

COMMONWEALTH OF VIRGINIA
STATE AIR POLLUTION CONTROL BOARD

CHAPTER 140. REGULATION FOR EMISSIONS TRADING

Part VII. CO₂ Budget Trading Program

Article 1. CO₂ Budget Trading Program General Provisions

9VAC5-140-6010. Purpose.

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.

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 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 \$13.00. 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
CO₂ 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
CO₂ 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 BBBB of 40 CFR Part 97 and 40 CFR 52.38(b), including such a program that is revised in a SIP revision approved by the administrator under 40 CFR 52.38(b)(3) or (4) or that is established in a SIP revision approved by the administrator under 40 CFR 52.38(b)(5), as a means of mitigating interstate transport of ozone and NO_x.

"Cross State Air Pollution Rule (CSAPR) SO₂ Group 1 Trading Program" means a multistate SO₂ air pollution control and emission reduction program established in accordance with Subpart CCCCC of 40 CFR Part 97 and 40 CFR 52.39(a), (b), (d) through (f), (j), and (k), including such a program that is revised in a SIP revision approved by the administrator under 40 CFR 52.39(d) or (e) or that is established in a SIP revision approved by the administrator under 40 CFR 52.39(f), as a means of mitigating interstate transport of fine particulates and SO₂.

"Cross State Air Pollution Rule (CSAPR) SO₂ Group 2 Trading Program" means a multistate SO₂ air pollution control and emission reduction program established in accordance with Subpart DDDDD of 40 CFR Part 97 and 40 CFR 52.39(a), (c), and (g) through (k), including such a program that is revised in a SIP revision approved by the administrator under 40 CFR 52.39(g) or (h) or that is established in a SIP revision 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. For 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 subsection.

"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.

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.

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:

$$(ES - EP) / EG \times 100$$

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.

9VAC5-140-6045. (Repealed.)

9VAC5-140-6050. Standard requirements.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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

B. The CO₂ authorized account representative shall include in the compliance certification report under subsection A of this section the following elements, in a format prescribed by the department:

1. Identification of the source and each CO₂ budget unit at the source;
2. At the CO₂ authorized account representative's option, the serial numbers of the CO₂ allowances that are to be deducted from the source's compliance account under [9VAC5-140-6260](#) for the control period; and
3. The compliance certification under subsection C of this section.

C. In the compliance certification report under subsection A of this section, the CO₂ authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the CO₂ budget units at the source in compliance with the CO₂ Budget Trading Program, whether the source and each CO₂ budget unit at the source for which the compliance certification is submitted was operated during the calendar years covered by the report in compliance with the requirements of the CO₂ Budget Trading Program, including:

1. Whether the source was operated in compliance with the CO₂ requirements of [9VAC5-140-6050](#) C;
2. Whether the monitoring plan applicable to each unit at the source has been maintained to reflect the actual operation and monitoring of the unit, and contains all information necessary to attribute CO₂ emissions to the unit, in accordance with Article 8 ([9VAC5-140-6330](#) et seq.) of this part;
3. Whether all the CO₂ emissions from the units at the source were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports, including whether conditional data were reported in the quarterly reports in accordance with Article 8 ([9VAC5-140-6330](#) et seq.) of this part. If

conditional data were reported, the owner or operator shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report resubmissions have been made;

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

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

9VAC5-140-6180. Action on compliance certifications.

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

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 CO₂ allowances.

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.

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:

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

Table 140-5A
CO₂ 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.

Table 140-5B
ECR Allowances from 2021 Forward

2021	2.716 million tons
2022	2.632 million tons
2023	2.548 million tons
2024	2.464 million tons

2025	2.380 million tons
2026	2.296 million tons
2027	2.212 million tons
2028	2.128 million tons
2019	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.

9VAC5-140-6211. (Repealed.)

9VAC5-140-6215. (Repealed.)

Article 6. CO₂ Allowance Tracking System

9VAC5-140-6220. CO₂ allowance tracking system accounts.

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.

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

B. General accounts shall operate as follows.

1. Any person may apply to open a general account for the purpose of holding and transferring CO₂ allowances. An application for a general account may designate one and only one CO₂ authorized account representative and one and only one CO₂ authorized alternate account representative who may act on behalf of the CO₂ authorized account representative. The agreement by which the CO₂ authorized alternate account representative is selected shall include a procedure for authorizing the CO₂ authorized alternate account representative to act in lieu of the CO₂ authorized account representative. A complete application for a general account shall be submitted to the department or its agent and shall include the following elements in a format prescribed by the department or its agent:

a. Name, address, email address, telephone number, and facsimile transmission number of the CO₂ authorized account representative and any CO₂ authorized alternate account representative;

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

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

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

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.

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.

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.

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.

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.

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.

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.

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.

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 nonrecording.

C. Nothing in this section shall preclude the submission of a CO₂ allowance transfer for recording following notification of nonrecording.

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

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 the effective date of this part. If such agreement is subject to third-party disclosure restrictions, the CO₂ budget source or unit shall provide purchaser with 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.

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.

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.

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

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

9VAC5-140-6360. Notifications.

The 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.

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 QA/QC program under Appendix B of 40 CFR Part 75 and the substitute values do not systematically underestimate CO₂ emissions; and

c. The CO₂ concentration values substituted for missing data under Subpart D of 40 CFR Part 75 do not systematically underestimate CO₂ emissions.

9VAC5-140-6380. Petitions.

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.)

9VAC5-140-6400. (Reserved.)

Article 9. Auction of CO₂ CCR and ECR Allowances

9VAC5-140-6410. Purpose.

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

9VAC5-140-6420. General requirements.

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

1. The number of 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.

9VAC5-140-6430. (Repealed.)

9VAC5-140-6435. (Repealed.)

Article 10. Program Monitoring and Review

9VAC5-140-6440. 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.

HISTORICAL NOTES:

Effective Date: July 10, 2020

Promulgated: July 10, 2020

REG\VAC\C140p7-CO2 Trading.docx