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Virginia Code Commission

<http://register.dls.virginia.gov>

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THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his

authority to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

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

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

STATEMENT

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

CITATION TO THE VIRGINIA REGISTER

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

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

Members of the Virginia Code Commission: **Marcus B. Simon, Chair; Russet W. Perry, Vice Chair; Katrina E. Callsen; Nicole Cheuk; Richard E. Gardiner; Ryan T. McDougle; Michael Mullin; Christopher R. Nolen; Steven Popps; Charles S. Sharp; Malfourd W. Trumbo; Amigo R. Wade.**

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PUBLICATION SCHEDULE AND DEADLINES

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

June 2026 through June 2027

| <u>Volume: Issue</u> | <u>Material Submitted By Noon*</u> | <u>Will Be Published On</u> |
|----------------------|--------------------------------------|-----------------------------|
| 42:21 | May 13, 2026 | June 1, 2026 |
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| 42:23 | June 10, 2026 | June 29, 2026 |
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| 43:8 | November 10, 2026 (Tuesday) | November 30, 2026 |
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| 43:20 | April 28, 2027 | May 17, 2027 |
| 43:21 | May 12, 2027 | May 31, 2027 |
| 43:22 | May 26, 2027 | June 14, 2027 |

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

Agency Decision

Title of Regulation: **18VAC30-21. Regulations Governing Audiology and Speech-Language Pathology.**

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

Name of Petitioner: American Academy of Audiology.

Nature of Petitioner's Request: The petitioner requests that the Board of Audiology and Speech-Language Pathology amend 18VAC30-21-60 A to include American Board of Audiology certification as an accepted pathway for audiologists applying for licensure in Virginia.

Agency Decision: Request granted.

Statement of Reason for Decision: At its April 21, 2026, meeting, the board voted to accept the petition and initiate rulemaking. Due to the noncontroversial nature of this change, the board will amend the regulation via a fast-track rulemaking action.

Agency Contact: Kelli Moss, Executive Director, Board of Audiology and Speech-Language Pathology, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 597-4132, or email kelli.moss@dhp.virginia.gov.

VA.R. Doc. No. PFR26-17; Filed December 17, 2025, 8:29 a.m.

PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

TITLE 1. ADMINISTRATION

DEPARTMENT OF GENERAL SERVICES

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of General Services conducted a periodic review and a small business impact review of **1VAC30-11, Public Participation Guidelines**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated April 20, 2026, to support this decision.

The purpose of this chapter is to promote public involvement in the development, amendment, or repeal of the regulations of the Department of General Services. The regulation is necessary to define and guide the public who are interested in an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. The regulation is written clearly and is easily understandable by outlining the purpose, definitions, and how notifications are guided.

The department has determined there is no economic impact on small businesses. This regulation promotes public involvement in the development, amendment, or repeal of the regulations of the department.

Contact Information: Kimberly Freiberger, Policy Planning Specialist III, Department of General Services, 1100 Bank Street, Suite 420, Richmond, VA 23219, telephone (804) 205-3861, or email kimberly.freiberger@dgs.virginia.gov.

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Agency Notice

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **2VAC5-320, Regulations for the Enforcement of the Endangered Plant and Insect Species Act**. The Notice of Intended Regulatory Action to amend 2VAC5-320, which is published in this issue of the Virginia Register, serves as the agency notices of announcement.

Agency Contact: David Gianino, Program Manager, Office of Plant Industry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3515, fax (804) 371-7793, TDD (800) 828-1120, or email david.gianino@vdacs.virginia.gov.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

BOARD OF JUVENILE JUSTICE

Agency Notice

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **6VAC35-150, Regulation for Nonresidential Services**. The Notice of Intended Regulatory Action to amend 6VAC35-150, which is published in this issue of the Virginia Register, serves as the agency notices of announcement.

Agency Contact: Kristen Peterson, Regulatory and Policy Coordinator, Department of Juvenile Justice, 600 East Main Street, 20th Floor, Richmond, VA 23219, telephone (804) 773-0180, fax (804) 371-6497, or email kristen.peterson@djj.virginia.gov.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Social Services conducted a periodic review and a small business impact review of **22VAC40-141, Licensing Standards for Independent Foster Homes**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated March 31, 2026, to support this decision.

The regulation establishes the requirements necessary to protect the health, safety, and welfare of children and youth receiving services from independent foster homes. The regulation is clearly written and readily understandable.

The regulation should be retained without change. There have been no licensed independent foster homes in Virginia since 2022; however, maintaining this regulation remains necessary to preserve the existing regulatory framework should licensure activity resume in the future. Retaining the current regulation ensures continuity and upholds the statutory requirements governing independent foster homes.

Retaining the regulation maintains compliance with requirements governing independent foster homes. No comments were received concerning this regulation. The regulation does not duplicate or conflict with federal or state law. This regulation has a current fast-track rulemaking action under review by the Office of the Attorney General. The last

Periodic Reviews and Small Business Impact Reviews

completed periodic review occurred in 2022 and resulted in a determination to retain the regulation as is due to the absence of licensed independent foster homes. There are no changes in technology, economic conditions, or other factors. This regulation has no impact on small businesses.

Contact Information: Alisa Foley, Licensing Consultant, Department of Social Services, 5600 Cox Road, Glen Allen, VA 23060, telephone (804) 726-7138, fax (804) 726-7132, or email a.foley@dss.virginia.gov.

Agency Notice

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **22VAC40-920, Appeals of Financial Sanctions for Local Departments of Social Services**. The review will be guided by the principles in Executive Order 19 (2022). The purpose of this review is to determine whether the regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to the regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins May 18, 2026, and ends June 8, 2026.

Comments must include the commenter's name and address (physical or email) in order to receive a response to the comment from the agency.

Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Torsheba Givens, Local Reimbursement Manager, Department of Social Services, 5600 Cox Road, Glen Allen, VA 23060, telephone (804) 726-7298, or email torsheba.givens@dss.virginia.gov.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to consider amending **2VAC5-105, Regulations Pertaining to Pet Shops Selling Dogs or Cats**. The purpose of the proposed action is to fulfill the requirements of Chapter 610 of the 2025 Acts of Assembly by developing civil penalties to be issued as a remedy for violations of the regulation related to inspecting pet shops that sell dogs or cats. Currently, the regulation prescribes probationary periods and revocation of registration for pet shops with egregious or repeat violations; the proposed amendments would add civil penalties to these. The board will also develop a civil penalty matrix as a guidance document.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 3.2-6501.1 of the Code of Virginia.

Public Comment Deadline: June 17, 2026.

Agency Contact: Dr.Carolynn Bissett, Program Manager, Office of Veterinary Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-2483, fax (804) 371-2380, TDD (800) 828-1120, or email carolynn.bissett@vdacs.virginia.gov.

VA.R. Doc. No. R26-8644; Filed April 23, 2026, 11:59 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to consider amending **2VAC5-320, Regulations for the Enforcement of the Endangered Plant and Insect Species Act**. The purpose of the proposed action is to add certain endangered and threatened plant and insect species that the board has determined are in danger of extinction or likely to become endangered in the foreseeable future throughout all or a significant portion of their native range to the lists of endangered and threatened plant and insect species. This action reflects the imperiled status of the various species and seeks to protect these species from take and destruction. The amendments are also expected to stimulate conservation programs to preserve and protect the affected species. The action is the result of a consultation with the Virginia Department of Conservation and Recreation regarding candidate species from reliable survey data gathered since the last time the lists of endangered and threatened plant and insect species were amended in 2020.

In addition, pursuant to § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business

impact review of this regulation to determine whether the regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §§ 3.2-1002 and 3.2-1005 of the Code of Virginia.

Public Comment Deadline: June 17, 2026.

Agency Contact: David Gianino, Program Manager, Office of Plant Industry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3515, fax (804) 371-7793, TDD (800) 828-1120, or email david.gianino@vdacs.virginia.gov.

VA.R. Doc. No. R26-8645; Filed April 23, 2026, 12:45 p.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

BOARD OF JUVENILE JUSTICE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Juvenile Justice intends to consider amending **6VAC35-150, Regulation for Nonresidential Services**. The purpose of the proposed action is to amend the regulation following a periodic review. The regulation for nonresidential services establishes the minimum requirements governing state-operated and locally operated court service units and nonresidential programs available to the juvenile and domestic relations district courts, including those funded through the Virginia Juvenile Community Crime Control Act. The proposed amendments being considered (i) remove obsolete provisions, (ii) eliminate references to improperly incorporated documents, (iii) add provisions to address gaps in regulatory oversight that may impact public safety, (iv) amend various sections for clarification, and (v) remove unnecessary discretionary requirements.

In addition, pursuant to § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether the regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on

small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §§ 16.1-233, 16.1-309.9, and 66-10 of the Code of Virginia.

Public Comment Deadline: June 17, 2026.

Agency Contact: Kristen Peterson, Regulatory and Policy Coordinator, Department of Juvenile Justice, 600 East Main Street, 20th Floor, Richmond, VA 23219, telephone (804) 773-0180, fax (804) 371-6497, or email kristen.peterson@djj.virginia.gov.

VA.R. Doc. No. R26-8643; Filed April 23, 2026, 6:47 a.m.



TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Education intends to consider amending **8VAC20-23, Licensure Regulations for School Personnel**. The purpose of the proposed action is to fulfill requirements of Chapter 552 of the 2025 Acts of the Assembly, which directs the board to develop and approve a geometry add-on endorsement for teachers licensed by the board to provide instruction in geometry for students in kindergarten through grade eight.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §§ 22.1-298.1 and 22.1-299 of the Code of Virginia.

Public Comment Deadline: June 17, 2026.

Agency Contact: Jim Chapman, Director of Board Relations, Department of Education, James Monroe Building, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 750-8750, or email jim.chapman@doe.virginia.gov.

VA.R. Doc. No. R26-8652; Filed April 27, 2026, 1:15 p.m.

REGULATIONS

For information concerning the different types of regulations, see the Information Page.

Symbol Key

Roman type indicates existing text of regulations. Underscored language indicates proposed new text. Language that has been stricken indicates proposed text for deletion. Brackets are used in final regulations to indicate changes from the proposed regulation.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: 4VAC20-950. Pertaining to Black Sea Bass (amending 4VAC20-950-20, 4VAC20-950-45, 4VAC20-950-47).

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

Effective Date: May 1, 2026.

Agency Contact: Benjamin Foster, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Fort Monroe, VA 23551, telephone (757) 709-9277, or email benjamin.foster@mrc.virginia.gov.

Summary:

The amendments bring the regulation into compliance with the Interstate Fisheries Management Plan by (i) establishing recreational management measures for black sea bass and (ii) updating the annual commercial quota determination.

4VAC20-950-20. Definitions.

The following words and terms when used in this chapter shall have the following meaning unless the context clearly indicates otherwise.

~~"Annual quota" means Virginia's 15.88% share of the annual coastwide commercial black sea bass quota managed by the Atlantic States Marine Fisheries Commission.~~

"Black sea bass" means any fish of the species *Centropristis striata*.

"Land" or "landing" means to (i) enter port with finfish, shellfish, crustaceans, or other marine seafood on board any boat or vessel; (ii) begin offloading finfish, shellfish, crustaceans, or other marine seafood; or (iii) offload finfish, shellfish, crustaceans, or other marine seafood.

"Recreational vessel" means any vessel, kayak, charter vessel, or headboat fishing recreationally.

"Snout" means the most forward projection from a fish's head that includes the upper and lower jaw.

"Total length" means the length of a fish measured from the most forward projection of the snout, with the mouth closed, to the tip of the longer lobe of the tail (caudal) fin, excluding the caudal fin filament, measured with the tail compressed along the midline, using a straight-line measure, not measured over the curve of the body.

4VAC20-950-45. Recreational possession limits and seasons.

A. It shall be unlawful for any person fishing with hook-and-line, rod and reel, spear, gig, or other recreational gear to possess more than 15 black sea bass. When fishing from a recreational vessel where the entire catch is held in a common hold or container, the possession limit shall be for that vessel and shall be equal to the number of persons on board legally licensed to fish, multiplied by 15. The captain or operator of the vessel shall be responsible for that vessel possession limit. Any black sea bass taken after the possession limit has been reached shall be returned to the water immediately.

B. Possession of any quantity of black sea bass that exceeds the possession limit described in subsection A of this section shall be presumed to be for commercial purposes.

C. ~~The In 2026, the open recreational fishing season shall be from May 15 through July 15 and August 5 through December 31. In 2027, the open recreational fishing season shall be from April 1 through December 31.~~

D. It shall be unlawful for any person fishing recreationally to take, catch, or possess any black sea bass, except during an open recreational season.

E. From February 1 through the last day of February, it shall be unlawful for any person to possess or land any black sea bass harvested from a recreational vessel, unless the captain or operator of that recreational vessel has obtained a Recreational Black Sea Bass Permit from the Marine Resources Commission (commission).

1. The captain or operator shall be responsible for reporting for all anglers on the recreational vessel and shall provide that captain's or that operator's Marine Resources Commission identification (MRC ID) number, the date of fishing, the number of persons on board, the mode of fishing, and the number of black sea bass kept or released. That report shall be submitted to the commission on forms provided by the commission or through the Virginia Saltwater Fisherman's Journal.

a. It shall be unlawful for any permittee to fail to report each trip where black sea bass were targeted, whether black sea bass were harvested, released, or not caught, by March 15 of the current calendar year.

b. It shall be unlawful for any permittee who did not take any fishing trips to target black sea bass in the February recreational black sea bass season to fail to report lack of participation by March 15 of the current calendar year.

2. It shall be unlawful for any permittee to fail to contact the Law Enforcement Operations at 1-800-541-4646 before or immediately after the start of each fishing trip. The permittee shall provide the Law Enforcement Operations with the permittee's name, MRC ID number, the point of landing, a description of the vessel, estimated return to shore time, and a contact telephone number.

3. Any permittee shall allow the commission to sample the vessel's catch to obtain biological information for scientific and management purposes.

4VAC20-950-47. Commercial harvest quotas.

A. The commercial landings of black sea bass shall be limited to the annual quota pursuant to the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Black Sea Bass Fishery Management Plan, except as specified in subsection B of this section.

B. If a quota transfer occurs between Virginia and another state participating in the Interstate Fishery Management Plan for black sea bass, Virginia's annual quota for the current calendar year shall be limited to the annual quota amount as adjusted for transfers.

C. The commercial black sea bass directed fishery quota shall be allocated 100% of the annual quota each year except the commercial directed fishery quota shall not include the amount of annual quota allocated to the commercial black sea bass bycatch fishery specified in subsection ~~B~~ D of this section. When it has been announced by the commission that the directed fishery quota has been projected as reached and the directed fishery has been closed, it shall be unlawful for any commercial black sea bass directed fishery permittee to possess aboard any vessel or land in Virginia any black sea bass.

~~B. D.~~ The commercial black sea bass bycatch fishery shall be allocated 40,000 pounds of the annual quota each calendar year. When it has been announced that the bycatch fishery quota has been projected as reached and the bycatch fishery has been closed, it shall be unlawful for any commercial black sea bass bycatch fishery permittee to possess aboard any vessel or land in Virginia any black sea bass. In the event the bycatch fishery quota is exceeded, the amount of the bycatch fishery quota overage shall be deducted from the following year's bycatch fishing quota.

VA.R. Doc. No. R26-8622; Filed April 22, 2026, 11:23 a.m.



TITLE 5. CORPORATIONS

STATE CORPORATION COMMISSION

Proposed Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **5VAC5-20. State Corporation Commission Rules of Practice and Procedure (amending 5VAC5-20-20, 5VAC5-20-140, 5VAC5-20-150, 5VAC5-20-170, 5VAC5-20-180, 5VAC5-20-200).**

Statutory Authority: §§ 12.1-13 and 12.1-25 of the Code of Virginia.

Public Hearing Information: A public hearing will be held upon request.

Public Comment Deadline: June 17, 2026.

Agency Contact: Bernard Logan, Clerk of the Commission, Clerk's Office, State Corporation Commission, 1300 East Main Street, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9834, or email bernard.logan@scc.virginia.gov.

Summary:

The proposed amendments include (i) generally expanding the scope of electronic filing and service in commission proceedings; (ii) allowing confidential and extraordinarily sensitive information to be filed electronically in commission proceedings and providing requirements for the submission, marking, and use of such filings; and (iii) making technical changes to facilitate electronic filing.

AT RICHMOND, APRIL 20, 2026

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. CLK-2026-00004

Ex Parte: In the matter concerning revised

State Corporation Commission Rules of

Practice and Procedure

ORDER ESTABLISHING PROCEEDING

Section 12.1-13 of the Code of Virginia (Code) provides, in relevant part, that "[i]n the administration and enforcement of all laws within its jurisdiction, the [State Corporation Commission (Commission)] shall have the power to promulgate rules and regulations[.]" Section 12.1-25 of the Code provides that the Commission "shall prescribe its own rules of practice and procedure not inconsistent with those made by the General Assembly." The Rules of Practice and Procedure (Rules) issued by the Commission pursuant to § 12.1-25 of the Code are set forth in Chapter 20 of Title 5 of the Virginia Administrative Code.¹

Regulations

The Clerk of the Commission (Clerk) has submitted to the Commission proposed amendments to the Rules. Specifically, and in addition to certain technical changes, the Clerk proposes amending the Rules to foster broader electronic filing and service in Commission proceedings. These amendments are proposed in conjunction with the Commission's implementation of a new Case System in early 2027 that will include enhanced capabilities for electronic filing and service.

Currently, the Rules generally permit electronic filing in Commission proceedings under Rule 20, subject to specific conditions. Similarly, the Rules permit electronic service on parties or Commission Staff under Rule 140, as well as electronic filing or service of written briefs under Rule 200, subject to specific conditions. The current Rules (including Rule 170 concerning confidential information), however, do not allow electronic submission of documents containing unredacted confidential information.

The new Case System has been designed to streamline the electronic filing and service processes for filers. Accordingly, the Clerk, with assistance of Commission Staff, has prepared proposed revisions to the Rules based on the increased capability for electronic filing and service under the new Case System. The proposed revisions to Rules 20 and 140 expand the scope for when electronic filing is permitted in general and when electronic filing and service are permitted in formal proceedings before the Commission. Additionally, proposed revisions to Rule 170 allow documents containing confidential information to be submitted electronically and provide guidance for the submission, marking, and use of confidential information when filed electronically, including for confidential information deemed "extraordinarily sensitive information." The proposed revisions also include technical revisions to Rules 150, 180 and 200 associated with the Commission's new Case System.

The Clerk has recommended to the Commission that the proposed revisions to the Rules be considered for adoption, with an effective date to coincide with the implementation of the new Case System in 2027.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that a proceeding should be established to consider revising the Rules to facilitate the Commission's new Case System. To initiate this proceeding, the Clerk has prepared the proposed revisions, which are appended to this Order Establishing Proceeding (Order). The Commission finds that notice of the proposed revisions should be given to the public, and that interested persons should be provided an opportunity to file written comments on, propose modifications or supplements to, or request a hearing on the proposed revisions.

Accordingly, IT IS ORDERED THAT:

- (1) This case is docketed and assigned Case No. CLK-2026-00004.
- (2) All comments and other documents and pleadings filed in this matter shall be submitted electronically to the extent authorized by 5VAC5-20-150, Copies and format, of the Commission's Rules. Confidential and Extraordinarily Sensitive Information shall not be submitted electronically and shall comply with 5VAC5-20-170, Confidential information, of the current Rules. Any person seeking to hand deliver and physically file or submit

any pleading or other document shall contact the Clerk's Office Document Control Center at (804) 371-9838 to arrange the delivery.

- (3) On or before June 17, 2026, any interested person may comment on, propose modifications or supplements to, or request a hearing solely on the proposed revisions by following the instructions on the Commission's website: scc.virginia.gov/case-information/submit-public-comments. Those unable, as a practical matter, to submit such documents electronically may file such comments by U.S. mail to the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. All documents shall refer to Case No. CLK-2026-00004. Any request for hearing shall state why a hearing is necessary and why the issues raised in the request for hearing cannot be addressed adequately in written comments.

- (4) The Commission Staff, with the Clerk, shall file its response to any comments filed pursuant to Ordering Paragraph 3 on or before July 17, 2026.

- (5) If a sufficient request for hearing is not received, the Commission may consider the matter and enter an order based upon the comments, documents or other pleadings filed in this proceeding.

- (6) On May 21, 2026, commencing at 10:00 a.m., the Commission shall convene a public presentation in this matter in the Commission's courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia 23219. The Clerk of the Commission shall coordinate the presentation, which will demonstrate preliminary design and planned functionality of the Commission's new Case System that is anticipated to utilize enhanced electronic filing processes, as set forth in the proposed revisions. The presentation also shall be webcast for viewing online by the public and accessible via the Commission's website: scc.virginia.gov/case-information/webcasting.

- (7) The Clerk, with assistance of Commission Staff, shall provide notice of this Order to any interested persons as the Commission Staff may designate.

- (8) The Commission's Office of General Counsel shall provide a copy of this Order, together with the proposed revisions, to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.

- (9) Interested persons may download unofficial copies of the Order and the proposed revisions from the Commission's website: scc.virginia.gov/case-information.

- (10) This matter is continued.

A COPY hereof shall be sent by the Clerk of the Commission to: John Farmer, Jr., Senior Assistant Attorney General, at JFarmer@oag.state.va.us, Office of the Attorney General, Division of Consumer Counsel, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219-3424; and the Commission's Office of General Counsel.

¹ 5VAC5-20-10 et seq. State Corporation Commission Rules of Practice and Procedure (available at <https://law.lis.virginia.gov/admincode/title5/agency5/chapter20/>).

5VAC5-20-20. Good faith pleading and practice.

Every pleading, written motion, or other document presented for filing by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, and the attorney's mailing address ~~and~~, telephone number, and ~~where available, telefax number and~~ email address, shall be stated. An individual not represented by an attorney shall sign the individual's pleading, motion, or other document, and shall state the individual's mailing address ~~and~~, telephone number, and email address. A partnership not represented by an attorney shall have a partner sign the partnership's pleading, motion, or other document, and shall state the partnership's mailing address ~~and~~, telephone number, and email address. A nonlawyer may only represent the interests of another before the commission in the presentation of facts, figures, or factual conclusions, as distinguished from legal arguments or conclusions. In the case of an individual or entity not represented by counsel, each signature shall be that of the individual or a qualified officer or agent of the entity. Documents signed pursuant to this rule need not be under oath unless so required by statute.

The commission ~~allows~~ prefers and encourages electronic filing. Before filing electronically, the filer shall ~~complete~~ establish an account as a registered user of the commission's Case System by completing an electronic document filing ~~authorization registration~~ form, establish a filer establishing multi-factor authentication password with the Clerk of the ~~State Corporation~~ Commission, and otherwise ~~comply~~ complying with the ~~electronic filing procedures adopted~~ registered user account requirements as directed by the commission. Upon establishment of a ~~filer authentication password registered user account~~, a filer registered user may, among other things, make electronic filings in ~~any case~~. ~~All documents submitted electronically must be capable of being printed as paper documents without loss of content or appearance~~ cases to which the registered user is associated.

Any filing made pursuant to this chapter through a person's registered user account, along with the person's name on the signature block, constitutes a "signature." The signature of an attorney or party constitutes a certification that (i) the attorney or party has read the pleading, motion, or other document; (ii) to the best of the attorney's or party's knowledge, information, and belief formed after reasonable inquiry, the pleading, motion, or other document is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and (iii) the pleading, motion, or other document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. A pleading, written motion, or other document will not be accepted for filing by the Clerk of the Commission if it is not signed.

An oral motion made by an attorney or party in a commission proceeding constitutes a representation that the motion (i) is

well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and (ii) is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

5VAC5-20-140. Filing and service.

A pleading or other document shall be considered filed with the commission upon receipt of the original and required copies by the Clerk of the Commission no later than the time established for the closing of business of the clerk's office on the day the item is due. The original and copies shall be stamped by the ~~Clerk~~ clerk to show the time and date of receipt.

Electronic filings may be submitted at any time and will be deemed filed on the date and at the time the electronic document is received by the commission's ~~database~~; clerk's office, provided; that if a document is received when the clerk's office is not open for public business, the document shall be deemed filed on the next regular business day. A filer will receive an electronic notification identifying the date and time the document was received by the commission's database. An electronic document may be rejected if it is not submitted in compliance with ~~these rules~~ this chapter.

When a filing would otherwise be due on a day when the clerk's office is not open for public business during all or part of a business day, the filing will be timely if made on the next regular business day that the office is open to the public. Except as otherwise ordered by the commission, when a period of 15 days or fewer is permitted to make a filing or take other action pursuant to commission rule or order, intervening weekends or holidays shall not be counted in determining the due date.

Service Unless otherwise ordered by the commission, service of a pleading, brief, or other document filed with the commission required to be served on the parties to a proceeding or upon the commission staff, shall be effected by delivery of a true copy to the party or staff, or by deposit of a true copy into the United States mail or overnight express mail delivery service properly addressed and postage prepaid, ~~or~~ via hand-delivery, or by electronic service on or before the date of filing. Service on a party may be made by service on the party's counsel. ~~Alternatively, electronic service shall be permitted on parties or staff in cases where all parties and staff have agreed to such service, or where the commission has provided for such service by order.~~ At the foot of a formal pleading, brief, or other document required to be served, the party making service shall append a certificate of counsel of record that copies were mailed or delivered as required. Notices, findings of fact, opinions, decisions, orders, or other documents to be served by the commission may be served by United States mail. However, all writs, processes, and orders of the commission, when acting in conformity with § 12.1-27 of the Code of Virginia, shall be attested by the Clerk of the Commission and served in compliance with § 12.1-19.1 or 12.1-29 of the Code of Virginia.

Regulations

5VAC5-20-150. Copies and format.

Applications, petitions, motions, responsive pleadings, briefs, and other documents filed by parties must be filed in an original and 15 copies unless otherwise directed by the commission. Except as otherwise stated in ~~these rules~~ this chapter, submissions filed electronically are exempt from the copy requirement. One copy of each responsive pleading or brief must be served on each party and the commission staff counsel assigned to the matter, or, if no counsel has been assigned, on the general counsel.

Each document filed on paper must be filed on standard size white opaque paper, 8-1/2 by 11 inches in dimension, must be capable of being reproduced in copies of archival quality, and only one side of the paper may be used. Submissions filed electronically shall be made in portable document format (PDF). Parties and commission staff may provide versions of these electronically filed documents using other formats as specified by the commission, such as Microsoft Word or Microsoft Excel.

Each document shall be bound or attached on the left side and contain adequate margins. Each page following the first page shall be numbered. If necessary, a document may be filed in consecutively numbered volumes, ~~each of which may not exceed three inches in thickness.~~ Submissions filed electronically ~~may not exceed 100 pages of printed text of 8-1/2 by 11 inches~~ must meet formatting requirements as established by the Clerk of the Commission at the time of the submission and made available on the commission's website.

Each document containing more than one exhibit should have dividers separating each exhibit and should contain an index. Exhibits such as maps, plats, and photographs not easily reduced to standard size may be filed in a different size, as necessary. Submissions filed electronically that otherwise would incorporate large exhibits impractical for conversion to electronic format shall be identified in the filing and include a statement that the exhibit was filed in hardcopy and is available for viewing at the commission or that a copy may be obtained from the filing party. Such exhibit shall be filed in an original and 15 copies.

All filed documents shall be fully collated and assembled into complete and proper sets ready for distribution and use, without the need for further assembly, sorting, or rearrangement. The Clerk of the Commission may reject the filing of any document not conforming to the requirements of this rule.

5VAC5-20-170. Confidential information.

A person who proposes in good faith in a formal proceeding that information to be filed with or delivered to the commission be withheld from public disclosure on the ground that it contains trade secrets, privileged, or confidential commercial or financial information shall file this information under seal with both the Clerk of the Commission, ~~or otherwise deliver~~

~~the information under seal to (clerk) and the commission staff, or both, as may be required.~~ Items filed or delivered under seal electronically shall indicate on the accompanying filing intake form that the item is "Filed Under Seal" and provide the applicable security classification. Whenever a document is filed with the clerk under seal electronically, the filing party shall also file electronically with the clerk an expurgated or redacted version of the document filed under seal for use and review by the public.

Items filed or delivered under seal, if not filed electronically, shall be securely sealed in an opaque container that is clearly labeled "UNDER SEAL," and, if filed, shall meet the other requirements for filing contained in ~~these rules~~ this chapter. An original and 15 copies of all such information shall be filed with the clerk. ~~One~~ If not filed electronically, one additional copy of all such information shall also be delivered under seal to the commission staff counsel assigned to the matter, or, where no counsel has been assigned, to the general counsel who, until ordered otherwise by the commission, shall disclose the information only to the members of the commission staff directly assigned to the matter as necessary in the discharge of their duties. Whenever a document is filed with the clerk under seal, if not filed electronically, the filing party also shall file with the clerk an original and one copy of an expurgated or redacted version of the document filed under seal for use and review by the public.

Staff counsel and all members of the commission staff, until otherwise ordered by the commission, shall maintain the information in strict confidence and shall not disclose its contents to members of the public, or to other staff members not assigned to the matter. The commission staff or any party may object to the proposed withholding of the information.

When an application (including supporting documents and prefiled testimony) contains information that the applicant claims to be confidential, the filing shall be made under seal and accompanied by a motion for protective order or ruling or other confidential treatment. The provision to a party of information claimed to be trade secrets, privileged, or confidential commercial or financial information shall be governed by a protective order or ruling or other individual arrangements for confidential treatment.

On every document filed or delivered under seal, either electronically or in hard copy, the producing party shall mark each individual page of the document that contains confidential information, and on each such page shall clearly indicate the specific information requested to be treated as confidential by use of highlighting, underscoring, bracketing, or other appropriate marking. All remaining materials on each page of the document shall be treated as nonconfidential and available for public use and review. If an entire document is confidential, ~~or if all information provided in electronic format under Part IV (5VAC5-20-240 et seq.) of these rules is confidential,~~ a marking prominently displayed on the first page of such

document or at the beginning of any information provided in electronic format, indicating that the entire document is confidential shall suffice.

Upon challenge, the information shall be treated as confidential pursuant to ~~these rules this chapter~~ only where the party requesting confidential treatment can demonstrate to the satisfaction of the commission that the risk of harm of publicly disclosing the information outweighs the presumption in favor of public disclosure. If the commission determines that the information should be withheld from public disclosure, it may nevertheless require the information to be disclosed to parties to a proceeding under appropriate protective order or ruling.

~~Whenever a document is filed with the clerk under seal, an original and one copy of an expurgated or redacted version of the document deemed by the filing party or determined by the commission to be confidential shall be filed with the clerk for use and review by the public. A document containing confidential information shall not be submitted electronically. An expurgated or redacted version of the document may be filed electronically. Documents containing confidential information must be filed in hardcopy and in accordance with all requirements of these rules. Upon a determination by the commission or a hearing examiner that all or portions of any materials filed under seal are not entitled to confidential treatment, if filed electronically, the filing party shall file one original and one copy of the expurgated or redacted version of the document reflecting the ruling. If not filed electronically, the filing party shall file one original and one copy of the expurgated or redacted version of the document reflecting the ruling.~~

When the information at issue is not required to be filed or made a part of the record, a party who wishes to withhold confidential information from filing or production may move the commission for a protective order without filing the materials. In considering such a motion, the commission may require production of the confidential materials for inspection in camera, if necessary.

A party may request additional protection for extraordinarily sensitive information by motion filed pursuant to 5VAC5-20-110, and filing, either electronically or in hard copy, the information with the Clerk of the Commission clerk under seal and, if not filed electronically, delivering a copy of the information to commission staff counsel under seal as directed above in this section. Whenever such treatment has been requested under Part IV of ~~these rules this chapter~~, the commission may make such orders as necessary to permit parties to challenge the requested additional protection.

The commission, hearing examiners, any party, and the commission staff may make use of confidential material in orders, filing pleadings, testimony, or other documents; as directed by order of the commission. When a party or commission staff uses confidential material in a filed pleading, testimony, or other document, the party or commission staff

must file both confidential and nonconfidential versions of the pleading, testimony, or other document. Confidential versions of filed pleadings, testimony, or other documents shall clearly indicate the confidential material contained within by highlighting, underscoring, bracketing or other appropriate marking. When filing a confidential ~~pleadings pleading~~, testimony, or other documents, ~~parties the party or commission staff~~ must submit the a confidential version and a nonconfidential version of the filed pleading, testimony, or other document that shall expurgate, redact, or otherwise omit all references to confidential material. If not filed electronically, the party or commission staff must submit the confidential version of the pleading, testimony, or other document to the Clerk of the Commission clerk securely sealed in an opaque container that is clearly labeled "UNDER SEAL." ~~Nonconfidential versions of filed pleadings, testimony, or other documents shall expurgate, redact, or otherwise omit all references to confidential material.~~

The commission may issue such order as it deems necessary to prevent the use of confidentiality claims for the purpose of delay or obstruction of the proceeding.

A person who proposes in good faith that information to be delivered to the commission staff outside of a formal proceeding be withheld from public disclosure on the ground that it contains trade secrets, privileged, or confidential commercial or financial information may deliver the information under seal to the commission staff, subject to the same protections afforded confidential information in formal proceedings.

5VAC5-20-180. Official transcript of hearing.

The official transcript of a hearing before the commission or a hearing examiner shall be that prepared by the court reporters retained by the commission and certified by the court reporter as a true and correct transcript of the proceeding. Transcripts of proceedings shall not be prepared except in cases assigned to a hearing examiner, when directed by the commission, or when requested by a party desiring to purchase a copy. Parties desiring to purchase expedited copies of the transcript shall make arrangement for purchase with the court reporter. When a transcript is prepared, a copy ~~thereof of the transcript~~ shall be made available for the public inspection in the clerk's office. If the transcript includes confidential information, an expurgated or redacted version of the transcript shall be made available for the public inspection in the clerk's office. Only the parties who have executed an agreement to adhere to a protective order or ruling or other arrangement for access to confidential treatment in such proceeding and the commission staff shall be entitled to access to an unexpurgated or unredacted version of the transcript. By agreement of the parties, or as the commission may by order provide, corrections may be made to the transcript.

Regulations

5VAC5-20-200. Briefs.

Written briefs may be authorized at the discretion of the commission, except in proceedings under 5VAC5-20-100 A, where briefs may be filed by right. The time for filing briefs and reply briefs, if authorized, shall be set at the time they are authorized. The commission may limit the length of a brief. ~~The commission may by order provide for the electronic filing or service of briefs.~~

VA.R. Doc. No. R26-8623; Filed April 21, 2026, 10:50 a.m.

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TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Proposed Regulation

Title of Regulation: 6VAC20-290. Rules Relating to the Use of Military Property and Equipment for Law-Enforcement Agencies (adding 6VAC20-290-10, 6VAC20-290-20, 6VAC20-290-30).

Statutory Authority: § 9.1-102 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: July 17, 2026.

Agency Contact: Kristi Shalton, Law Enforcement Program Coordinator, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 786-7801, fax (804) 786-0410, or email kristi.shalton@dcjs.virginia.gov.

Basis: Section 9.1-102 of the Code of Virginia authorizes the Department of Criminal Justice Services, under the direction of the Criminal Justice Services Board, to adopt regulations for the administration of Chapter 1 (§ 9.1-100 et seq.) of Title 9.1 of the Code of Virginia. Specifically, § 9.2-102 authorizes the department to establish and administer a waiver process in accordance with §§ 2.2-5515 and 15.2-1721.1 of the Code of Virginia for law-enforcement agencies to use certain military property.

Purpose: This action is essential to protect the safety and welfare of citizens in the Commonwealth because it provides for the adoption and administration of a statewide waiver process for the review of waivers submitted by law-enforcement agencies to utilize certain military property and equipment.

Substance: In response to Chapter 37 of the 2020 Acts of Assembly, Special Session I, this action establishes Rules Relating to the Use of Military Property and Equipment for Law-Enforcement Agencies (6VAC20-290), which provides for the adoption and administration of a statewide waiver process for the review of waivers submitted by law-enforcement agencies to utilize certain military property and

equipment. Specifically, the chapter (i) requires affected law-enforcement agencies in possession of certain prohibited equipment prior to March 1, 2021, to submit a waiver application form to the department for use of that equipment; (ii) specifies that qualifying equipment may be used while the application for the waiver is pending and that the agency may appear before the board in support of its application; and (iii) requires the department to publish any waivers granted by the board on the department's website.

Issues: The primary advantage to the public and the Commonwealth is the protection of the safety and well-being of the public and the local and state law-enforcement community. There are no known disadvantages to the public or the Commonwealth.

Department of Planning and Budget Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.¹

Summary of the Proposed Amendments to Regulation. As a result of a 2020 legislative mandate,² the Criminal Justice Services Board (board) seeks to create a permanent regulation to replace an emergency regulation that allows law-enforcement agencies to obtain a waiver to use certain military property the agency acquired prior to March 1, 2021. The proposed changes would require affected law-enforcement agencies to submit an application form to the Department of Criminal Justice Services (DCJS); specify that qualifying equipment may be used while the application for the waiver is pending, and that the agency may appear before the board in support of its application; and require DCJS to publish any waivers granted by the board on the DCJS website.

Background. Chapter 37 of the 2020 Acts of Assembly, Special Session I, created two new sections of the Code of Virginia, and amended two existing sections, to address the acquisition of military property. Section 2.2-5515 of the Code of Virginia prohibits any agency of the Commonwealth, or director or chief executive of any agency or department employing law-enforcement officers from acquiring or purchasing certain types of military equipment.³ This section also specifies that any agency or department employing law-enforcement officers that had previously acquired any of the prohibited items could only continue the use of such items by obtaining a waiver from the board. Section 15.2-1721.1 of the Code of Virginia added identical restrictions for any locality, sheriff, chief of police, or director or chief executive of any agency or department employing deputy sheriffs or law-enforcement officers or any public or private institution of higher education that has established a campus police department. Chapter 37 also amended § 52-11.3 of the Code of Virginia to apply similar restrictions for the Superintendent of State Police. Lastly, this legislation further amended subdivision 62 of § 9.1-102 of the Code of Virginia to state that DCJS, under the direction of the board, shall establish and administer a waiver process, in accordance with §§ 2.2-5515 and 15.2-1721.1 of the Code of Virginia, for law-enforcement agencies to use certain

military property, and that any waivers granted by the board shall be published on the DCJS website. As a result of these statutory changes, the list of equipment that cannot be acquired or purchased is now in §§ 2.2-5515, 15.2-1721.1, and 52-11.3 of the Code of Virginia. Collectively, this list applies to all law-enforcement agencies in the Commonwealth, as follows: (i) weaponized unmanned aerial vehicles; (ii) aircraft that are configured for combat or are combat-coded and have no established commercial flight application; (iii) grenades or similar explosives or grenade launchers from a surplus program operated by the federal government; (iv) armored multi-wheeled vehicles that are mine-resistant, ambush-protected, and configured for combat, also known as MRAPs, from a surplus program operated by the federal government; (v) bayonets; (vi) firearms of .50 caliber or higher; (vii) ammunition of .50 caliber or higher; and (viii) weaponized tracked armored vehicles. All three sections also specify that, "Nothing in this section shall restrict the acquisition or purchase of an armored high mobility multi-purpose wheeled vehicle, also known as HMMWVs, or preclude the seizure of any prohibited item in connection with a criminal investigation or proceeding or subject to a civil forfeiture. Any property obtained by seizure shall be disposed of at the conclusion of any investigation or as otherwise provided by law." Accordingly, the board proposes to add a new regulation (6VAC20-290) to implement the legislative mandate. 6VAC20-290-20 specifies that any law-enforcement agency subject to the provisions of §§ 2.2-5515, 15.2-1721.1, and 52-11.3 of the Code of Virginia that are in possession of equipment prohibited by these sections prior to March 1, 2021, must request a waiver to continue the use of such equipment. The proposed language also specifies that a waiver request be made on an application form provided by DCJS (which is included in the regulation), that applicants may appear before the board in support of the request, and that they may utilize such equipment while the application for waiver is pending. Section 10 also directs DCJS to publish any waivers granted by the board on their website. 6VAC20-290-30 specifies that law-enforcement agencies that do not request or receive a waiver may not utilize any equipment prohibited by §§ 2.2-5515, 15.2-1721.1, and 52-11.3 of the Code of Virginia. Lastly, the 2020 legislation directed DCJS to promulgate regulations within 280 days of the effective date of the Act. Thus, DCJS adopted the emergency regulation, which became effective on September 15, 2023.⁴ The proposed language summarized above is identical to the emergency language currently in effect. Further, the board developed a waiver request form and sent it out to all law-enforcement agencies statewide in January 2021.⁵ At its May 2021 meeting, the board voted on and approved 18 waivers from 17 law-enforcement agencies.⁶ As required by the legislation, DCJS has published all the waiver applications on their website.⁷ Of the 18 waiver applications, 15 appear to have been for MRAPs and three for 0.50-caliber rifles. DCJS reports that they have not received any new applications since the May 2021 meeting and that they do not anticipate receiving any more applications.

Estimated Benefits and Costs. The waiver process codified by the proposed regulation would benefit law-enforcement agencies in the Commonwealth that have any military equipment prohibited by §§ 2.2-5515, 15.2-1721.1, and 52-11.3 of the Code of Virginia by allowing them to continue using such equipment. More

specifically, the regulation would validate the waivers that have already been issued to 17 law-enforcement agencies. DCJS reports that they do not anticipate receiving any more waiver applications and that the waivers that have been issued cover all prohibited equipment in the possession of law-enforcement agencies in the Commonwealth. Thus, any administrative costs arising from submitting a waiver application to the board, and possibly from appearing at a board meeting to speak in support of the application, have already been incurred.

Businesses and Other Entities Affected. The proposed regulation only affects any law-enforcement agencies in Virginia that have any military equipment prohibited by §§ 2.2-5515, 15.2-1721.1, and 52-11.3 of the Code of Virginia. Specifically, waivers have been obtained by the Sheriff Offices for Bedford, Caroline, Culpeper, Franklin, Frederick, Greene, Mecklenburg, Page, Russell, Spotsylvania, Washington, and Westmoreland counties, and by Police Departments for Hampton, Harrisonburg, Virginia Beach, and Winchester. The Metropolitan Washington Airports Authority also obtained a waiver. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁸ An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.⁹ The proposed regulation would not create any costs that are not a direct result of the legislative mandate. Further, any administrative costs to law-enforcement agencies arising from the legislative mandate have already been incurred. Thus, an adverse impact is not indicated.

Small Businesses¹⁰ Affected.¹¹ The proposed amendments would not adversely affect small businesses.

Localities¹² Affected.¹³ Localities whose sheriff offices or police departments have prohibited military equipment would be particularly affected by this regulation, and by the legislation requiring it. As mentioned previously, waivers have been obtained by the Sheriff Offices for Bedford, Caroline, Culpeper, Franklin, Frederick, Greene, Mecklenburg, Page, Russell, Spotsylvania, Washington, and Westmoreland counties, and by Police Departments for Hampton, Harrisonburg, Virginia Beach, and Winchester. The proposed regulation does not affect costs for local governments.

Projected Impact on Employment. The proposed regulation does not appear to affect total employment.

Effects on the Use and Value of Private Property. The proposed regulation does not affect the value of private property or real estate development costs.

¹ Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

² See <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=202&typ=bil&val=ch37>.

³ See <https://law.lis.virginia.gov/vacode/title2.2/chapter55.4/section2.2-5515/>.

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⁴ See <https://townhall.virginia.gov/l/ViewStage.cfm?stageid=9507>.

⁵ See the minutes of the board's March 25, 2021, meeting: https://townhall.virginia.gov/l/GetFile.cfm?File=meeting\51\32001\Minutes_DCJS_32001_v2.pdf.

⁶ See the minutes of the board's May 20, 2021, meeting: https://townhall.virginia.gov/l/GetFile.cfm?File=Meeting\51\32002\Minutes_DCJS_32002_v1.pdf.

⁷ See <https://www.dcsj.virginia.gov/content/2021-cjsb-document-review>.

⁸ Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

⁹ Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

¹⁰ Pursuant to § 2.2-4007.04, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

¹¹ If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

¹² "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹³ Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency Response to Economic Impact Analysis: The Virginia Department of Criminal Justice Services (DCJS) agrees with the economic impact analysis prepared by the Department of Planning and Budget (DPB) dated March 8, 2024. Legislatively mandated in 2020, this action creates a permanent regulation to replace an emergency regulation (that has since expired) that allows law-enforcement agencies to obtain a waiver to use certain military property the agency acquired prior to March 1, 2021. DCJS concurs with the DPB assessment that it adopted the emergency regulation, which became effective on September 15, 2023. Additionally, the Board of Criminal Justice Services developed a waiver request form and sent it out to all law-enforcement agencies statewide in January 2021. The regulatory language in this action is identical to the emergency language and poses no economic impact to any localities or law-enforcement agencies. At its May 2021 meeting, the board voted on and approved 18

waivers from 17 law-enforcement agencies. As required by the legislation, DCJS has published all the waiver applications on the DCJS website. Although the regulatory action has been stagnant, DCJS maintains that it has not received any new applications since the May 2021 meeting and does not anticipate receiving any more applications. The DPB assessment that the new permanent regulation (6VAC20-290) does not adversely affect small businesses or real estate development costs is accurate. DCJS fully supports the DPB assessment and is in agreement with the published analysis.

Summary:

In response to Chapter 37 of the 2020 Acts of Assembly, Special Session I, the proposed action establishes Rules Relating to the Use of Military Property and Equipment for Law-Enforcement Agencies (6VAC20-290), which provides for the adoption and administration of a statewide waiver process for the review of waivers submitted by law-enforcement agencies to utilize certain military property and equipment.

Chapter 290

Rules Relating to the Use of Military Property and Equipment for Law-Enforcement Agencies

6VAC20-290-10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Board" means the Criminal Justice Services Board.

"Department" means the Department of Criminal Justice Services.

"Law-enforcement agency" means any state or local police or sheriff's office.

6VAC20-290-20. Establishment of a waiver process.

A. Any law-enforcement agency subject to the provisions of § 2.2-5515, 15.2-1721.1, or 52-11.3 of the Code of Virginia in possession of equipment prohibited by § 2.2-5515, 15.2-1721.1, or 52-11.3 of the Code of Virginia prior to March 1, 2021, must request a waiver to continue the use of such prohibited equipment.

B. A law-enforcement agency shall file with the department a completed application for such waiver on the form and in the manner provided by the department.

C. The board shall consider each waiver request. A law-enforcement agency may appear before the board in support of the request. A law-enforcement agency may utilize qualifying equipment while the application for waiver is pending.

D. Any waivers granted by the board shall be published by the department on the department's website.

6VAC20-290-30. Failure to comply with rules relating to waiver process.

A law-enforcement agency that does not request or receive a waiver may not utilize any equipment prohibited by §§ 2.2-5515, 15.2-1721.1, and 52-11.3 of the Code of Virginia.

NOTICE: The following forms used in administering the regulation have been filed by the agency. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the Virginia Register of Regulations may also click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of Registrar of Regulations, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

FORMS (6VAC20-290)

[Military Surplus and Other Regulated Police Equipment Waiver \(rev. 4/2021\)](#)

VA.R. Doc. No. R22-6818; Filed April 24, 2026, 4:58 p.m.



TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Final Regulation

Title of Regulation: 8VAC20-770. Background Checks for Child Day Programs and Family Day Systems (repealing 8VAC20-770-10 through 8VAC20-770-150).

Statutory Authority: §§ 22.1-16 and 22.1-289.046 of the Code of Virginia.

Effective Date: June 17, 2026.

Agency Contact: Tatanishia Armstrong, Legislative Consultant, Department of Education, James Monroe Building, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 382-5047, or email tatanishia.armstrong@doe.virginia.gov.

Summary:

The action repeals Background Checks for Child Day Programs and Family Day Systems (8VAC20-770). The content of the repealed chapter was amended and added to a new chapter, General Procedures and Information for Licensure (8VAC20-821), which became effective through a separate action on February 1, 2026.

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

VA.R. Doc. No. R22-7027; Filed April 27, 2026, 1:16 p.m.

Action Withdrawn

Title of Regulation: 8VAC20-780. Standards for Licensed Child Day Centers (amending 8VAC20-780-40, 8VAC20-780-245, 8VAC20-780-510).

Statutory Authority: §§ 22.1-16 and 22.1-289.046 of the Code of Virginia.

The State Board of Education has WITHDRAWN the regulatory action for **8VAC20-780, Standards for Licensed Child Day Centers**, which was published as a Fast-Track Rulemaking Action in [42:7 VA.R. 845-851 November 17, 2025](#). The purpose of the proposed action was to (i) require each child day center to implement policies for the possession and administration of epinephrine to be administered by certain authorized and trained individuals to any child believed to be having an anaphylactic reaction and (ii) require that at least one authorized and trained individual at each child day center has the means to access at all times during regular facility hours any appropriate weight-based dosage of epinephrine that is stored in a locked or otherwise generally inaccessible container or area. The board received more than the requisite 10 objections to the fast-track rulemaking process. That objection was published in [42:12 VA.R. 1483 January 26, 2026](#). On April 23, 2026, the board voted to withdraw the action to avoid conflict with the promulgation of the new Standards for Licensed Child Day Centers (8VAC20-781). The action is being withdrawn in order to ensure that policy remains consistent across all early childhood care and education providers. After the promulgation of 8VAC20-781, the agency will restart the standard rulemaking process for this action. Therefore, this action is unnecessary and should be withdrawn.

Agency Contact: Tatanishia Armstrong, Legislative Consultant, Office of Child Care Health and Safety, Department of Education, 101 North 14th Street, Richmond, VA 23219, telephone (804) 382-5047, or email tatanishia.armstrong@doe.virginia.gov.

VA.R. Doc. No. R26-7599; Filed April 28, 2026, 12:30 p.m.

Action Withdrawn

Title of Regulation: 8VAC20-790. Child Care Program (amending 8VAC20-790-250, 8VAC20-790-350, 8VAC20-790-400, 8VAC20-790-520, 8VAC20-790-600, 8VAC20-790-770).

Statutory Authority: §§ 22.1-16 and 22.1-289.046 of the Code of Virginia.

The State Board of Education has WITHDRAWN the regulatory action for **8VAC20-790, Child Care Program**, which was published as a Fast-Track Rulemaking Action in [42:7 VA.R. 851-859 November 17, 2025](#). The purpose of the proposed action was to (i) require center-based programs that participate in the Child Care Subsidy Program to implement policies for the possession and administration of epinephrine to be administered by certain authorized and trained individuals to any child believed to be having an anaphylactic

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reaction; (ii) require that at least one authorized and trained individual has the means at all times during regular facility hours to access any such appropriate weight-based dosage of epinephrine that is stored in a locked or otherwise generally inaccessible container or area; and (iii) require each family day home provider or at least one other caregiver employed by such provider in the family day home to be trained in the administration of epinephrine and to notify the parents of each child who receives care in such family day home whether the provider stores an appropriate weight-based dosage of epinephrine in the residence or home in which the family day home operates. The board received more than the requisite 10 objections to the fast-track rulemaking process. That objection was published in [42:12 VA.R. 1483 January 26, 2026](#). On April 23, 2026, the board voted to withdraw the action to avoid conflict with the promulgation of the new Standards for Licensed Child Day Centers (8VAC20-781). The action is being withdrawn in order to ensure that policy remains consistent across all early childhood care and education providers. After the promulgation of 8VAC20-781, the agency will restart the standard rulemaking process for this action. Therefore, this action is unnecessary and should be withdrawn.

Agency Contact: Tatanishia Armstrong, Legislative Consultant, Office of Child Care Health and Safety, Department of Education, 101 North 14th Street, Richmond, VA 23219, telephone (804) 382-5047, or email tatanishia.armstrong@doe.virginia.gov.

VA.R. Doc. No. R26-7611; Filed April 28, 2026, 12:30 p.m.

Action Withdrawn

Title of Regulation: **8VAC20-800. Standards for Licensed Family Day Homes (amending 8VAC20-800-70, 8VAC20-800-220).**

Statutory Authority: §§ 22.1-16 and 22.1-289.046 of the Code of Virginia.

The State Board of Education has WITHDRAWN the regulatory action for **8VAC20-800, Standards for Licensed Family Day Homes**, which was published as a Fast-Track Rulemaking Action in [42:7 VA.R. 859-862 November 17, 2025](#). The purpose of the proposed action was to require (i) each family day home provider or at least one other caregiver employed by such provider to be trained in epinephrine administration and (ii) each family day home provider to notify the parents of each child who receives care in such family day home whether the provider stores an appropriate weight-based dosage of epinephrine in the residence or home in which the family day home operates. The board received more than the requisite 10 objections to the fast-track rulemaking process. That objection was published in [42:12 VA.R. 1484 January 26, 2026](#). On April 23, 2026, the board voted to withdraw the action to avoid conflict with the promulgation of the new Standards for Licensed Child Day Centers (8VAC20-781). The action is being withdrawn in order to ensure that policy remains consistent across all early childhood care and

education providers. After the promulgation of 8VAC20-781, the agency will restart the standard rulemaking process for this action. Therefore, this action is unnecessary and should be withdrawn.

Agency Contact: Alyson Williams, Legislative Consultant, Office of Child Care Health and Safety, Department of Education, 101 North 14th Street, Richmond, VA 23219, (804) 774-6273, or email alyson.williams@doe.virginia.gov.

VA.R. Doc. No. R26-7612; Filed April 28, 2026, 12:30 p.m.

Action Withdrawn

Title of Regulation: **8VAC20-850. Voluntary Registration of Family Day Homes - Requirements for Providers (amending 8VAC20-850-20, 8VAC20-850-90).**

Statutory Authority: §§ 22.1-16 and 22.1-289.046 of the Code of Virginia.

The State Board of Education has WITHDRAWN the regulatory action for **8VAC20-850, Voluntary Registration of Family Day Homes - Requirements for Providers**, which was published as a Fast-Track Rulemaking Action in [42:7 VA.R. 862-865 November 17, 2025](#). The purpose of the proposed action was to require (i) each voluntarily registered family day home provider or at least one other caregiver employed by such provider to be trained in epinephrine administration and (ii) each voluntarily registered family day home provider to notify the parents of each child who receives care in such family day home whether the provider stores an appropriate weight-based dosage of epinephrine in the residence or home in which the family day home operates. The board received more than the requisite 10 objections to the fast-track rulemaking process. That objection was published in [42:12 VA.R. 1484 January 26, 2026](#). On April 23, 2026, the board voted to withdraw the action to avoid conflict with the promulgation of the new Standards for Licensed Child Day Centers (8VAC20-781). The action is being withdrawn in order to ensure that policy remains consistent across all early childhood care and education providers. After the promulgation of 8VAC20-781, the agency will restart the standard rulemaking process for this action. Therefore, this action is unnecessary and should be withdrawn.

Agency Contact: Alyson Williams, Legislative Consultant, Office of Child Care Health and Safety, Department of Education, 101 North 14th Street, Richmond, VA 23219, (804) 774-6273, or email alyson.williams@doe.virginia.gov.

VA.R. Doc. No. R26-7613; Filed April 28, 2026, 12:31 p.m.



TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The State Air Pollution Control Board is claiming an exemption from the Administrative Process Act pursuant to Item 365 R of Chapter 7 of the 2026 Acts of Assembly, the 2026 Appropriation Act.

Title of Regulation: 9VAC5-140. Regulation for Emissions Trading Programs (adding 9VAC5-140-7010 through 9VAC5-140-7440; repealing 9VAC5-140-6445).

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

Effective Date: April 24, 2026.

Agency Contact: Julia Wack, Regulatory Analyst, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 432-3581, or email julia.n.wack@deq.virginia.gov.

Background: Item 365 R of Chapter 7 of the 2026 Acts of Assembly, the 2026 Appropriation Act, requires the Department of Environmental Quality to (i) complete a regulatory action to rejoin the Regional Greenhouse Gas Initiative (RGGI) and resume participation by nullifying the action published [39:25 VA.R. 2813-2838 July 31, 2023](#), which repealed Part VII (9VAC5-140-6010 et seq.) of Regulation for Emissions Trading Programs (9VAC5-140) and transitioned facilities affected by Virginia's withdrawal; and (ii) reinstate the provisions of the repealed part and include amendments necessary to account for the time Virginia was not participating in RGGI.

Summary:

To meet the requirements of Chapter 7, this action creates Part VIII (9VAC5-140-7010 through 9VAC5-140-7440), which reinstates the text from repealed Part VII (9VAC5-140-6010 through 9VAC5-140-6440) and makes necessary amendments to account for January 1, 2024, to June 30, 2026. The amendments include (i) creating a one-time six-month control period from July 1, 2026, to December 31, 2026; (ii) adjusting the base budget and allowances for calendar year 2026 to reflect participation in the program for a six month period; and (iii) including a crosswalk of repealed sections and reinstated sections to maintain consistency between citations in existing permits and the reinstated regulation.

Part VII

CO₂ Budget Trading Program and Transition to
Repeal (Repealed)

Article 9

Auction of CO₂ CCR and ECR Allowances (Repealed)

Article 10

Program Monitoring and Review Transition (Repealed)

9VAC5-140-6445. Transition to repeal. (Repealed.)

~~Notwithstanding this section, Part VII (9VAC5-140-6010 et seq.) shall be repealed effective December 31, 2023. Each affected facility shall place the allowances needed to meet its remaining compliance obligation into its compliance account in the CO₂ Allowance Tracking System (COATS) as soon as practicable but no later than March 1, 2024, in order that the allowances can be deducted from the account to meet the full control period obligation. The department shall repeal this section once every affected source has met its full compliance obligation.~~

EDITOR'S NOTE: Chapter 7 of the 2026 Acts of Assembly states that changes necessary to reinstate the Regional Greenhouse Gas Initiative (RGGI) program, including any amendments necessary to account for the time such regulation was not in effect, shall be made to 9VAC5-140. Language previously repealed from Part VII of this regulation has been reinstated as Part VIII of this regulation. Reinstated language is not new language and is therefore not underlined. Reinstated sections have been renumbered by adding 1000 to the previously repealed section numbers. Amendments to account for the time the regulation was not in effect are stricken or underlined.

Part VIII

CO₂ Budget Trading Program

Article 1

CO₂ Budget Trading Program General Provisions

9VAC5-140-7010. 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.

9VAC5-140-7020. 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.

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

"Adjustment for banked allowances" means an adjustment applied to the Virginia CO₂ Budget Trading Program base budget for allocation years 2021 through 2025 to address allowances held in general and compliance accounts, including compliance accounts established pursuant to the CO₂ Budget Trading Program, but not including accounts opened by participating states.

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

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

"Allocation year" means a calendar year for which the department allocates CO₂ allowances pursuant to Article 8 (~~9VAC5-140-6190~~ 9VAC5-140-7190 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~~ 9VAC5-140-7250 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~~ 9VAC5-140-7330 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~~ 9VAC5-140-7330 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~~ 9VAC5-140-7330 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~~ 9VAC5-140-7050 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~~ 9VAC5-140-7220 et seq.) and Article 7 (~~9VAC5-140-6300~~ 9VAC5-140-7300 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~~ 9VAC5-140-7080 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~~ 9VAC5-140-7220 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~~ 9VAC5-140-7080 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~~ 9VAC5-140-7220 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~~ 9VAC5-140-7040.

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

"CO₂ cost containment reserve trigger price" or "CCR trigger price" means the minimum price at which CO₂ CCR allowances are offered for sale by the department or its agent at an auction. The CCR trigger price in calendar year 2021 shall be \$13. The CCR trigger price in calendar year 2022 shall be \$13.91. Each calendar year thereafter, the CCR trigger price shall be 1.07 multiplied by the CCR trigger price from the previous calendar year, rounded to the nearest whole cent, as shown in Table 140-1A. Virginia's CO₂ Budget Trading Program was not active from January 1, 2024, to June 30, 2026, inclusive, and requirements of Virginia's CO₂ Budget Trading Program were not applicable during that time period, however, the CCR trigger price shall include escalations during the period the program was not active.

| | |
|------|---------|
| 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

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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. Virginia's CO₂ Budget Trading Program was not active from January 1, 2024, to June 30, 2026, inclusive, and requirements of Virginia's CO₂ Budget Trading Program were not applicable during that time period, however, the ECR trigger price shall include escalations during the period the program was not active.

| | |
|------|---------|
| 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~~ 9VAC5-140-7040 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~~ 9VAC5-140-7040 on the date the unit commences commercial operation, the date the unit becomes a CO₂ budget unit under ~~9VAC5-140-6040~~ 9VAC5-140-7040 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~~ 9VAC5-140-7040 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~~ 9VAC5-140-7040 on the date of commencement of operation, the date the unit becomes a CO₂ budget unit under ~~9VAC5-140-6040~~ 9VAC5-140-7040 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~~ 9VAC5-140-7220 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~~ 9VAC5-140-7050 C.

"Continuous Emissions Monitoring System" or "CEMS" means the equipment required under Article 8 (~~9VAC5-140-6330~~ 9VAC5-140-7330 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~~ 9VAC5-140-7330 et seq.) of this part. The following systems are types of CEMS required under Article 8 (~~9VAC5-140-6330~~ 9VAC5-140-7330 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 with the exception noted in this definition. 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. There shall be a one-time six-month control period from July 1, 2026, to December 31, 2026, inclusive.

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

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

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

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

administrator under 40 CFR 52.39(g) or (h) or that is established in a SIP revision approved by the administrator under 40 CFR 52.39(i), as a means of mitigating interstate transport of fine particulates and SO₂.

"Department" means the Virginia Department of Environmental Quality.

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

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

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

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

"General account" means a COATS account established under Article 6 (~~9VAC5-140-6220~~ 9VAC5-140-7220 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. Virginia's CO₂ Budget Trading Program was not active from January 1, 2024, to June 30, 2026, inclusive, and requirements of Virginia's CO₂ Budget Trading Program were not applicable during that time 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

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release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period; or

b. Any energy conversion or energy tolling agreement that has a primary term of 20 years or more and pursuant to which the purchaser is required to deliver fuel to the CO₂ budget source or CO₂ budget unit and is entitled to receive all of the nameplate capacity and associated energy generated by such source or unit for the entire contractual period. Such agreements shall be subject to ~~9VAC5-140-6325~~ 9VAC5-140-7325. Such purchaser shall not be considered an "owner" as defined under this section.

"Maximum potential hourly heat input" means an hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use Appendix D of 40 CFR Part 75 to report heat input, this value shall be calculated, in accordance with 40 CFR Part 75, using the maximum fuel flow rate and the maximum gross calorific value. If the unit intends to use a flow monitor and a diluent gas monitor, this value shall be reported, in accordance with 40 CFR Part 75, using the maximum potential flow rate and either the maximum CO₂ concentration in percent CO₂ or the minimum O₂ concentration in percent O₂.

"Minimum reserve price" means, in calendar year 2021, \$2.38. Each calendar year thereafter, the minimum reserve price shall be 1.025 multiplied by the minimum reserve price from the previous calendar year, rounded to the nearest whole cent. Virginia's CO₂ Budget Trading Program was not active from January 1, 2024, to June 30, 2026, inclusive, and requirements of Virginia's CO₂ Budget Trading Program were not applicable during that time period, however, the minimum reserve price shall include escalations during the period the program was not active.

"Monitoring system" means any monitoring system that meets the requirements of Article 8 (~~9VAC5-140-6330~~ 9VAC5-140-7330 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~~ 9VAC5-140-7040.

"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~~ 9VAC5-140-7410 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~~ 9VAC5-140-7250 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~~ 9VAC5-140-7050 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~~ 9VAC5-140-7330 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~~ 9VAC5-140-7210 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~~ 9VAC5-140-7210 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~~ 9VAC5-140-7190. 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.

9VAC5-140-7030. 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.

9VAC5-140-7040. Applicability.

EDITOR'S NOTE: 9VAC5-140-7040 E contains a crosswalk showing the equivalent reinstated section in Part VIII of 9VAC5-140 for each repealed section formerly in Part VII thereby maintaining consistency between any citation in an existing permit and the applicable provision in the reinstated regulation.

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.

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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.

C. Virginia's CO₂ Budget Trading Program was not active from January 1, 2024, to June 30, 2026, inclusive, and requirements of Virginia's CO₂ Budget Trading Program were not applicable during that time period.

D. There is a one-time six-month control period from July 1, 2026, to December 31, 2026, inclusive.

E. When referenced in permits issued by the board or department prior to July 1, 2026, the following citations have the following meanings:

1. 9VAC5-140-6010 means 9VAC5-140-7010.
2. 9VAC5-140-6020 means 9VAC5-140-7020.
3. 9VAC5-140-6030 means 9VAC5-140-7030.
4. 9VAC5-140-6040 means 9VAC5-140-7040.
5. 9VAC5-140-6050 means 9VAC5-140-7050.
6. 9VAC5-140-6060 means 9VAC5-140-7060.
7. 9VAC5-140-6070 means 9VAC5-140-7070.
8. 9VAC5-140-6080 means 9VAC5-140-7080.
9. 9VAC5-140-6090 means 9VAC5-140-7090.
10. 9VAC5-140-6100 means 9VAC5-140-7100.
11. 9VAC5-140-6110 means 9VAC5-140-7110.

12. 9VAC5-140-6120 means 9VAC5-140-7120.
13. 9VAC5-140-6130 means 9VAC5-140-7130.
14. 9VAC5-140-6140 means 9VAC5-140-7140.
15. 9VAC5-140-6150 means 9VAC5-140-7150.
16. 9VAC5-140-6160 means 9VAC5-140-7160.
17. 9VAC5-140-6170 means 9VAC5-140-7170.
18. 9VAC5-140-6180 means 9VAC5-140-7180.
19. 9VAC5-140-6190 means 9VAC5-140-7190.
20. 9VAC5-140-6200 means 9VAC5-140-7200.
21. 9VAC5-140-6210 means 9VAC5-140-7210.
22. 9VAC5-140-6220 means 9VAC5-140-7220.
23. 9VAC5-140-6230 means 9VAC5-140-7230.
24. 9VAC5-140-6240 means 9VAC5-140-7240.
25. 9VAC5-140-6250 means 9VAC5-140-7250.
26. 9VAC5-140-6260 means 9VAC5-140-7260.
27. 9VAC5-140-6270 means 9VAC5-140-7270.
28. 9VAC5-140-6280 means 9VAC5-140-7280.
29. 9VAC5-140-6290 means 9VAC5-140-7290.
30. 9VAC5-140-6300 means 9VAC5-140-7300.
31. 9VAC5-140-6310 means 9VAC5-140-7310.
32. 9VAC5-140-6320 means 9VAC5-140-7320.
33. 9VAC5-140-6325 means 9VAC5-140-7325.
34. 9VAC5-140-6330 means 9VAC5-140-7330.
35. 9VAC5-140-6340 means 9VAC5-140-7340.
36. 9VAC5-140-6350 means 9VAC5-140-7350.
37. 9VAC5-140-6360 means 9VAC5-140-7360.
38. 9VAC5-140-6370 means 9VAC5-140-7370.
39. 9VAC5-140-6380 means 9VAC5-140-7380.
40. 9VAC5-140-6410 means 9VAC5-140-7410.
41. 9VAC5-140-6420 means 9VAC5-140-7420.
42. 9VAC5-140-6440 means 9VAC5-140-7440.

9VAC5-140-7050. 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~~ 9VAC5-140-7160 in accordance with the deadlines specified in ~~9VAC5-140-6150~~ 9VAC5-140-7150; 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~~ 9VAC5-140-7330 et seq.) of this part.

2. The emissions measurements recorded and reported in accordance with Article 8 (~~9VAC5-140-6330~~ 9VAC5-140-7330 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~~ 9VAC5-140-7260, 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~~ 9VAC5-140-7220 et seq.) and Article 8 (~~9VAC5-140-6330~~ 9VAC5-140-7330 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~~ 9VAC5-140-7260, 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~~ 9VAC5-140-7220 et seq.)

and Article 8 (~~9VAC5-140-6330~~ 9VAC5-140-7330 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~~ 9VAC5-140-7190 et seq.), Article 6 (~~9VAC5-140-6220~~ 9VAC5-140-7220 et seq.), and Article 7 (~~9VAC5-140-6300~~ 9VAC5-140-7300 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~~ 9VAC5-140-7260 D 1; and

2. Pay any fine, penalty, or assessment or comply with any other remedy imposed under ~~9VAC5-140-6260~~ 9VAC5-140-7260 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

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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~~ 9VAC5-140-7110, 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~~ 9VAC5-140-7330 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~~ 9VAC5-140-7170 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.

9VAC5-140-7060. 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.

9VAC5-140-7070. 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

9VAC5-140-7080. Authorization and responsibilities of the CO₂ authorized account representative.

A. Except as provided under ~~9VAC5-140-6090~~ 9VAC5-140-7090, 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~~ 9VAC5-140-7110.

C. Upon receipt by the department or its agent of a complete account certificate of representation under ~~9VAC5-140-6110~~ 9VAC5-140-7110, 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~~ 9VAC5-140-7110 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.

9VAC5-140-7090. 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~~ 9VAC5-140-7110, 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~~ 9VAC5-140-7080 A, ~~9VAC5-140-6100~~ 9VAC5-140-7100, ~~9VAC5-140-6110~~ 9VAC5-140-7110, and ~~9VAC5-140-6230~~ 9VAC5-140-7230, 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.

9VAC5-140-7100. 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~~ 9VAC5-140-7110. 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~~ 9VAC5-140-7110. 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.

9VAC5-140-7110. Account certificate of representation.

A. A complete account certificate of representation for a CO₂ authorized account representative or a CO₂ authorized alternate

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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.

9VAC5-140-7120. Objections concerning the CO₂ authorized account representative.

A. Once a complete account certificate of representation under ~~9VAC5-140-6110~~ 9VAC5-140-7110 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~~ 9VAC5-140-7110.

B. Except as provided in ~~9VAC5-140-6100~~ 9VAC5-140-7100 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.

9VAC5-140-7130. 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~~ 9VAC5-140-7130 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~~ 9VAC5-140-7130 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~~ 9VAC5-140-7130 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

9VAC5-140-7140. 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.

9VAC5-140-7150. 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~~ 9VAC5-140-7160 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.

9VAC5-140-7160. 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

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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~~ 9VAC5-140-7050.

Article 4

Compliance Certification

9VAC5-140-7170. Compliance certification report.

A. For each control period in which a CO₂ budget source is subject to the CO₂ requirements of ~~9VAC5-140-6050~~ 9VAC5-140-7050 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~~ 9VAC5-140-7260 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~~ 9VAC5-140-7050 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~~ 9VAC5-140-7330 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~~ 9VAC5-140-7330 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~~ 9VAC5-140-7330 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~~ 9VAC5-140-7330 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.

9VAC5-140-7180. 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

9VAC5-140-7190. 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 half of 22.96 million tons, or 11.48 million tons, for the period from July 1, 2026, to December 31, 2026, inclusive.

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.

9VAC5-140-7200. 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.

9VAC5-140-7210. 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~~ 9VAC5-140-7190 to the Virginia Auction Account. The CCR allocation is for the purpose of containing the cost of CO₂ allowances. The department will allocate CO₂ CCR allowances as follows:

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

| Table 140-5A CO ₂ CCR Allowances from 2021 Forward | |
|------------------------------------------------------------------|--------------------|
| 2021 | 2.716 million tons |
| 2022 | 2.632 million tons |
| 2023 | 2.548 million tons |

| Table 140-5A CO ₂ CCR Allowances from 2021 Forward | |
|------------------------------------------------------------------|--------------------------------------------|
| 2024 | 2.464 million tons |
| 2025 | 2.380 million tons |
| 2026 | 2.296 <u>1.148</u> 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~~ 9VAC5-140-7420 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 |

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| | |
|-------------------------------|-------------------------------------|
| 2026 | 2.296 1.148 million tons |
| 2027 | 2.212 million tons |
| 2028 | 2.128 million tons |
| 2029 | 2.044 million tons |
| 2030 and each year thereafter | 1.960 million tons |

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

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

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

Where:

TABA is the adjustment for banked allowances quantity in tons.

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

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

RS% is Virginia budget divided by the regional budget.

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

$$AB = BB - TABA$$

Where:

AB is the Virginia CO₂ Budget Trading Program adjusted budget.

BB is the Virginia CO₂ Budget Trading Program base budget.

TABA is the adjustment for banked allowances quantity in tons.

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

Article 6

CO₂ Allowance Tracking System

9VAC5-140-7220. CO₂ Allowance Tracking System accounts.

A. Consistent with ~~9VAC5-140-6230~~ 9VAC5-140-7230 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~~ 9VAC5-140-7190 et seq.) of this part and deductions or transfers of CO₂ allowances pursuant to ~~9VAC5-140-6180~~ 9VAC5-140-7180, ~~9VAC5-140-6260~~ 9VAC5-140-7260, ~~9VAC5-140-6280~~ 9VAC5-140-7280, or Article 7 (~~9VAC5-140-6300~~ 9VAC5-140-7300 et seq.) of this part will be recorded in the compliance accounts in accordance with this section.

B. Consistent with ~~9VAC5-140-6230~~ 9VAC5-140-7230 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~~ 9VAC5-140-7300 et seq.) of this part will be recorded in the general account in accordance with this article.

9VAC5-140-7230. Establishment of accounts.

A. Upon receipt of a complete account certificate of representation under ~~9VAC5-140-6110~~ 9VAC5-140-7110, 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

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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~~ 9VAC5-140-7300 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~~ 9VAC5-140-7300 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~~ 9VAC5-140-7230 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~~ 9VAC5-140-7230 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~~ 9VAC5-140-7230 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.

9VAC5-140-7240. 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.

9VAC5-140-7250. 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~~ 9VAC5-140-7210 A.

B. Each year the department or its agent will record CO₂ allowances, as allocated to the unit under Article 5 (~~9VAC5-140-6190~~ 9VAC5-140-7190 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~~ 9VAC5-140-7190 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.

9VAC5-140-7260. 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~~ 9VAC5-140-7050 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~~ 9VAC5-140-7300 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~~ 9VAC5-140-7050 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~~ 9VAC5-140-7330 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~~ 9VAC5-140-7310, 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~~ 9VAC5-140-7330 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~~ 9VAC5-140-7330 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

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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~~ 9VAC5-140-7170.

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.

9VAC5-140-7270. 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~~ 9VAC5-140-7180, ~~9VAC5-140-6260~~ 9VAC5-140-7260, ~~9VAC5-140-6280~~ 9VAC5-140-7280, or Article 7 (~~9VAC5-140-6300~~ 9VAC5-140-7300 et seq.) of this part.

9VAC5-140-7280. 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.

9VAC5-140-7290. 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~~ 9VAC5-140-7300 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~~ 9VAC5-140-7300 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

9VAC5-140-7300. 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.

9VAC5-140-7310. 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~~ 9VAC5-140-7300; 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~~ 9VAC5-140-7260 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.

9VAC5-140-7320. Notification.

A. Within five business days of recordation of a CO₂ allowance transfer under ~~9VAC5-140-6310~~ 9VAC5-140-7310, 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~~ 9VAC5-140-7310 A, the department or its agent will notify the CO₂ authorized account representatives of both accounts subject to the transfer of (i) a decision not to record the transfer and (ii) the reasons for such nonrecordation.

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

9VAC5-140-7325. 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 July 10, 2020. If such agreement is subject to third-party disclosure restrictions, the CO₂ budget source or unit shall provide purchaser within 10 days prior written notice of its intention to disclose the agreement to the department and request confidential treatment from the public disclosure of such agreement. The department will grant a request for confidential treatment pursuant to applicable statutory and regulatory requirements addressing confidential information.

C. The CO₂ budget source or unit shall be responsible for compliance with and otherwise be subject to all other requirements of this part and the CO₂ budget trading program.

Article 8

Monitoring, Reporting, and Recordkeeping

9VAC5-140-7330. 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~~ 9VAC5-140-7020 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~~ 9VAC5-140-7020. 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~~ 9VAC5-140-7340 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~~ 9VAC5-140-7190 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~~ 9VAC5-140-7380.

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~~ 9VAC5-140-7340 D 3 a.

9VAC5-140-7340. 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~~ 9VAC5-140-7330 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~~ 9VAC5-140-7330 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

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department under ~~9VAC5-140-6380~~ 9VAC5-140-7380 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~~ 9VAC5-140-7330 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~~ 9VAC5-140-7330 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~~ 9VAC5-140-7330 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~~ 9VAC5-140-7330 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~~ 9VAC5-140-7330 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~~ 9VAC5-140-7360.

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~~ 9VAC5-140-7350 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~~ 9VAC5-140-7330 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).

9VAC5-140-7350. 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~~ 9VAC5-140-7340 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~~ 9VAC5-140-7340 for each disapproved monitoring system.

9VAC5-140-7360. 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.

9VAC5-140-7370. 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

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requirements under 40 CFR 75.73, and the requirements of ~~9VAC5-140-6080~~ 9VAC5-140-7080 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~~ 9VAC5-140-7340, 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.

9VAC5-140-7380. 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.

9VAC5-140-7390. [Reserved].

9VAC5-140-7400. [Reserved].

Article 9

Auction of CO₂ CCR and ECR Allowances

9VAC5-140-7410. 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.

9VAC5-140-7420. 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 ~~9VAC5-140-6240~~ 9VAC5-140-7210 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.

Article 10

Program Monitoring and Review

9VAC5-140-7440. 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.

VA.R. Doc. No. R26-8592; Filed April 24, 2026, 11:19 a.m.



TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

REGISTRAR'S NOTICE: The Department of Medical Assistance Services is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The department will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: 12VAC30-10. State Plan under Title XIX of the Social Security Act Medical Assistance Program; General Provisions (amending 12VAC30-10-430).

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12VAC30-20. Administration of Medical Assistance Services (amending 12VAC30-20-500).

12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-328).

12VAC30-130. Amount, Duration and Scope of Selected Services (amending 12VAC30-130-800, 12VAC30-130-810, 12VAC30-130-820).

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Effective Date: June 17, 2026.

Agency Contact: Meredith Lee, Policy, Regulations, and Manual Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, fax (804) 786-1680, TDD (800) 343-0634, or email meredith.lee@dmas.virginia.gov.

Background: The Virginia Medicaid Management Information System (VAMMIS) was a monolithic system that had several significant constraints, including outdated systems capabilities and increased operational costs to meet the demand of the aging platform. The Medicaid Enterprise System (MES), which has replaced VAMMIS, is a modular, interoperable solution that enables the Department of Medical Assistance Services (DMAS) to deliver better and timelier services in support of its mission to improve the health and well-being of Medicaid members through access to high-quality health care coverage. This action ensures the regulations align with both the Centers for Medicare and Medicaid Services (CMS) standards and DMAS Medicaid information technology framework and practices.

Summary:

The technical amendments update agency regulations to reflect the transition of several key information management functions, previously handled through VAMMIS, to the new technology platform, MES, as of April 4, 2022.

12VAC30-10-430. Medicaid quality control.

A. A system of quality control is implemented in accordance with 42 CFR 431, Subpart P.

B. The state does not operate a claims processing assessment system that meets the requirements of 42 CFR 431.808, 42 CFR 431.818, 42 CFR 431.830, 42 CFR 431.832, 42 CFR 431.834, and 42 CFR 431.836. The state has an approved Medicaid ~~Management Information System~~ Enterprise System (MES) (~~MMIS~~) (MES).

12VAC30-20-500. Definitions.

The following words and terms when used in this part shall have the following meanings:

"Administrative dismissal" means a dismissal that requires only the issuance of a decision with appeal rights but does not require the submission of a case summary or any further proceeding.

"Day" means a calendar day unless otherwise stated.

"DMAS" means the Virginia Department of Medical Assistance Services or its agents or contractors.

"Hearing officer" means an individual selected by the Executive Secretary of the Supreme Court of Virginia to conduct the formal appeal in an impartial manner pursuant to §§ 2.2-4020 and 32.1-325.1 of the Code of Virginia and this part.

"Informal appeals agent" means a DMAS employee who conducts the informal appeal in an impartial manner pursuant to §§ 2.2-4019 and 32.1-325.1 of the Code of Virginia and this part.

"Last known address" means the provider's physical or electronic correspondence address on record in the DMAS Medicaid ~~Management Information System~~ Enterprise System (MES) as of the date DMAS transmits an item to the provider or the address of the provider's counsel of record. Nothing herein shall prevent DMAS and the provider from agreeing in writing during the course of an audit or an appeal to use an alternative location for the transmittal of an item or items related to the audit or the appeal.

"Provider" means an individual or entity that has a contract with DMAS to provide covered services and that is not operated by the Commonwealth of Virginia.

"Transmit" means to send by means of the United States mail, courier or other hand delivery, facsimile, electronic mail, or electronic submission.

12VAC30-50-328. PACE enrollment and disenrollment.

The Commonwealth assures that there is a process in place to provide for dissemination of PACE enrollment and disenrollment data. The Commonwealth assures that it has developed and will implement procedures for the enrollment and disenrollment of PACE participants via the Virginia Medicaid ~~management information system~~ Enterprise System (MES), including procedures for any adjustment to account for the difference between the estimated number of PACE participants on which the prospective monthly payment was based and the actual number of PACE participants in that month.

12VAC30-130-800. Definitions.

The following words and terms when used in this part shall have the following meanings unless the context clearly indicates otherwise:

"Abuse" or "abusive activities" means practices by individuals or providers that are inconsistent with sound fiscal or medical practices and result in unnecessary costs to the Virginia Medicaid program.

"Card-sharing" means (i) the intentional sharing of an individual's eligibility card for use by someone other than the

individual for whom it was issued or (ii) unauthorized use of an individual's eligibility card by one or more persons other than the individual for whom it was issued due to the failure of the individual to safeguard the card.

"Client Medical Management Program for individuals" or "CMM Program for individuals" means the individuals' utilization control program designed to prevent abuse and promote improved and cost efficient medical management of essential health care for noninstitutionalized individuals through restriction to one primary care provider or one pharmacy, or any combination of these designated providers.

"Client Medical Management Program for providers" or "CMM Program for providers" means the providers' utilization control program designed to complement the individual abuse and utilization control program in promoting improved and cost efficient medical management of essential health care.

"Controlled substance" means a substance that has a potential for abuse because physical and psychic dependence and tolerance may develop upon repeated administration and that is classified as a Schedules I through V drug.

"Covering provider" means a provider designated by the primary provider to render health care services in the temporary absence of the primary provider.

"DMAS" or "the department" means the Department of Medical Assistance Services.

"Dental services" means covered dental services available to Medicaid or FAMIS eligible children as well as the limited, emergency services available to Medicaid eligible adults.

"Designated physician or pharmacy" means the provider who agrees to be the designated physician or pharmacy from whom the restricted individual must first attempt to seek medical or pharmaceutical services. Other providers may be established as designated physician or pharmacy providers with the approval of DMAS.

"Diagnosis" means (i) the process of determining by examination the nature and circumstances of a diseased condition or injury and (ii) the decision reached from such examination.

"Diagnostic category" means the broad classification of diseases and injuries found in the International Classification of Diseases (ICD), which is commonly used by providers in billing for medical services.

"Drug" means a substance or medication intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease as defined by the Virginia Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia).

"Duplicative medical care" means two or more practitioners are concurrently treating the same or similar medical problems or conditions falling into the same diagnostic category, but

excluding confirmation for diagnosis, evaluation, or assessment.

"Duplicative medications" means more than one prescription of the same drug or more than one drug in the same therapeutic class.

"Education" means providing individuals with information regarding DMAS' identification of inappropriate utilization and what is appropriate access to Medicaid covered services according to the policies and procedures of the CMM Program for individuals and the CMM Program for providers. Education shall not include providing a professional opinion regarding an individual's medical or mental health.

"Eligibility card" means the document issued to each Medicaid individual listing the name and Medicaid number, either the identification or billing number, of the eligible individual, which may be in the form of a plastic card magnetically encoded, allowing electronic access to inquiries for eligibility status.

"Emergency hospital services" means those hospital services that are necessary to treat a medical emergency. Hospital treatment of a medical emergency necessitates the use of the most accessible hospital available that is equipped to furnish the required services.

"EPSDT" means the Early and Periodic Screening, Diagnosis, and Treatment Program that is federally mandated for eligible individuals younger than 21 years of age.

"Essential medical services" means quality medical services, including ~~but not limited to~~ preventive care, emergency services, maternity care, hospital and physician services, and prescription drug services as set out in the State Plan for Medical Assistance.

"Excessive medical care" means obtaining greater than necessary services such that health risks to the individual or unnecessary costs to the Virginia Medicaid Program may ensue from the accumulation of services or obtaining duplicative services.

"Excessive medications" means obtaining medication in greater than generally acceptable maximum therapeutic dosage regimens or obtaining duplicative medication from one or more practitioners.

"FAMIS" means the Family Access to Medical Insurance Security program as created by Title XXI of the Social Security Act.

"Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable federal or state laws.

"Health care" means any covered service, including equipment or supplies provided by any person, organization,

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or entity that participates in the Virginia Medical Assistance Program.

"Home and community-based services" means a range of community services approved by the Centers for Medicare and Medicaid Services (CMS) pursuant to § 1915(c) of the Social Security Act to be offered to individuals as an alternative to institutionalization.

"Hospice services" means services, pursuant to § 1905(o) of the Act, that are reasonable and necessary for the palliation or management of a terminal illness if the terminal illness runs its normal course.

"Immunization" means the creation of immunity against a particular disease using a vaccination.

"Individual" means the recipient of Medicaid-covered services that are provided under the authority of Titles XIX and XXI of the Social Security Act.

~~"Java Server Utilization Review System" or "JSURS" means a computer subsystem of the Virginia Medicaid Management Information System (VAMMIS) that collects claims data and computes statistical profiles of individual and provider activity and compares such profiles with the appropriate peer group.~~

"Managed care organization" or "MCO" means an entity that meets the participation and solvency criteria defined in 42 CFR Part 438 and has an executed agreement with the department to provide services covered under (i) the Medallion II programs, pursuant to 12VAC30-120-360 et seq., or any successor programs and (ii) the FAMIS programs, pursuant to 12VAC30-141, or any successor programs.

"Medical emergency" means the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, that in the absence of immediate medical attention could reasonably be expected to result in (i) placing the individual's health in serious jeopardy, (ii) serious impairment of the individual's bodily functions, or (iii) serious dysfunction of the individual's bodily organs or parts.

"Medically necessary" means services that are reasonable and necessary for the diagnosis or treatment of an illness, condition, or injury, or to improve the function of a disability, consistent with community standards of medical practice and in accordance with Medicaid or FAMIS policies.

"Noncompliance" means failing to follow Client Medical Management Program policies and procedures, or a pattern of utilization that is inconsistent with sound fiscal or medical practices. Noncompliance includes, ~~but is not limited to,~~ failure to follow a recommended treatment plan or drug regimen; failure to disclose to a provider any treatment or services provided by another provider; or requests for medical services or medications that are not medically necessary.

"Pattern" means a combination of qualities, acts, or tendencies that result in duplication or frequent occurrence.

"Practitioner" means a health care provider licensed, registered, or otherwise permitted by law to distribute, dispense, prescribe, and administer drugs or otherwise treat medical conditions.

"Primary care provider" or "PCP" means a physician or nurse practitioner practicing in accordance with state law who is responsible for supervising, coordinating, and providing initial and primary medical care to patients; for initiating written referrals for specialist care; and for maintaining the continuity of patient care.

"Provider" means a person, organization, or institution with a current, valid license or certification, as applicable, and participation agreement with DMAS who or that will (i) render service to Medicaid individuals who are eligible for covered services, (ii) submit a claim or claims for the rendered services, and (iii) accept as payment in full the amount paid by the Virginia Medicaid or FAMIS program.

"Psychotropic drugs" means drugs that alter the mental activity, behavior, or perception. Examples of such drugs include morphine, barbiturates, hypnotics, antianxiety agents, antidepressants, and antipsychotics.

"Renal dialysis services" means services that aid the process of diffusing blood across a semi-permeable membrane to remove substances that a normal kidney would eliminate, including poisons, drugs, urea, uric acid, and creatinine. Renal dialysis services help to restore electrolytes and correct acid-base imbalances.

"Restrict" or "restriction" means an administrative action imposed on an individual that limits access to specific types of health care services through a designated primary provider or an administrative action imposed on a provider to prohibit participation as a designated primary provider, referral, or covering provider for restricted individuals.

"Social Security Act" or "the Act" means the statute, enacted by the 74th Congress on August 14, 1935, and as amended, that provides for the general welfare by establishing a system of federal old age benefits, and by enabling the states to make more adequate provisions for aged persons, blind persons, dependent children who have disabilities, maternal and child welfare, public health, and the administration of their unemployment compensation laws.

"State Plan for Medical Assistance" or "the Plan" means the comprehensive written statement submitted by the department to the Centers for Medicare and Medicaid Services (CMS) for approval describing the nature and scope of the Virginia Medicaid program and giving assurance that it will be administered in conformity with the requirements, standards, procedures, and conditions for obtaining federal financial participation.

"Therapeutic class" means a group of drugs with similar pharmacologic actions and uses.

"Under-use" or "under-utilization" means an occurrence where there is evidence that an individual did not receive a service or procedure whose benefits exceeded the risks.

"Utilization control" means the control of covered health care services to assure the use of cost efficient, medically necessary or appropriate services.

12VAC30-130-810. Client Medical Management Program for individuals.

A. Purpose. The Client Medical Management Program for individuals is designed to assist and educate Medicaid individuals in appropriately using essential medical and pharmacy services. Individuals who use these services excessively or inappropriately as determined by DMAS may be assigned to a single primary care provider or pharmacy, or both. The CMM Program for individuals also monitors individual compliance with program guidelines.

B. Authority.

1. The Act and federal regulations at 42 CFR 456.3 require the Medicaid agency to implement a statewide surveillance and utilization control program that (i) safeguards against unnecessary or inappropriate use of Medicaid services and against excess payments, (ii) assesses the quality of those services, (iii) provides for the control of the utilization of all services provided under the Plan, and (iv) provides for the control of the utilization of inpatient services.

2. Federal regulations at 42 CFR 431.54(e) allow states to restrict individuals to designated providers when the individuals have utilized services at a frequency or an amount that is not medically necessary in accordance with utilization guidelines established by the state.

C. Identification of participants for inclusion in the CMM Program for individuals. DMAS shall identify individuals for review from computerized reports such as but not limited to individual ~~Java Server Utilization Review~~ Medicaid Enterprise System (JSURS), VAMMIS (MES), Oracle or by written referrals from agencies, health care professionals, or other persons. Certain individuals who are reviewed may not be restricted when evidence indicates that the prescription or medical service utilization patterns, or both, are for appropriate therapy. Only individuals who are excluded, pursuant to 12VAC30-120-370 B, from receiving care from a managed care organization shall be reviewed and evaluated for restriction under the CMM Program for individuals.

D. Individual evaluation for restriction.

1. DMAS shall utilize data as indicated in subsection C of this section to conduct a review of individuals to determine if services are being utilized at a frequency or amount that results in a level of utilization or a pattern of services which

is not medically necessary or which are excessive medical services or excessive medications, or both, as established by the department. Evaluation of utilization patterns can include but is not limited to review by the department of medical records or computerized reports, or both, generated by the department reflecting claims submitted for physician visits, drugs or prescriptions, outpatient and emergency room visits, lab or diagnostic procedures, or both, and hospital admissions.

2. Restricted individuals shall have reasonable access to all essential medical services. These restrictions shall not apply to hospital emergency services.

3. Abusive activities shall be investigated and, if appropriate, the individual shall be reviewed for educational intervention or restriction, or both.

a. If DMAS' review determines that an individual's data indicates (i) inappropriate use of Medicaid services, (ii) questionable patterns of utilization, or (iii) unreasonable levels of utilization, the department shall initiate the individual's restriction to either a physician or pharmacy, or both.

b. Once an individual is restricted, the restriction period shall last for 24 months from the enrollment date. During this restriction period, the individual shall be required to use the services of the designated physician or designated pharmacy, or both.

c. The individual may visit physicians or specialists other than those who are designated only by a written referral from the designated PCP.

d. The individual may obtain prescriptions from pharmacies other than the designated pharmacy only (i) in an emergency, (ii) when the designated pharmacy is closed, (iii) when the designated pharmacy does not stock the required medication, or (iv) when the designated pharmacy is not able to obtain the required medication in a timely manner.

E. Determination of restriction. DMAS may restrict an individual if any of the following activities or patterns or levels of utilization are identified. These activities, patterns, or levels of utilization include, for example:

1. Two occurrences of having prescriptions for the same drugs filled two or more times on the same or the subsequent day.

2. Utilizing services from three or more prescribers and three or more dispensing pharmacies in a three-month period.

3. Receiving more than 24 prescriptions in a three-month period.

4. Receiving more than 12 psychotropic prescriptions or more than 12 analgesic prescriptions or more than 12 prescriptions for controlled drugs with potential for abuse in a three-month period.

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5. Exceeding the maximum therapeutic dosage of the same drug or multiple drugs in the same therapeutic class, which have been prescribed by two or more practitioners, for a period exceeding four weeks.

6. Receiving two or more drugs, duplicative in nature or potentially addictive (even within acceptable therapeutic levels), dispensed by more than one pharmacy or prescribed by more than one practitioner for a period exceeding four weeks.

7. Receiving narcotic prescriptions from two or more prescribers without supporting diagnoses indicative of use.

8. Utilizing three or more different physicians of the same type or specialty in a three-month period for treatment of the same or similar condition or conditions.

9. Two or more occurrences of seeing two or more physicians of the same type or specialty on the same or subsequent day for the same or similar diagnosis.

10. Duplicative, excessive, or contraindicated utilization of medications, medical supplies, or appliances dispensed by or prescribed by more than one provider for the time period specified by DMAS.

11. Use of emergency hospital services for three or more emergency room visits for nonemergency care during a three-month period.

12. One or more providers recommend restriction for medical management because the recipient has demonstrated inappropriate utilization practices.

13. A pattern of noncompliance that is inconsistent with sound fiscal or medical practices. For example, noncompliance may be characterized by:

- a. Failure to disclose to a provider any treatment or services provided by another provider;
- b. Failure to follow a drug regimen or other recommended treatment;
- c. Requests for medical services or medications that are not medically necessary;
- d. Use of hospital emergency services via self-referral for nonacute episodes of care or solely for nonacute management of the medical condition; or
- e. Under-use or under-utilization of medically necessary services that results in higher costs for the management of the medical condition.

14. Any documented occurrences of use of the eligibility card to obtain drugs under false pretenses, which includes, but is not limited to the purchase or attempt to purchase drugs via a forged or altered prescription.

15. Any documented occurrences of card-sharing.

16. Any documented occurrences of alteration of the recipient eligibility card.

17. One or more documented occurrences of paying cash for controlled substances, analgesic drugs, or psychotropic drugs in addition to the use of the eligibility card to obtain similar or duplicative controlled substances.

F. Individual restriction procedures.

1. DMAS shall advise affected individuals by written notice of the proposed restriction under the CMM Program for individuals. Written notice shall include an explanation of restriction procedures and the individual's right to appeal the proposed action.

2. The individual shall have the opportunity to select a designated physician or pharmacy, or both. If an individual fails to respond by the date specified in the restriction notice, DMAS shall select a designated physician or pharmacy, or both.

3. DMAS shall not implement restriction if a valid appeal, consistent with 12VAC30-110-210, is noted. (See subsection K of this section.)

4. DMAS shall restrict individuals to their designated physician or pharmacy, or both, for 24 months.

G. Designated providers.

1. A designated physician or pharmacy, or both, must be a provider that is enrolled in Virginia Medicaid and that is unrestricted by DMAS. Providers who are restricted pursuant to 12VAC30-130-820 D and E shall not serve as designated providers for restricted individuals and shall not serve as referral or covering providers for restricted individuals.

2. Physicians or pharmacy providers, or both, who are under the CMM Program for providers shall not serve as designated providers, shall not provide services through referral, and shall not serve as covering providers for restricted individuals.

3. Physicians with practices limited to the delivery of emergency room services may not serve as designated primary providers.

4. Other physicians or pharmacies, or both, may be established as designated providers as needed but only with the approval of DMAS.

H. Provider reimbursement.

1. DMAS shall reimburse for covered medical or pharmaceutical services, or both, and physician services for restricted individuals only when they are provided by the designated providers, or by physicians seen on a written referral from the designated PCP, or in a medical emergency consistent with the methodologies established for such services in the State Plan for Medical Assistance.

2. DMAS shall require a written referral, in accordance with published procedures, from the designated PCP for payment of covered outpatient services by nondesignated practitioners unless there is a medical emergency requiring immediate hospital treatment. Services exempt from these written referral requirements include:

- a. Family planning services;
- b. Annual or routine vision examinations for individuals under the age of 21 years;
- c. Dental services for individuals under the age of 21 years;
- d. Emergency services;
- e. EPSDT well-child exams/screenings for individuals under the age of 21 years;
- f. Immunizations for individuals under the age of 21 years;
- g. Home and community-based care services such as private duty nursing or respite services;
- h. Renal dialysis services;
- i. Expanded prenatal services, including prenatal group education, nutrition services, and homemaker services for pregnant women and care coordination for high-risk pregnant women and infants up to age two years; and
- j. Hospice services.

3. Designated primary care providers (PCPs) shall receive a monthly case management fee for each assigned individual.

I. Changes in designated providers.

- 1. DMAS must give prior approval to all changes of designated providers.
- 2. The individual or the designated provider may initiate requests for change for the following reasons:
 - a. Relocation of the individual or provider.
 - b. Inability of the provider to meet the routine health or pharmaceutical needs of the individual.
 - c. Breakdown of the individual/provider relationship.
- 3. If the designated provider initiates the request and the individual does not select a new physician or pharmacy, or both, by established deadlines, DMAS shall select a provider, subject to concurrence from the provider or providers.
- 4. If DMAS denies the individual's request for a particular physician or pharmacy, or both, the individual shall be notified in writing and given the right to appeal the decision. (See subsection K of this section.)

J. Review of individual restriction status.

- 1. During the restriction period, DMAS shall monitor an individual's utilization no less frequently than every 12 months and follow up with the individual to promote appropriate utilization patterns.

2. DMAS shall also review an individual's utilization prior to the end of the restriction period to determine restriction termination or continuation.

a. DMAS shall extend utilization control restrictions for 12 months if any one of the following conditions is identified:

- (1) The individual's utilization patterns include one or more conditions listed in subsection E of this section.
- (2) The individual has not complied with procedures of the CMM Program for individuals resulting in services or medications received from any nondesignated provider, as demonstrated by his submitted claims, without a written referral or in the absence of a medical emergency.
- (3) The individual has not complied with procedures of the CMM Program for individuals as demonstrated by a pattern of documented attempts to receive medications from any nondesignated pharmacy (i) in the absence of a medical emergency, (ii) when the designated pharmacy is closed, (iii) when the designated pharmacy does not stock the required medication, or (iv) when the designated pharmacy is unable to obtain the required medication in a timely manner.

(4) One or more of the designated providers recommends continued restriction status because the individual has demonstrated noncompliant behavior which is being controlled by restrictions within the CMM Program for individuals.

(5) Any changes of designated provider have been made due to the breakdown of the individual/provider relationship as a result of the individual's noncompliance.

b. DMAS shall notify the individual and designated physician or pharmacy, or both, in writing of the review decision. If restrictions are continued, written notice shall include the individual's right to appeal the proposed action. (See subsection K of this section.)

c. DMAS shall not implement the continued individual restriction if a valid appeal is noted pending the completion of the appeal action. Should the outcome of the appeal action support implementation of the restriction, the restriction shall be promptly implemented.

K. Individual appeals.

- 1. Individuals shall have the right to appeal any action, as defined in 42 CFR 431.201, that is taken by DMAS under this part.
- 2. Individual appeals shall be held pursuant to the provisions of Part I (12VAC30-110-10 et seq.) of 12VAC30-110, Eligibility and Appeals.

12VAC30-130-820. Client Medical Management Program for providers.

A. Purpose. The CMM Program for providers is a utilization control program designed to promote improved and cost-

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efficient medical management of essential health care.

B. Authority.

1. Federal regulations at 42 CFR 456.3 require the Medicaid agency to implement a statewide surveillance and utilization control program and at 42 CFR 455.1 through 455.16 require the Medicaid agency to conduct investigations of abuse by providers.

2. Federal regulations at 42 CFR 431.54(f) allow states to restrict providers' participation in the Medicaid program if the agency finds that providers of items or services under the State Plan have provided items or services at a frequency or amount not medically necessary in accordance with utilization guidelines established by the state or have provided items or services of a quality that do not meet professionally recognized standards of health care.

C. Identification of participants for inclusion in the CMM Program for providers. DMAS shall identify providers for review through computerized reports such as but not limited to JSURS, Oracle, VAMMIS Medicaid Enterprise System (MES), or by written referrals from agencies, health care professionals, or other individuals.

D. Provider evaluation for restriction.

1. DMAS shall review providers to determine if health care services are being provided at a frequency or amount that is not medically necessary or that are not of a quality to meet professionally recognized standards of health care. Evaluation of utilization patterns can include ~~but is not limited to~~ review by the department of medical records or computerized reports generated by the department reflecting claims submitted for physician visits, drugs or prescriptions, outpatient and emergency room visits, lab or diagnostic procedures, hospital admissions, and referrals.

2. DMAS may restrict providers if any one or more of the following conditions is identified in a significant number or proportion of cases. These conditions include ~~but shall not be limited to~~ the following:

- a. Visits billed at a frequency or level exceeding that which is medically necessary;
- b. Diagnostic tests billed in excess of what is medically necessary;
- c. Diagnostic tests billed which are unrelated to the diagnosis;
- d. Medications prescribed or prescriptions dispensed in excess of recommended dosages;
- e. Medications prescribed or prescriptions dispensed unrelated to the diagnosis; or
- f. The provider's license to practice in any state has been revoked or suspended.

E. Provider restriction procedures.

1. DMAS shall advise affected providers by written notice of the proposed restriction under the CMM Program for providers. Written notice shall include an explanation of the basis for the decision, request for additional documentation, if any, and notification of the provider's right to appeal the proposed action.

2. DMAS shall restrict providers from being the designated provider, a referral provider, or a covering provider for individuals in the CMM Program for providers for 24 months.

3. DMAS shall notify the Centers for Medicare and Medicaid Services (CMS) and the general public of the restriction and its duration.

4. DMAS shall not implement provider restriction if a valid appeal is noted.

F. Review of provider restriction status.

1. DMAS shall review a restricted provider's claims history record prior to the end of the restriction period to determine restriction termination or continuation (See subsection D of this section). DMAS shall extend provider restriction for 24 months in one or more of the following situations:

- a. Where abuse by the provider is identified.
- b. Where the practices which led to restriction continue.

2. In cases where the provider has submitted an insufficient number of claims during the restriction period to enable DMAS to conduct a claims history review, DMAS shall continue restriction until a reviewable six-month claims history is available for evaluation.

3. If DMAS continues restriction following the review, the provider shall be notified of the agency's proposed action, the basis for the action, and appeal rights. (See subsection E of this section).

4. If the provider continues a pattern of inappropriate health care services, DMAS may make a referral to the appropriate peer review group or regulatory agency for recommendation and action as appropriate.

G. Provider appeals.

1. Providers shall have the right to appeal any action taken by the department under this part pursuant to § 32.1-325.1 of the Code of Virginia.

2. Provider appeals shall be held pursuant to the provisions of Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.

VA.R. Doc. No. R26-7392; Filed April 27, 2026, 8:14 a.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

Final Regulation

REGISTRAR'S NOTICE: The Board of Audiology and Speech-Language Pathology is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 18VAC30-21. Regulations Governing Audiology and Speech-Language Pathology (amending 18VAC30-21-131).

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

Effective Date: June 17, 2026.

Agency Contact: Kelli Moss, Executive Director, Board of Audiology and Speech-Language Pathology, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 597-4132, fax (804) 939-5238, or email kelli.moss@dhp.virginia.gov.

Summary:

The amendment removes an obsolete citation to a list of approved continuing education providers, which was removed from regulation through a prior action and is currently available in a board policy document.

18VAC30-21-131. Performance of flexible endoscopic evaluation of swallowing.

A. For the purposes of this section, an endoscopic procedure shall mean a flexible endoscopic evaluation of swallowing limited to the use of flexible endoscopes to observe, collect data, and measure the parameters of swallowing for the purposes of functional assessment and therapy planning.

B. A speech-language pathologist who performs an endoscopic procedure shall meet the following qualifications:

1. Completion of a course ~~or courses~~ or an educational program offered by a provider approved ~~in 18VAC30-20-100~~ by the board that includes at least 12 hours on endoscopic procedures;
2. Successful performance of at least 25 flexible endoscopic procedures under the immediate and direct supervision of a board-certified otolaryngologist or another speech-language pathologist who has successfully performed at least 50 flexible endoscopic procedures beyond the 25 required for initial qualification and has been approved in writing by a

board-certified otolaryngologist to provide that supervision; and

3. Current certification in basic life support.

C. The speech-language pathologist who qualifies to perform an endoscopic procedure pursuant to subsection B of this section shall maintain documentation of course completion and written verification from the supervising otolaryngologist or speech-language pathologist of successful completion of flexible endoscopic procedures.

D. An endoscopic procedure shall only be performed by a speech-language pathologist on referral from an otolaryngologist or other qualified physician.

E. A speech-language pathologist shall only perform an endoscopic procedure in a facility that has protocols in place for emergency medical backup. A flexible endoscopic evaluation of swallowing shall only be performed by a speech-language pathologist in either:

1. A licensed hospital or nursing home under the general supervision of a physician who is readily available in the event of an emergency, including physical presence in the facility or available by telephone; or
2. A physician's office at which the physician is on premises and available to provide onsite supervision.

F. The speech-language pathologist shall promptly report any observed abnormality or adverse reaction to the referring physician, an appropriate medical specialist, or both. The speech-language pathologist shall provide a report of an endoscopic procedure to the referring physician in a timely manner and, if requested, shall ensure access to a visual recording for viewing.

G. A speech-language pathologist is not authorized to possess or administer prescription drugs except as provided in § 54.1-3408 B of the Code of Virginia.

H. A speech-language pathologist who has been performing flexible endoscopic evaluations of swallowing prior to October 7, 2015, may continue to perform such evaluations provided ~~he~~ the speech-language pathologist has written verification from a board-certified otolaryngologist that ~~he~~ the speech-language pathologist has the appropriate training, knowledge, and skills to safely perform such evaluations.

VA.R. Doc. No. R26-8369; Filed April 29, 2026, 9:24 a.m.

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BOARD OF OPTOMETRY

Final Regulation

REGISTRAR'S NOTICE: The Board of Optometry is claiming an exemption from the Administrative Process Act in accordance with Chapters 553 and 561 of the 2025 Acts of Assembly, which exempt the actions of the board relating to the initial adoption of regulations necessary to implement the provisions of the acts; however, the board is required to provide an opportunity for public comment on regulations prior to their adoption.

Title of Regulation: 18VAC105-20. Regulations Governing the Practice of Optometry (amending 18VAC105-20-10, 18VAC105-20-20; adding 18VAC105-20-11).

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

Effective Date: June 17, 2026.

Agency Contact: Kelli Moss, Executive Director, Board of Optometry, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 597-4077, fax (804) 793-9145, or email kelli.moss@dhp.virginia.gov.

Summary:

Pursuant to Chapters 553 and 561 of the 2025 Acts of Assembly, the amendments create a defined and appropriate licensure by endorsement process for qualified applicants from other jurisdictions.

18VAC105-20-10. Requirements for initial licensure.

A. The applicant, in order to be eligible for initial licensure to practice optometry in the Commonwealth, shall meet the requirements for TPA certification in 18VAC105-20-16 and shall:

1. Be a graduate of a school of optometry accredited by the Accreditation Council on Optometric Education or other accrediting body deemed by the board to be substantially equivalent and have an official transcript verifying graduation sent to the board;
2. Request submission of an official report from the NBEO of a score received on each required part of the NBEO examination or other board-approved examination;
3. Submit a completed application and the prescribed fee; ~~and~~
4. Submit a current report from the National Practitioner Data Bank; and
5. Sign a statement attesting that the applicant has read, understands, and will comply with the statutes and regulations governing the practice of optometry in Virginia.

B. On or after January 1, 2033, all applicants to practice optometry in the Commonwealth shall meet the requirements for laser surgery in 18VAC105-20-80.

~~C. The board may waive the requirement of graduation from an accredited school of optometry for an applicant who holds a current, unrestricted license in another United States jurisdiction and has been engaged in active clinical practice for 36 out of the 60 months immediately preceding application for licensure in Virginia.~~

~~D. C. Required examinations.~~ For the purpose of § 54.1-3211 of the Code of Virginia, the board adopts all parts of the NBEO examination as its written examination for licensure. After July 1, 1997, the board shall require passage as determined by the board of Parts I, II, and III of the NBEO examination, including passage of TMOD.

~~E. If an applicant has been licensed in another jurisdiction, the following requirements shall also apply:~~

- ~~1. The applicant shall attest that the applicant is not a respondent in a pending or unresolved malpractice claim.~~
- ~~2. Each jurisdiction in which the applicant is or has been licensed shall verify that:~~
 - ~~a. The license is current and unrestricted, or if the license has lapsed, it is eligible for reinstatement;~~
 - ~~b. All continuing education requirements have been completed, if applicable;~~
 - ~~e. The applicant is not a respondent in any pending or unresolved board action; and~~
 - ~~d. The applicant has not committed any act that would constitute a violation of § 54.1-3204 or 54.1-3215 of the Code of Virginia.~~

~~3. An applicant licensed in another jurisdiction who has not been engaged in active practice within the 12 months immediately preceding application for licensure in Virginia shall be required to complete 20 hours of continuing education as specified in 18VAC105-20-70.~~

~~4. In the case of a federal service optometrist, the commanding officer shall also verify that the applicant is in good standing.~~

18VAC105-20-11. Licensure by endorsement.

An applicant for licensure by endorsement shall submit the following:

1. Evidence of a current, active license in a United States jurisdiction or Canada that is in good standing;
2. A completed application and fee;
3. Evidence that the applicant meets the requirements for TPA certification in 18VAC105-20-16; and
4. A current report from the National Practitioner Data Bank.

18VAC105-20-20. Fees.

A. Required fees.

| | |
|-----------------------------------------------------------------------------------------------------------------|-------|
| Initial application and licensure with TPA certification | \$250 |
| Initial application Application for licensure with TPA certification and laser surgery certification | \$350 |
| Application for laser surgery certification | \$200 |
| Annual licensure renewal without TPA certification | \$150 |
| Annual licensure renewal with TPA certification | \$200 |
| Annual licensure renewal with TPA certification and laser surgery certification | \$250 |
| Annual renewal of inactive license | \$100 |
| Late renewal of any license | \$50 |
| Handling fee for returned check or dishonored credit card or debit card | \$50 |
| Reinstatement application fee (including renewal and late fees) | \$400 |
| Reinstatement application after disciplinary action | \$500 |
| Duplicate wall certificate | \$25 |
| Duplicate license | \$10 |
| Licensure verification | \$10 |

B. Unless otherwise specified, all fees are nonrefundable.

VA.R. Doc. No. R26-8516; Filed April 29, 2026, 9:32 a.m.

BOARD OF COUNSELING

Fast-Track Regulation

Title of Regulation: 18VAC115-20. Regulations Governing the Practice of Professional Counseling (amending 18VAC115-20-45).

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

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: June 17, 2026.

Effective Date: July 2, 2026.

Agency Contact: Maria S. Stransky, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4610, or email maria.stransky@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia authorizes the Board of Counseling to promulgate regulations that are reasonable and necessary to effectively administer the regulatory system.

Purpose: This action is essential to protect the health, safety, and welfare of citizens because faster licensure of professional counselors will ensure an adequate supply of practitioners in the Commonwealth, increasing access to care.

Rationale for Using Fast-Track Rulemaking Process: This action is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process because the amendments reduce requirements to assist individuals licensed in other states in obtaining a license in the Commonwealth more quickly.

Substance: The amendments (i) eliminate a requirement that an applicant for licensure by endorsement in professional counseling submit an affidavit of having read and understood Virginia laws and regulations, (ii) eliminate a requirement that an applicant provide documentation of having completed education and experience requirements, and (iii) replace a requirement that an applicant meet certain educational and experience requirements with a requirement that an applicant submit an official transcript documenting completion of a graduate degree program.

Issues: The primary advantage to the public is increased access to care as more practitioners will enter the Commonwealth faster. There are no disadvantages to the public. There are no primary advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.¹

Summary of the Proposed Amendments to Regulation. The Board of Counseling (board) proposes to no longer require that applicants for licensure by endorsement submit: (i) extensive documentation related to supervision and post-licensure clinical practice, and (ii) an affidavit of having read and understood the regulations and laws governing the practice of professional counseling in Virginia. The board also proposes to add clarifying language.

Background. Under both the current and proposed regulations, applicants for licensure by endorsement must hold or have held a professional counselor license in another jurisdiction of the United States and have no unresolved action against that license. Both regulations also state that the board will consider history of disciplinary action on a case-by-case basis. Under the current regulation, applicants for licensure by endorsement must submit documentation of having completed education and experience requirements per the following: 1. Educational requirements consistent with those specified in 18VAC115-20-49 and 18VAC115-20-51 and experience requirements consistent with those specified in 18VAC115-20-52; 2. If an applicant does not have educational and experience credentials consistent with those required by this chapter, he shall provide: a. Documentation of education and supervised experience that met the requirements of the jurisdiction in which he was initially licensed as verified by an

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official transcript and a certified copy of the original application materials; and b. Evidence of post-licensure clinical practice in counseling, as defined in § 54.1-3500 of the Code of Virginia, for 24 of the last 60 months immediately preceding his licensure application in Virginia. Clinical practice shall mean the rendering of direct clinical counseling services or clinical supervision of counseling services; or 3. In lieu of transcripts verifying education and documentation verifying supervised experience, the board may accept verification from the credentials registry of the American Association of State Counseling Boards or any other board-recognized entity. The board proposes to replace the above documentation requirement with an official transcript documenting the applicant's completion of a graduate degree program.

Estimated Benefits and Costs. Under both the current and proposed regulations applicants for licensure by endorsement must hold or have held a professional counselor license in another jurisdiction of the United States and have no unresolved action against that license. In order to have obtained a professional counselor license in another jurisdiction the applicant must have met the education and supervised experience requirements of the other jurisdiction. The board is proposing to eliminate the requirement that the applicant provide documentation of supervised experience and post-licensure clinical practice in counseling. According to the Department of Health Professions (DHP), some states are legally prohibited from providing applicants with copies of their original licensure files, which forces an applicant to locate a former supervisor to verify supervision hours or possibly even complete an additional 2,000 hours of supervised training in Virginia before being approved for licensure (2,000 hours is roughly equal to one year of practice). Eliminating the requirement that documentation of the supervised experience is provided can thus remove a potential substantial barrier for some individuals to become licensed by endorsement. Since the applicant must have satisfied the supervised experience requirement in the other jurisdiction in order to have gained licensure, eliminating the documentation requirement would not allow less qualified practitioners to become licensed in the Commonwealth. According to DHP, some applicants have had difficulty finding evidence to prove their two years of post-licensure experience. Eliminating this requirement would also make it easier for individuals who hold or have held a professional counselor license in another jurisdiction to become licensed in Virginia. Reducing barriers for professional counselors licensed in other jurisdictions to become licensed in the Commonwealth could be beneficial for Virginia consumers of counseling services in that it may increase the number of qualified professional counselors available to provide these services. This may reduce the difficulty some Virginians have finding mental health services. According to an August 2025 report from the Virginia Healthcare Workforce Data Center, less than one percent of professional counselors in the Commonwealth are involuntarily unemployed, which suggests that openings for professional counseling services for new clients may be limited.² Increasing the number of qualified professional counselors available to provide services in Virginia could also benefit employers of licensed professional counselors in that they may be able to find more productive or less costly people to hire. On the other hand, some current Virginia licensed

professional counselors may face greater competition and have somewhat less leverage to negotiate pay increases; if they have their own practice, they may have less ability to raise rates for service. According to DHP, all jurisdiction of the United States require a graduate degree. Thus, adding that official transcript documenting the applicant's completion of a graduate degree program be provided and removing the current education documentation text would not have a substantive impact. Licensed professional counselors are required to abide by the regulations and laws governing the practice of professional counseling in Virginia whether or not they sign an affidavit of having read and understood such regulations and laws. Eliminating the affidavit requirement saves a small amount of time and paperwork and would have no other substantive impact.

Businesses and Other Entities Affected. The proposed amendments would particularly affect applicants for licensure by endorsement. In 2025, 576 individuals became Virginia licensed professional counselors via licensure by endorsement.³ The proposed reduction in barriers to become licensed by endorsement may lead to more individuals gaining licensure than otherwise would occur. Consumers of counseling services, employers of licensed professional counselors, and the 11,652 professional counselors currently licensed in the Commonwealth⁴ may be affected as well. According to survey data from the Virginia Healthcare Workforce Data Center report titled "Virginia's Licensed Professional Counselor Workforce: 2025," the primary types of employers of licensed professional counselors by establishment type in the Commonwealth are distributed as follows:⁵

| Primary Employers of Licensed Professional Counselors by Type | Percentage |
|----------------------------------------------------------------------|-------------------|
| Private Practice, Group | 24% |
| Private Practice, Solo | 24% |
| Mental Health Facility, Outpatient | 13% |
| Community Services Board | 12% |
| Community-Based Clinic or Health Center | 6.0% |
| School (Providing Care to Clients) | 5.0% |
| Academic Institution (Teaching Health Professions Students) | 2.0% |
| Residential Mental Health/Substance Abuse Facility | 2.0% |
| Hospital, General | 2.0% |
| Hospital, Psychiatric | 1.0% |
| Corrections/Jail | 1.0% |
| Administrative or Regulatory | 1.0% |
| Other Practice Setting | 7.0% |

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁶ An adverse impact is indicated if there is any increase in net cost or reduction

in net benefit for any entity, even if the benefits exceed the costs for all entities combined.⁷ Some current Virginia professional counselors could face increased competition in providing services through the proposed reduction in barriers to licensure by endorsement. Thus, an adverse impact is indicated.

Small Businesses⁸ Affected.⁹ Types and Estimated Number of Small Businesses Affected: The board regulates individual practitioners, but not their employers. Thus, data on the number of small businesses affected is not available. The types of businesses that are potentially affected and may qualify as small are described in the table . **Costs and Other Effects:** Some small providers of counseling services may have less ability to raise rates for service due to potentially increased competition. **Alternative Method that Minimizes Adverse Impact:** There are no clear alternative methods that both reduce adverse impact and meet the intended policy goals.

Localities¹⁰ Affected.¹¹ Additional professional counselors licensed in a neighboring state or the District of Columbia may choose to become licensed by endorsement in the Commonwealth in response to the proposed reduction in barriers and the resulting potential for more clients. It may be more likely in practice that residents of localities near the border of neighboring states or the District of Columbia would receive recommendations for counselors licensed in the nearby jurisdiction than would residents further from the border. Thus, localities near a neighboring state or the District of Columbia may be particularly affected. The proposed amendments do not appear to introduce costs for local governments.

Projected Impact on Employment. The proposed reduced barriers for licensure by endorsement may increase the number of individuals employed as licensed professional counselors in the Commonwealth. The number of professional counselors licensed in another U.S. jurisdiction who would be encouraged to apply for licensure by endorsement in Virginia due to the proposed reduction in barriers is not known.

Effects on the Use and Value of Private Property. Some private providers of counseling services may have reduced costs through the potential increase in supply of professional counselors from which to hire, while other private providers may have reduced ability to raise rates for services due to increased competition. Some may face both effects simultaneously. Thus, some private providers of counseling services may moderately increase in value, while others may moderately decrease in value. The proposed amendments do not affect real estate development costs.

¹ Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

² See <https://www.dhp.virginia.gov/media/dhpweb/docs/hwdc/behsci/0701LP C2025.pdf>.

³ Data source: DHP.

⁴ Ibid.

⁵ See footnote 2, supra.

⁶ Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

⁷ Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

⁸ Pursuant to § 2.2-4007.04, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

⁹ If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

¹⁰ "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹¹ Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency Response to Economic Impact Analysis: The Board of Counseling concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The amendments reduce requirements for licensure by endorsement in professional counseling and streamline the application process by eliminating extensive documentation requirements related to supervision and post-licensure clinical practice.

18VAC115-20-45. Prerequisites for licensure Licensure by endorsement.

A. Every applicant for licensure by endorsement shall hold or have held a professional counselor license in another jurisdiction of the United States that allows independent assessment, diagnosis, and treatment of behavioral health conditions and shall submit the following:

1. A completed application;
2. The application processing fee and initial licensure fee as prescribed in 18VAC115-20-20;

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REAL ESTATE APPRAISER BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Real Estate Appraiser Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 18VAC130-20. Real Estate Appraiser Board Rules and Regulations (amending 18VAC130-20-110, 18VAC130-20-210, 18VAC130-20-220, 18VAC130-20-230).

Statutory Authority: §§ 54.1-201 and 54.1-2013 of the Code of Virginia.

Effective Date: June 17, 2026.

Agency Contact: Anika Coleman, Executive Director, Real Estate Appraiser Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, fax (866) 826-8863, or email reappraisers@dpor.virginia.gov.

Summary:

The amendments conform the regulation to recent changes in federal standards contained in the Appraisal Qualification Board standards, The Real Property Appraiser Qualification Criteria. Effective January 1, 2026, education requirements on fair housing laws and regulations and valuation bias have been added for qualification of state certified and state licensed real estate appraisers. This action puts those federally required changes into the state regulation.

18VAC130-20-110. Qualifications for renewal.

A. As a condition of renewal, and under § 54.1-2014 of the Code of Virginia, all active certified general real estate appraisers, certified residential real estate appraisers, and licensed residential real estate appraisers are required to complete continuing education courses satisfactorily within each licensing term as follows:

1. All real estate appraisers must satisfactorily complete continuing education courses or seminars offered by a provider of not less than 28 hours during each licensing term.
2. All real estate appraisers may also satisfy up to one half of an individual's continuing education requirements by participation other than as a student in educational processes and programs approved by the board to be substantially equivalent for continuing education purposes, including teaching, program development, or authorship of textbooks.
3. Seven of the classroom hours completed to satisfy the continuing education requirements must be the National

3. Verification of all mental health or health professional licenses, ~~or certificates, or registrations~~ ever held in any other jurisdiction. In order to qualify for endorsement, the applicant shall have no unresolved action against a license, ~~or certificate, or registration~~. The board will consider history of disciplinary action on a case-by-case basis;

~~4. Documentation of having completed education and experience requirements as specified in subsection B of this section;~~

~~5.~~ 4. Verification of a passing score on an examination required for counseling licensure in the jurisdiction in which licensure was obtained;

6. ~~5.~~ A current report from the U.S. Department of Health and Human Services National Practitioner Data Bank (NPDB); and

~~7. An affidavit~~ 6. Official transcript documenting the applicant's completion of having read and understood the regulations and laws governing the practice of professional counseling in Virginia a graduate degree program.

~~B. Every applicant for licensure by endorsement shall meet one of the following:~~

~~1. Educational requirements consistent with those specified in 18VAC115-20-49 and 18VAC115-20-51 and experience requirements consistent with those specified in 18VAC115-20-52;~~

2. If an applicant does not have educational and experience credentials consistent with those required by this chapter, he shall provide:

a. Documentation of education and supervised experience that met the requirements of the jurisdiction in which he was initially licensed as verified by an official transcript and a certified copy of the original application materials; and

b. ~~Evidence of post licensure clinical practice in counseling, as defined in § 54.1-3500 of the Code of Virginia, for 24 of the last 60 months immediately preceding his licensure application in Virginia. Clinical practice shall mean the rendering of direct clinical counseling services or clinical supervision of counseling services; or~~

~~3. In lieu of transcripts verifying education and documentation verifying supervised experience, the board may accept verification from the credentials registry of the American Association of State Counseling Boards or any other board recognized entity.~~

VA.R. Doc. No. R26-8406; Filed April 29, 2026, 9:29 a.m.

Uniform Standards of Professional Appraisal Practice (USPAP) update course.

4. Aside from complying with the requirement to complete the seven-hour National USPAP update course, appraisers may not receive credit for completion of the same continuing education course within a licensing term.

5. As part of the required hours, all real estate appraisers must complete a ~~minimum two-hour course on either fair housing or appraisal bias~~ that meets the content requirements of the Valuation Bias and Fair Housing Laws and Regulations Outline established by the Appraiser Qualifications Board. On or after January 1, 2026, the first time an appraiser completes this continuing education requirement, the minimum course length must be seven hours, unless the appraiser successfully completed an eight-hour course (seven hours plus a one-hour examination) as part of qualifying education. Each subsequent time an appraiser completes this continuing education requirement, the minimum course length must be four hours. Such course must be (i) ~~a fair housing or appraisal bias course~~ approved by the Appraiser Qualifications Board; or (ii) ~~approved by the Real Estate Board in its fair housing category;~~ or (iii) approved by the board in accordance with Part V (18VAC130-20-200 et seq.) of this chapter.

B. As a condition of renewal, all licensed real estate appraiser trainees must meet the continuing education requirements set forth in subsection A of this section.

C. All applicants for renewal of a license must meet the standards for entry as set forth in subdivisions 2 and 3 of 18VAC130-20-30.

D. Applicants for the renewal of a registration must meet the requirement for registration as set forth in 18VAC130-20-20.

E. Licensees applying to activate an inactive license must complete all continuing education requirements that would have been required in the current license term if the licensee was active prior to application to activate the license.

18VAC130-20-210. Standards for the approval of appraisal educational offerings for prelicensure credit.

A. Content.

1. Prior to licensure, applicants must have successfully completed ~~the (i) the 15-hour National Uniform Standards of Professional Appraisal Practice course and (ii) an eight-hour valuation bias and fair housing laws and regulations course.~~

2. While various appraisal courses may be credited toward the classroom requirement specified for each classification of licensure, all applicants for licensure as an appraiser trainee or a licensed residential, certified residential, or certified general real estate appraiser must demonstrate that

course work included coverage of the required topics listed in this subdivision.

| |
|-----------------------------------------------------------------------|
| Basic appraisal principles (30 hours) |
| Basic appraisal procedures (30 hours) |
| Residential market analysis and highest and best use (15 hours) |
| Residential appraiser site valuation and cost approach (15 hours) |
| Residential sales comparison and income approaches (30 hours) |
| Residential report writing and case studies (15 hours) |
| Statistics, modeling and finance (15 hours) |
| Advanced residential applications and case studies (15 hours) |
| General appraiser market analysis and highest and best use (30 hours) |
| General appraiser sales comparison approach (30 hours) |
| General appraiser site valuation and cost approach (30 hours) |
| General appraiser income approach (60 hours) |
| General appraiser report writing and case studies (30 hours) |

3. All appraisal and appraisal-related offerings presented for prelicense credit must have a final, written examination. The examination may not be an open book examination.

4. Credit toward the classroom hour requirement to satisfy the educational requirement prior to licensure will be granted only where the length of the educational offering is at least 15 classroom hours, except for the eight-hour course on valuation bias and fair housing laws and regulations.

B. Instruction. With the exception of courses taught at accredited colleges, universities, junior and community colleges, or adult distributive or marketing education programs, all other prelicense educational offerings given after January 1, 1993, must be taught by instructors certified by the board. All courses in the Uniform Standards of Professional Appraisal Practice must be instructed by an Appraisal Qualifications Board certified instructor.

18VAC130-20-220. Standards for the approval of appraisal educational offerings for continuing education credit.

A. Content.

1. The content of courses, seminars, workshops, or conferences that may be accepted for continuing education credit includes those topics listed in 18VAC130-20-210 A 2 and this subdivision.

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| |
|----------------------------------------------------------------------------------------------------------------|
| Ad valorem taxation |
| Appraisal Valuation bias |
| Arbitration, dispute resolution |
| Courses related to the practice of real estate appraisal or consulting |
| Development cost estimating |
| Ethics and standards of professional practice, Uniform Standards of Professional Appraisal Practice |
| Fair housing |
| Land use planning, zoning |
| Management, leasing, timesharing |
| Property development, partial interests |
| Real estate financing and investment |
| Real estate law, easements, and legal interests |
| Real estate litigation, damages, condemnation |
| Real estate appraisal related computer applications |
| Real estate securities and syndication |
| Developing opinions of real property value in appraisals that also include personal property or business value |
| Seller concessions and impact on value |
| Energy efficient items and "green building" appraisals |

2. Any course related to appraisal valuation bias and fair housing laws and regulations designed to meet the requirements of 18VAC130-20-110 A 5 must ~~be directly applicable to rendering of an opinion of value by an appraiser. Acceptable topics should consist of: a. Awareness and identification of appraisal bias; b. Effects of appraisal bias on consumers; c. Assisting consumers who may have been subjected to biased appraisals; d. Strategies to address appraisal bias; and e. Laws and regulations applicable to appraisal bias~~ meet the content requirements of the Valuation Bias and Fair Housing Laws and Regulations Outline established by the Appraiser Qualifications Board.

3. Courses, seminars, workshops, or conferences submitted for continuing education credit must indicate that the licensee participated in an educational program that maintained and increased the licensee's knowledge, skill, and competency in real estate appraisal.

4. Credit toward the classroom hour requirement to satisfy the continuing education requirements will be granted only where the length of the educational offering is at least two hours and the licensee participated in the full length of the program.

B. Instruction. Although continuing education offerings are not required to be taught by board-certified instructors, the Uniform Standards of Professional Appraisal Practice course must be taught by an Appraiser Qualifications Board certified instructor who is also a state certified appraiser.

18VAC130-20-230. Procedures for awarding prelicense and continuing education credits.

A. Course credits will be awarded only once per license cycle for courses having substantially equivalent content.

B. Proof of completion of such course, seminar, workshop, or conference may be in the form of a transcript, certificate, letter of completion, or any such written form as may be required by the board. All courses, seminars, and workshops submitted for prelicensure and continuing education credit must indicate the number of classroom hours.

C. The board may request additional information in order to evaluate course content, including course descriptions, syllabi, or textbook references.

D. All transcripts, certificates, letters of completion, or similar documents submitted to verify completion of seminars, workshops, or conferences for continuing education credit must indicate successful completion of the course, seminar, workshop, or conference. Applicants must furnish written proof of having received a passing grade in all prelicense education courses submitted.

E. All courses, seminars, workshops, or conferences submitted for satisfaction of continuing education requirements must be satisfactory to the board.

F. Distance education courses may be acceptable to meet prelicense education and continuing education requirements provided the course is approved by the board. Such courses must meet the following standards:

1. The course is presented by an accredited college or university that offers distance education programs in other disciplines or the course has received approval of the International Distance Education Certification Center (IDECC) for the course design and delivery mechanism, and either the approval of the Appraiser Qualifications Board through its course approval program or the approval of the board for the content of the course.

2. The course meets the requirements for qualifying education or continuing education, as applicable, established by the Appraiser Qualifications Board;

3. The course meets classroom hour requirements.

a. For a prelicense education course, the course must be equivalent to the minimum of 15 classroom hours, except for an eight-hour course on valuation bias and fair housing laws and regulations.

b. For a continuing education course, the course must be a minimum of two classroom hours; and

4. The course provides for a written examination proctored by an official approved by the presenting college or university or by the sponsoring organization consistent with the requirements of the course accreditation, or if no written examination is required for accreditation, completion of the course mechanisms required for accreditation demonstrates mastery and fluency.

VA.R. Doc. No. R26-8577; Filed April 27, 2026, 1:25 p.m.

BOARD OF SOCIAL WORK

Forms

REGISTRAR'S NOTICE: Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

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

18VAC140-30. Regulations Governing the Practice of Music Therapy.

Agency Contact: Erin Barrett, Director of Legislative and Regulatory Affairs, Department of Health Professions, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 750-3912, or email erin.barrett@dhp.virginia.gov.

FORMS (18VAC140-20)

~~Request for Termination of Supervision (rev. 2/2020)~~

~~Initial Application for Supervision for LCSW Licensure (rev. 4/2022)~~

~~Verification of Clinical Supervision (rev. 4/2022)~~

~~Add or Change Supervision (rev. 4/2022)~~

~~LCSW Application by Examination (rev. 4/2022)~~

~~LCSW Endorsement Online Instructions and Forms (rev. 11/2022)~~

~~LMSW Application by Examination (rev. 4/2022)~~

~~LMSW Endorsement Online Instructions and Forms (rev. 11/2022)~~

~~LBSW Application by Examination (rev. 4/2022)~~

~~LBSW Endorsement Online Instructions and Forms (rev. 11/2022)~~

~~LCSW Supervision Log (rev. 3/2020)~~

~~Application for Reinstatement of Licensure: Checklist Instructions (rev. 3/2020)~~

~~Application for Reinstatement Following Disciplinary Action: Checklist Instructions (rev. 3/2020)~~

~~Social Work Name/Address Change (rev. 2/2020)~~

~~Request for Change in Status of Virginia Social Work License (Current Active to Current Inactive) (rev. 3/2020)~~

~~Request for Change in Status of Virginia Social Work License (Current Inactive to Current Active) (rev. 3/2020)~~

~~Request for Verification of Virginia Social Work License (rev. 2/2020)~~

~~Request for Late Renewal Instructions (rev. 3/2020)~~

[Termination of Supervision \(rev. 9/2024\)](#)

[Initial Application for Supervision for LCSW \(rev. 10/2024\)](#)

[Verification of Clinical Supervision \(rev. 9/2024\)](#)

[Add or Change Supervision \(rev. 10/2024\)](#)

[LCSW Application by Examination \(rev. 10/2024\)](#)

[LCSW Application by Endorsement \(rev. 10/2024\)](#)

[LCSW Reapplication for Licensure by Examination \(rev. 10/2024\)](#)

[LMSW Application by Examination \(rev. 10/2024\)](#)

[LMSW Application by Endorsement \(rev. 10/2024\)](#)

[LBSW Application by Examination \(rev. 10/2024\)](#)

[LBSW Application by Endorsement \(rev. 10/2024\)](#)

[LCSW Supervision Log \(rev. 9/2024\)](#)

[Application for Reinstatement for LCSW \(rev. 9/2024\)](#)

[Application for Reinstatement for LBSW and LMSW \(rev. 9/2024\)](#)

[Application for Reinstatement Following Disciplinary Action \(rev. 9/2024\)](#)

[Change of Name or Address \(rev. 10/2025\)](#)

[Change of Status \(Active to Inactive\) \(rev. 9/2024\)](#)

[Change of Status \(Inactive to Active\) \(rev. 9/2024\)](#)

[Verification of Virginia License \(rev. 11/2025\)](#)

[Renewal Application \(rev. 9/2024\)](#)

[Late Renewal Application \(rev. 9/2024\)](#)

[Applicant Out-of-State Verification Form \(rev. 9/2024\)](#)

Regulations

[Extension Request for Supervised Experience \(rev. 9/2024\)](#)

[Supervisor Approval Application \(rev. 10/2024\)](#)

[Supervisor Out-of-State Verification \(rev. 9/2024\)](#)

[Verification of Education and Field Placement Practicum Hours \(rev. 9/2024\)](#)

[Group Attendance Log \(rev. 10/2024\)](#)

[Prescription Report \(rev. 10/2024\)](#)

[Employer Notification of a Board Order \(rev. 10/2024\)](#)

[Initial Contact for Compliance Monitoring \(rev. 10/2024\)](#)

[Licensee Self-Report Form \(rev. 10/2024\)](#)

[Continuing Education Course Approval Request \(rev. 10/2024\)](#)

[Evaluator Approval Request \(rev. 10/2024\)](#)

[Therapist Approval Request \(rev. 10/2024\)](#)

[Practice Supervisor Report Form \(rev. 10/2024\)](#)

[Request for Board Approval of Practice Supervisor \(rev. 10/2024\)](#)

[Initial Therapy Compliance Report \(rev. 10/2024\)](#)

[Quarterly Report for Therapy Compliance \(rev. 10/2024\)](#)

[Continuing Education Summary Form \(rev. 6/2025\)](#)

FORMS (18VAC140-30)

[Application for Licensure in Music Therapy \(eff. 11/2025\)](#)

[Change of Status \(Active to Inactive\) \(eff. 11/2025\)](#)

[Change of Status \(Inactive to Active\) \(eff. 11/2025\)](#)

[Application for Reinstatement in Music Therapy \(eff. 11/2025\)](#)

[Application for Reinstatement Following Discipline in Music Therapy \(eff. 11/2025\)](#)

VA.R. Doc. No. R26-8638; Filed April 20, 2026, 9:32 a.m.

GENERAL NOTICES

BOARD OF PHARMACY

Notice of Scheduling Chemicals in Schedule I Pursuant to § 54.1-3443 of the Code of Virginia

Pursuant to § 54.1-3443 D of the Code of Virginia, the Board of Pharmacy is giving notice of a public hearing to consider placement of chemical substances in Schedule I of the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia). The public hearing will be conducted at 9:01 a.m. on June 16, 2026. Instructions for public comment will be included in the agenda for the board meeting on June 16. Public comment may also be submitted electronically or in writing prior to June 16, 2026, to the agency contact listed at the end of this notice.

Pursuant to § 54.1-3443 D of the Code of Virginia, the Virginia Department of Forensic Science (DFS) has identified six compounds for recommended inclusion into the Code of Virginia.

The following compounds are classified as synthetic opioids. Compounds of this type have been placed in Schedule I (subdivision 1 of § 54.1-3446 of the Code of Virginia) in previous legislative sessions.

3-[2-[(dimethylamino)methyl]-1-hydroxycyclohexyl]phenol (other names: O-desmethyltramadol, ODMT), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

3-[1-[1-(4-chlorophenyl)ethyl]piperidin-4-yl]-1H-benzimidazol-2-one (other names: chlorphine; 1-[1-[1-(4-chlorophenyl)ethyl]-4-piperidiny]-1,3-dihydro-2H-benzimidazol-2-one), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

3-[3-[1-[1-(4-chlorophenyl)ethyl]piperidin-4-yl]-2-oxobenzimidazol-1-yl]propanenitrile (other names: cyclorphine; N-propionitrile chlorphine), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

Based on their chemical structure, the following compounds are expected to have hallucinogenic properties. Compounds of this type have been placed in Schedule I (subdivision 3 of § 54.1-3446 of the Code of Virginia) in previous legislative sessions.

[3-[2-[ethyl(methyl)amino]ethyl]-1H-indol-4-yl] acetate (other names: 4-acetoxy-N-methyl-N-ethyltryptamine, 4-acetoxy-MET, 4-AcO-MET), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the

existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

1-(4-bromophenyl)-2-pyrrolidin-1-ylpentan-1-one (other names: 4-bromo-alpha-pyrrolidinovalerophenone, 4-bromo-alpha-PVP), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

1-[1-(3-methylphenyl)cyclohexyl]piperidine (other names: 3-methyl phenyclidine, 3-methyl PCP), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

Contact Information: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4456, fax (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Enforcement Action for the Bedford County School Board

The Virginia Department of Environmental Quality is proposing an enforcement action for the Bedford County School Board for violations of State Water Control Law, regulations, and applicable permit at the Staunton River High School located in Moneta, Virginia. The proposed order is available from the DEQ contact or at <https://www.deq.virginia.gov/news-info/shortcuts/public-notices/enforcement-actions>. The DEQ contact will accept written comments from May 18, 2026, to June 17, 2026.

Contact Information: Joseph Heller, Enforcement Specialist, Department of Environmental Quality, Blue Ridge Regional Office, 901 Russell Drive, Salem, VA 24153, or email joseph.r.heller@deq.virginia.gov.

Proposed Enforcement Action for Buena Vista Public Service Authority

The Virginia Department of Environmental Quality is proposing an enforcement action for Buena Vista Public Service Authority for violations of State Water Control Law, regulations, and applicable permit at the Buena Vista sewage treatment plant facility located in Buena Vista, Virginia. The proposed order is available from the DEQ contact or at <https://www.deq.virginia.gov/news-info/shortcuts/public-notices/enforcement-actions>. The DEQ contact will accept written comments from May 18, 2026, to June 17, 2026.

Contact Information: Michelle Callahan, Enforcement Specialist, Department of Environmental Quality, Central Office, P.O. Box 1105, Richmond, VA 23218, or email michelle.callahan@deq.virginia.gov.

General Notices

Proposed Enforcement Action for Chesapeake Airport Authority

The Virginia Department of Environmental Quality is proposing an enforcement action for the Chesapeake Airport Authority for violations of State Water Control Law, regulations, and applicable permit at the Chesapeake Regional Airport located in Chesapeake, Virginia. The proposed order is available from the DEQ contact or at <https://www.deq.virginia.gov/news-info/shortcuts/public-notices/enforcement-actions>. The DEQ contact will accept written comments from May 18, 2026, to June 17, 2026.

Contact Information: Cara Witte, Enforcement Specialist, Department of Environmental Quality, Piedmont Regional Office, 4949 Cox Road, Suite A, Glen Allen, VA 23060, or email cara.witte@deq.virginia.gov.

Proposed Enforcement Action for Town of Farmville

The Virginia Department of Environmental Quality is proposing an enforcement action for the Town of Farmville for violations of State Water Control Law, regulations, and applicable permit at the Farmville advanced wastewater treatment plant located in Farmville, Virginia. The proposed order is available from the DEQ contact or at <https://www.deq.virginia.gov/news-info/shortcuts/public-notices/enforcement-actions>. The DEQ contact will accept written comments from May 18, 2026, to June 17, 2026.

Contact Information: Cara Witte, Enforcement Specialist, Department of Environmental Quality, Piedmont Regional Office, 4949 Cox Road, Suite A, Glen Allen, VA 23060, or email cara.witte@deq.virginia.gov.

Proposed Enforcement Action for Ramsey Inc.

The Virginia Department of Environmental Quality is proposing an enforcement action for Ramsey Inc. for violations of State Water Control Law, regulations, and applicable permit at the 3853 Guard Hill Ramsey project located in Front Royal, Virginia. The proposed order is available from the DEQ contact or at <https://www.deq.virginia.gov/news-info/shortcuts/public-notices/enforcement-actions>. The DEQ contact will accept written comments from May 18, 2026, to June 17, 2026.

Contact Information: Megan Wisdom, Enforcement Specialist, Department of Environmental Quality, Piedmont Regional Office, 4949 Cox Road, Suite A, Glen Allen, VA 23060, or email megan.wisdom@deq.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th

Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* varegs@dls.virginia.gov.

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

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

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