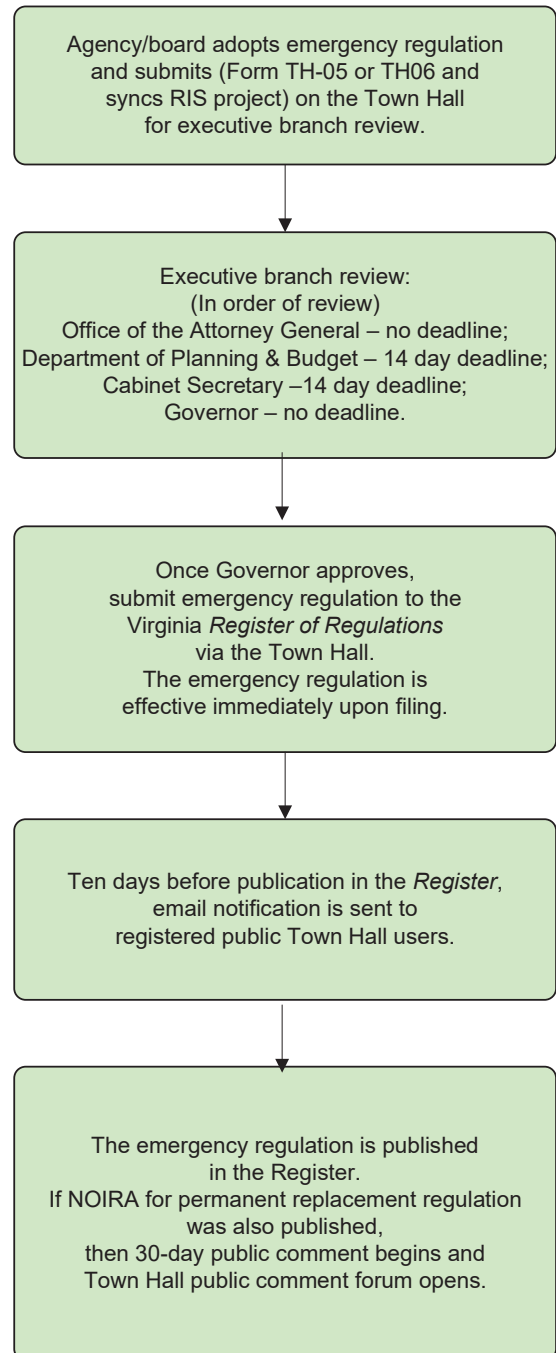
--Effective upon filing with the Registrar of Regulations.

--Initially effective for up to 18 months, and then may be extended for up to an additional 6 months if the Governor approves (for a total of 2 years).

--Usually replaced with a permanent regulation; therefore, a Notice of Intended Regulatory Action (NOIRA) to promulgate the permanent replacement regulation is normally filed at the same time as the emergency regulation.

Source: Section 2.2-4011 of the Code of Virginia

Steps to promulgating:



Code of Virginia
Title 2.2. Administration of Government
Subtitle II. Administration of State Government
Part B. Transaction of Public Business
Chapter 40. Administrative Process Act
Article 2. Regulations

§ 2.2-4011. Emergency regulations; publication; exceptions

A. Regulations that an agency finds are necessitated by an emergency situation may be adopted by an agency upon consultation with the Attorney General, which approval shall be granted only after the agency has submitted a request stating in writing the nature of the emergency, and the necessity for such action shall be at the sole discretion of the Governor.

B. Agencies may also adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment and the regulation is not exempt under the provisions of subdivision A 4 of § 2.2-4006. In such cases, the agency shall state in writing the nature of the emergency and of the necessity for such action and may adopt the regulations. Pursuant to § 2.2-4012, such regulations shall become effective upon approval by the Governor and filing with the Registrar of Regulations.

C. All emergency regulations shall be limited to no more than 18 months in duration. During the 18-month period, an agency may issue additional emergency regulations as needed addressing the subject matter of the initial emergency regulation, but any such additional emergency regulations shall not be effective beyond the 18-month period from the effective date of the initial emergency regulation. If the agency wishes to continue regulating the subject matter governed by the emergency regulation beyond the 18-month limitation, a regulation to replace the emergency regulation shall be promulgated in accordance with this article. The Notice of Intended Regulatory Action to promulgate a replacement regulation shall be filed with the Registrar within 60 days of the effective date of the emergency regulation and published as soon as practicable, and the proposed replacement regulation shall be filed with the Registrar within 180 days after the effective date of the emergency regulation and published as soon as practicable.

D. In the event that an agency concludes that despite its best efforts a replacement regulation cannot be adopted before expiration of the 18-month period described in subsection C, it may seek the prior written approval of the Governor to extend the duration of the emergency regulation for a period of not more than six additional months. Any such request must be submitted to the Governor at least 30 days prior to the scheduled expiration of the emergency regulation and shall include a description of the agency's efforts to adopt a replacement regulation together with the reasons that a

replacement regulation cannot be adopted before the scheduled expiration of the emergency regulation. Upon approval of the Governor, provided such approval occurs prior to the scheduled expiration of the emergency regulation, the duration of the emergency regulation shall be extended for a period of no more than six months. Such approval shall be in the sole discretion of the Governor and shall not be subject to judicial review. Agencies shall notify the Registrar of Regulations of the new expiration date of the emergency regulation as soon as practicable.

E. Emergency regulations shall be published as soon as practicable in the Register.

F. The Regulations of the Marine Resources Commission shall be excluded from the provisions of this section.

ATTACHMENT D

January XX, 2022

The Honorable Jason S. Miyares
Attorney General of Virginia
202 North Ninth Street
Richmond, VA 23219

Dear Attorney General Miyares:

Pursuant to Va. Code §2.2-4011, the Department of Environmental Quality (DEQ) is asking your concurrence that an emergency situation exists with respect to Virginia's carbon trading program and participation in the Regional Greenhouse Gas Initiative (RGGI), and approval for DEQ to issue an emergency regulation to repeal the sections of 9VAC5-140 that establish and regulate the state's carbon trading program and participation in RGGI (VAC5-140-6010 through 6440). DEQ is making this request in accordance with Executive Order (EO) 9 issued by Governor Youngkin on January 15, 2021. (A copy of EO-9 is attached.)

Va. Code §2.2-4011 states that your approval of an emergency regulation, "shall be granted only after the agency has submitted a request stating in writing the nature of the emergency, and the necessity for such action shall be at the sole discretion of the Governor." The nature of this emergency is described by the Governor in EO-9 as follows:

Reliable and affordable access to electricity is imperative to the health and safety of all Virginians. Our hospitals, schools, businesses, and homes all rely on this essential service. And the unpredictable and rising cost of electricity poses a significant and immediate threat to our Commonwealth and its citizens. In 2019, alone, over 100,000 Virginian households required Energy Assistance with a cost of \$46 million to the Commonwealth.

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.

Concurrent with making this request and in conformance with Va. Code §2.2-4011 and EO-9, DEQ is preparing a Notice of Intended Regulatory Action (NOIRA) to commence the process of bringing to the State Air Pollution Control Board for its consideration a proposed rule to make the repeal of Virginia's carbon trading program permanent.

Should you find that further consultation between your office and DEQ pursuant to Va. Code §2.2-4011 would be helpful in this matter, please do not hesitate to contact me. Thank you for your prompt attention to this request.

Sincerely,

Michael S. Rolband

ATTACHMENT E

The following table summarizes the emergency regulation/NOIRA process.

| | |
|-------|---|
| | DEQ/OAG consultation period via letter |
| | Board adopts emergency regulation (ER) |
| | DEQ submits adopted ER for executive branch review (OAG/DPB/SNR/Governor) |
| | Governor approves ER which is effective on filing; NOIRA filed same time |
| | <i>Replacement Regulation (RR) Clock Starts</i> |
| MONTH | DELIVERABLE |
| 1 | Submit NOIRA (filed automatically with ER) |
| 2 | 30 day NOIRA comment period |
| 3 | prepare response to comments and board book |
| 4 | |
| 5 | board adopt proposed RR for public comment |
| 6 | proposed RR filed for executive branch review within 180 days after ER effective date |
| 7 | 60 day proposed comment period starts |
| 8 | 60 day proposed comment period ends |
| 9 | |
| 10 | |
| 11 | |
| 12 | |
| 13 | board adopt final RR |
| 14 | final RR filed for executive branch review within 180 days after end of proposed comment period |
| 15 | |
| 16 | |
| 17 | <i>request extension if needed</i> |
| 18 | original RR completion date |
| 19 | <i>6-month extension</i> |
| 20 | |
| 21 | |
| 22 | |
| 23 | |
| 24 | <i>RR final</i> |

Project 7070 - Emergency/NOIRA

State Air Pollution Control Board

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.~~

~~"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 C 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.~~

~~"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.~~

~~"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 |
| 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:~~

- ~~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 BBBBB of 40 CFR Part 97 and 40 CFR 52.38(b), including such a program that is revised in a SIP revision approved by the administrator under 40 CFR 52.38(b)(3) or (4) or that is established in a SIP revision approved by the administrator under 40 CFR 52.38(b)(5), as a means of mitigating interstate transport of ozone and NO_x.~~

~~"Cross State Air Pollution Rule (CSAPR) 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 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, 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.~~

~~"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.~~

~~"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.~~
~~CEMS— 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:~~

$$\text{(ES — EP) / EG x 100}$$

~~Where:~~

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

~~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 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.~~

~~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, 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.~~

~~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 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;~~
- ~~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 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.~~

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 G;~~
- ~~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 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.

C.

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:

4.

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.

| | |
|-------------------------------|--------------------|
| 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.~~

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.~~

~~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 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.~~

~~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 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 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 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 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.~~
- ~~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.~~

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.~~

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 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.

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 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.~~

~~(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 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 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 QAVQC 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 CEMS required under the common stack provisions of 40 CFR 75.72 or a CO₂ concentration CEMS used under 40 CFR 75.71(a)(2). Application of an alternative to any such requirement is in accordance with this article only to the extent the petition is approved in writing by the administrator and subsequently approved in writing by the department.~~

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

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

Article 9

Auction of 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 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.~~



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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) 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-E) |
| 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 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), 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 the subject matter, intent, and goals 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 or changes. 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 immediately begin regulatory processes to end it. Specifically, the order requires that the department develop a proposed emergency 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 to 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.

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.

EO-9 - Executive Order 9 (2022)

RGGI - Regional Greenhouse Gas Initiative

Mandate and Impetus (Necessity for Emergency)

Explain why this rulemaking is an emergency situation in accordance with § 2.2-4011 A and B of the Code of Virginia. In doing so, either:

- a) Indicate whether the Governor’s Office has already approved the use of emergency regulatory authority for this regulatory change.
- b) Provide specific citations to Virginia statutory law, the appropriation act, federal law, or federal regulation that require that a regulation be effective in 280 days or less from its enactment.

As required by § 2.2-4011, also describe the nature of the emergency and of the necessity for this regulatory change. In addition, delineate any potential issues that may need to be addressed as part of this regulatory change

The Governor's Office has already approved the use of emergency regulatory authority for this regulatory change via EO-9. The nature of the emergency and the necessity for this regulatory change are described in EO-9 as follows:

Reliable and affordable access to electricity is imperative to the health and safety of all Virginians. Our hospitals, schools, businesses, and homes all rely on this essential service. And the unpredictable and rising cost of electricity poses a significant and immediate threat to our Commonwealth and its citizens. In 2019, alone, over 100,000 Virginian households required Energy Assistance with a cost of \$46 million to the Commonwealth.

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.

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 or Acts and 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

The specific directive of EO-9 states:

. . . I hereby direct the Director of the Department of Environmental Quality, in coordination with the Secretary of Natural and Historic Resources, to take the following actions in accordance with the provisions and requirements of § 10.1-1300, et seq. and § 2.2-4000, et seq. of the Code of Virginia:

1. Provide me a full 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.
2. During this same period, develop a proposed emergency regulation for the State Air Pollution Control Board’s consideration to repeal 9VAC5-140.
3. During this same period, take all necessary steps to 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.
4. During this same period, notify the Regional Greenhouse Gas Initiative Inc. (RGGI Inc.) of the review and the Governor’s intent to withdraw from RGGI, whether by legislative or regulatory action.

This NOIRA is intended to implement items 2 and 3 of the directive.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

As described in the Mandate and Impetus section of this document, EO-9 describes nature of the emergency and 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.

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 associated with the regulatory change is to protect the health, safety and welfare of the public through the reduced cost of electricity for citizens and businesses. Any potential adverse impacts are speculative as of this writing; however, should adverse impacts become apparent, they can be addressed at the appropriate time and by the appropriate regulatory means.

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.

Alternatives to the proposal will be considered by the board. It has been tentatively determined that the first alternative is appropriate, as it is the least burdensome and least intrusive alternative that fully meets the purpose of the regulatory action. The alternatives being considered, along with the reasoning by which any of the alternatives have been rejected, are discussed below.

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.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this Emergency/NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete the paragraph below and insert "This NOIRA is not being used to announce a periodic review or a small business impact review."

This NOIRA is not being used to announce a periodic review or a small business impact review.

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. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The the board is seeking comments on this regulation, including but not limited to: ideas to be considered in the development of this regulation, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation. The the board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: 1) projected reporting, recordkeeping, and other administrative costs; 2) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so 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 804-698-4178, email karen.sabasteanski@deq.virginia.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>). Written comments must include the name and address of the commenter. In order to be considered, comments must be received before midnight on the last day of the public comment period.

Public Hearing at Proposed Stage

[If holding a public hearing after the proposed stage, insert:]

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar (<https://www.virginia.gov/connect/commonwealth-calendar>).

[If not holding a public hearing during the proposed stage, insert:]

A public hearing will not be held following the publication of the proposed stage of this regulatory action unless requests for a public hearing are received during the NOIRA public comment period from at least 25 persons.

Regulatory Advisory Panel

Please indicate, to the extent known, if advisers (e.g., regulatory advisory panel or negotiated rulemaking panel) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using a panel in the development of the proposal; 2) the agency is using a panel in the development of the proposal; or 3) the agency is inviting comment on whether to use a panel to assist the agency in the development of a proposal.

The board does not intend to establish a panel to assist in the development of the proposal. However, in response to requests received during the NOIRA public comment period the board will consider establishing a panel. Persons requesting the agency use a panel and interested in assisting in the development of a proposal should notify the Department's contact person by the end of the comment period and provide their name, address, phone number, email address and their organization (if any). If a panel is used, notification of the composition of the panel will be sent to all applicants.

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.

| 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 | | Purpose of the regulation is described. | Repealed in accordance with the directives of EO-9. |
| 9VAC5-140-6020 | | Terms defined. | Repealed in accordance with the directives of EO-9. |
| 9VAC5-140-6030 | | Measurements, abbreviations, and acronyms used in the regulation are described. | Repealed in accordance with the directives of EO-9. |
| 9VAC5-140-6040 | | Entities to which the regulation applies are described. | Repealed in accordance with the directives of EO-9. |
| 9VAC5-140-6050 | | Standard requirements for permitting, monitoring, recordkeeping, liability, etc., are explained. | Repealed in accordance with the directives of EO-9. |
| 9VAC5-140-6060 | | Computation of time is described. | Repealed in accordance with the directives of EO-9. |
| 9VAC5-140-6070 | | Severability is established. | Repealed in accordance with the directives of EO-9. |
| 9VAC5-140-6080 | | Authorization and responsibilities of the CO ₂ authorized account representative are explained. | Repealed in accordance with the directives of EO-9. |
| 9VAC5-140-6090 | | The role of the CO ₂ authorized alternate account representative is described. | Repealed in accordance with the directives of EO-9. |
| 9VAC5-140-6100 | | 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 | | The elements of an account certificate of representation are provided. | Repealed in accordance with the directives of EO-9. |
| 9VAC5-140-6120 | | Objections concerning the CO ₂ authorized account representative are addressed. | Repealed in accordance with the directives of EO-9. |

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|----------------|--|---|---|
| 9VAC5-140-6130 | | Delegation by CO ₂ authorized account representatives and CO ₂ authorized alternate account representatives is explained. | Repealed in accordance with the directives of EO-9. |
| 9VAC5-140-6140 | | CO ₂ budget permit requirements are provided. | Repealed in accordance with the directives of EO-9. |
| 9VAC5-140-6150 | | Submission of CO ₂ budget permit applications. | Repealed in accordance with the directives of EO-9. |
| 9VAC5-140-6160 | | Information requirements for CO ₂ budget permit applications are established. | Repealed in accordance with the directives of EO-9. |
| 9VAC5-140-6170 | | Compliance certification reports are explained. | Repealed in accordance with the directives of EO-9. |
| 9VAC5-140-6180 | | Actions on compliance certifications are described. | Repealed in accordance with the directives of EO-9. |
| 9VAC5-140-6190 | | The Virginia CO ₂ Budget Trading Program base budgets are listed. | Repealed in accordance with the directives of EO-9. |
| 9VAC5-140-6200 | | 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 | | Allowance allocations are provided. | Repealed in accordance with the directives of EO-9. |
| 9VAC5-140-6220 | | CO ₂ allowance tracking system accounts are established. | Repealed in accordance with the directives of EO-9. |
| 9VAC5-140-6230 | | Establishment of accounts is described. | Repealed in accordance with the directives of EO-9. |
| 9VAC5-140-6240 | | 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 | | How the recordation of allowance allocations is to be accomplished. | Repealed in accordance with the directives of EO-9. |
| 9VAC5-140-6260 | | Compliance requirements are established. | Repealed in accordance with the directives of EO-9. |
| 9VAC5-140-6270 | | Banking requirements are described. | Repealed in accordance with the directives of EO-9. |
| 9VAC5-140-6280 | | Management of account errors is explained. | Repealed in accordance with the directives of EO-9. |
| 9VAC5-140-6290 | | How to close general accounts. | Repealed in accordance with the directives of EO-9. |

| | | | |
|----------------|--|--|---|
| 9VAC5-140-6300 | | How to submit CO ₂ allowance transfers. | Repealed in accordance with the directives of EO-9. |
| 9VAC5-140-6310 | | The recordation of allowance transfers is explained. | Repealed in accordance with the directives of EO-9. |
| 9VAC5-140-6320 | | Notification of allowance transfers is explained. | Repealed in accordance with the directives of EO-9. |
| 9VAC5-140-6325 | | Life-of-the-unit contractual arrangements are described. | Repealed in accordance with the directives of EO-9. |
| 9VAC5-140-6330 | | General requirements for monitoring, reporting, and recordkeeping. | Repealed in accordance with the directives of EO-9. |
| 9VAC5-140-6340 | | The initial certification and recertification procedures for a monitoring system are delineated. | Repealed in accordance with the directives of EO-9. |
| 9VAC5-140-6350 | | Out-of-control periods are addressed. | Repealed in accordance with the directives of EO-9. |
| 9VAC5-140-6360 | | Notifications are described. | Repealed in accordance with the directives of EO-9. |
| 9VAC5-140-6370 | | Recordkeeping and reporting requirements are explained. | Repealed in accordance with the directives of EO-9. |
| 9VAC5-140-6380 | | 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 | | Reserved. | Repealed in accordance with the directives of EO-9. |
| 9VAC5-140-6400 | | Reserved. | Repealed in accordance with the directives of EO-9. |
| 9VAC5-140-6410 | | The purpose of the requirements for allowance auctions is provided. | Repealed in accordance with the directives of EO-9. |
| 9VAC5-140-6420 | | General requirements for the auction notice. | Repealed in accordance with the directives of EO-9. |
| 9VAC5-140-6430 | | [repealed section] | [already repealed] |
| 9VAC5-140-6440 | | Program monitoring and review requirements. | Repealed in accordance with the directives of EO-9. |

Family Impact

In accordance with § 2.2-606 of the Code of Virginia, 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.

A positive impact to the institution of the family may be anticipated as a result of improved health, safety and welfare of the public through the reduced cost of electricity for citizens.

REG\DEVA22-E-01PD

ATTACHMENT H

#[date]

Andrew McKeon
Executive Director
The Regional Greenhouse Gas Initiative, Inc.
90 Church Street, 4th Floor
New York, NY 10007

Re: Notice of Intent to Withdraw the
Commonwealth of Virginia from
RGGI

Dear Mr. McKeon:

In accordance with Governor Youngkin's Executive Order 9 (2022), this letter is to notify the Regional Greenhouse Gas Initiative, Inc. (RGGI, Inc.) of the following actions to be undertaken by the Virginia Department of Environmental Quality:

1. Provide the Governor with a full report re-evaluating the costs and benefits of participation in RGGI in view of all available data, within 30 days.
2. During this same period, develop a proposed emergency regulation for the State Air Pollution Control Board's consideration to repeal the CO₂ Budget Trading Program (Part VII of 9VAC5-140).
3. During this same period, 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.
4. During this same period, notify RGGI, Inc., of the review and the Governor's intent to withdraw from RGGI, whether by legislative or regulatory action.

Accordingly, this letter notifies RGGI, Inc., of the Governor's intent to withdraw the Commonwealth of Virginia from RGGI upon the conclusion of an appropriate legislative or regulatory process. I will keep you informed as this process progresses. Please contact either me or my staff if you have any questions.

Sincerely,

MSR/MGD/kgs