

Title 26
DEPARTMENT OF
ENVIRONMENT

Subtitle 09 MARYLAND CO₂ BUDGET
TRADING PROGRAM

Notice of Proposed Action
[25-206-P-I]

The Secretary of the Environment proposes to:

- (1) Amend Regulations .02—.04 under **COMAR 26.09.01 General Administrative Provisions**;
- (2) Amend Regulations .03, .06, .07, .10, and .11 under **COMAR 26.09.02 Applicability, Determining Compliance, and Allowance Distribution**;
- (3) Repeal existing Regulations .01—.09 under **COMAR 26.09.03 Offsets Projects**; and
- (4) Amend Regulations .03 and .06 under **COMAR 26.09.04 Auctions**.

Statement of Purpose

The purpose of this action is to amend the Maryland CO₂ Budget Trading Program. RGGI is comprised of ten states in the Northeast and Mid-Atlantic regions and is composed of individual CO₂ Budget Trading Programs in each RGGI participating state. These states adopted market-based carbon dioxide (CO₂) cap-and-invest programs designed to reduce emissions of CO₂, a greenhouse gas, from fossil fuel-fired electricity generators with a nameplate capacity of 25 megawatts or greater. Each participating state’s CO₂ Budget Trading Program is based on the RGGI Model Rule, which was developed to provide guidance to states as they implemented the RGGI program. RGGI participating states have concluded a third Program Review, which is a comprehensive evaluation of program successes, program impacts, the potential for additional reductions, and imports and emissions leakage.

Amendments to the RGGI Model Rule were developed by the RGGI state staff as part of the third Program Review and a consensus agreement was reached in 2025. This effort was supported by an extensive regional stakeholder process that engaged the regulated community, environmental non-profits, and other organizations with technical expertise in the design of cap-and-invest programs.

Maryland’s CO₂ Budget Trading Program is being amended to incorporate changes to the RGGI Model Rule. A summary of the amendments to the RGGI Program, as outlined in the RGGI Model Rule, are discussed below.

Amendments to the regulations will implement the policy changes to the cap and stability mechanisms from the Program Review, remove offsets, eliminate obsolete accounting mechanisms for industrial sources and long-term contracts, and address miscellaneous clerical changes. There is no corresponding federal standard to this proposed action.

CO₂ budget sources subject to the requirements of the Maryland CO₂ Budget Trading Program will be affected.

Compliance requirements for CO₂ budget sources subject to the Maryland CO₂ Budget Trading Program will remain the same.

Emission Reduction Summary

The changes to the size and structure of the regional cap and allowance apportionments will result in emissions reductions. The regional emissions cap in 2027 will be equal to 69,806,919 tons and will decline by an average of 8,538,789 tons per year, which is

approximately 10.5 percent of the 2025 budget, thereafter through 2033. Then, from 2034 through 2037 the cap will decline by 2,386,204 tons of CO₂ annually, which is approximately 3 percent of the 2025 budget. Subsequent years are set to match the 2037 emissions cap.

Estimate of Economic Impact

I. Summary of Economic Impact. The participating RGGI states conduct economic analyses utilizing the REMI model to determine the overall impact on the RGGI region from these changes. The most recent analysis from August 2025 showed that the estimated economic impact across the 10-state RGGI region is an increase in gross state product between \$20.4 billion and \$21.1 billion from 2025 to 2040; an increase in disposable personal income between \$8.9 billion and \$13.2 billion from 2025 to 2040; and an increase in employment between 24,900 job-years and 176,500 job-years from 2025 to 2040.

II. Types of Economic Impact.

Impacted Entity	Revenue (R+/R-) Expenditure (E+/E-)		Magnitude
A. On issuing agency:			
(1) MDE	(R+)		Positive Estimation
B. On other State agencies:			
(1) MEA	(R+)	\$250.4M	to \$734.1M
(2) Other State Agencies	(R+)		Positive Estimation
C. On local governments:			
(1) N/A	(R+)		Positive Estimation
D. On regulated industries or trade groups:			
(1) Power Sector (zero carbon)	(+)		Positive Estimation
(2) Construction	(+)		Positive Estimation
(3) Power Sector (fossil fuel)	(-)	\$250.4M	to \$734.1M
E. On other industries or trade groups:			
(1) Commercial	(+)	\$97.44	to \$39.00 cost/business/year
(2) Industrial	(+)	\$348.48	to \$140.64 cost/business/year
F. Direct and indirect effects on public:			
(1) Public Health Benefits	(+)		Positive Estimation
(2) Workers	(+)		Net increase in jobs in MD
(3) Households	(+)	\$10.08	to \$4.08 cost/household/year

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

A(1). Maryland Energy Administration (MEA) allocates some SEIF funds to the Department to implement climate change programs. As the fund increases more revenues can be allocated to these programs.

B(1). SEIF revenues are projected to increase as a result of higher allowance prices even though Maryland’s CO₂ allowance budget decreases. MEA is responsible for the administration of Maryland’s portion of the RGGI auction proceeds. The projected cumulative revenue is based on economic modeling of future allowance prices and the quantity of allowances available each year from 2028—2037.

B(2). A number of programs funded through SEIF are administered by other state agencies. As the fund increases more revenues can be allocated to these programs.

C(1). A number of programs funded through SEIF are specific to local governments, including revolving loan programs and energy efficiency programs. As the fund increases more revenues can be allocated to these programs.

D(1). Zero-carbon electricity generators compete with fossil fuel-fired generators in the regional electricity market. Since the RGGI carbon price increases costs for those competing fossil-fired generators but does not affect zero-carbon generators, the zero-carbon generators will benefit. Furthermore, some SEIF funds are reinvested in clean and renewable energy.

D(2). The construction industry will benefit from the increased spending on energy efficiency improvements to homes, businesses and government buildings.

D(3). The power sector will be responsible for buying the allowances necessary to comply with the regulation. This will increase their operating costs. The exact expenditures will depend on Maryland source emissions during the time period, as well as the number of allowances those sources continue to hold from prior periods, which the Department expects to be substantial. Sources’ allowance holdings are protected as confidential business information, so the Department cannot know how many banked allowances Maryland sources hold. The Department therefore uses the cumulative MD allowance revenues from 2028—2037 as a proxy for Maryland source allowance expenditures here.

E(1). Analysis performed by the RGGI participating states projects the region-wide yearly commercial energy bill will be lower by \$39.00 to \$97.44 on average across the time period 2028—2037, depending on the influence of broader trends across the energy markets.

E(2). Analysis performed by the RGGI participating states projects the region-wide yearly industrial energy bill will be lower by \$140.64 to \$348.48 on average across the time period 2028—2037, depending on the influence of broader trends across the energy markets.

F(1). There are unquantified, but likely substantial, public health benefits that will result from lowering GHGs in Maryland. Improved air quality will result in lower health risks to the Maryland population. The RGGI states did not perform public health modeling, but as carbon emissions and fossil fuel consumption decrease, emission of co-pollutants will decrease, as well.

F(2). Analysis performed by the RGGI participating states projects net gains in both overall economic output and overall employment across the RGGI region as a result of the lower cap.

F(3). Analysis performed by the RGGI participating states projects the region-wide yearly residential energy bill will be lower by \$4.08 to \$10.08 on average across the time period 2028—2037, depending on the influence of broader trends across the energy markets.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Luke Wisniewski, Market-Based Program Administrator, Department of the Environment, 1800 Washington Boulevard, Baltimore, Maryland 21230, or call 410-537-4231, or email to luke.wisniewski@maryland.gov. Comments will be accepted through January 6, 2026. A public hearing will be held on virtually by the Maryland Department of the Environment on January 6, 2026 at 10AM. Visit the Department’s website for the virtual public hearing details: <https://mde.maryland.gov/programs/regulations/air/Pages/reqcomments.aspx>

Editor’s Note on Incorporation by Reference
Pursuant to State Government Article, §7-207, Annotated Code of Maryland, the New York State Renewable Energy Standard Biomass Power Guide, June 2018 has been declared a document generally available to the public and appropriate for incorporation by reference. For this reason, it will not be printed in the Maryland Register or the Code of Maryland Regulations (COMAR). Copies of this document are filed in special public depositories located throughout the State. A list of these depositories was published in 52:2 Md. R. 53 (January 24, 2025), and is available online at www.dsd.maryland.gov. The document may also be inspected at the office of the Division of State Documents, 16 Francis Street, Annapolis, Maryland 21401.

26.09.01 General Administrative Provisions

Authority: Environment Article, §§1-101, 1-404, 2-103, and 2-1002(g), Annotated Code of Maryland

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) — (13) (text unchanged)

[(14) "Award" means an allocation of CO₂ allowances by the Department:

(a) Which are recorded in the general account of a project sponsor; or

(b) Which are recorded in the compliance account of a recipient of allowances from the Clean Generation Set-aside Account.]

[(14-1)] (14) (text unchanged)

(15) “Billing meter” means a measurement device used to measure electric or thermal output for commercial billing under a contract where the *owners of the* facility selling the electric or thermal output [is a] *must be* different [owner] from the [person] *owners of the party* purchasing the electric or thermal output.

(16) — (24) (text unchanged)

(25) “CO₂ allowance retirement account” means a general account administered by the Department to hold CO₂ allowances that have been permanently retired from the Voluntary Renewable Set-aside Account [, the Limited Industrial Exemption Set-aside Account,] or the CO₂ Allowance Contingency Account.

(26) “CO₂ allowance tracking system or COATS” means the system that records allocations, deductions, and transfers of CO₂ allowances which may also be used to track [CO₂ emissions offset

projects.] CO₂ allowance prices, and emissions from affected sources.

(27) "CO₂ allowance transfer deadline" means [midnight of the March 1 occurring after the end of the relevant control period and each relevant control period.] *the deadline by which CO₂ allowances must be submitted for recordation in a CO₂ budget source's compliance account for the source to meet the requirements of COMAR 26.09.02.03K for a control period or interim control period, occurring at:*

(a) *Midnight of the March 1 after the end of the relevant control period or interim control period;* or

(b) *If the relevant March 1 is not a business day, the deadline is midnight of the first business day thereafter.*

(28) (text unchanged)

(29) "CO₂ budget emissions limitation" means the tonnage equivalent of the CO₂ allowances available for compliance deduction for a CO₂ budget source for a control period or *twice the CO₂ allowances available for an interim control period.*

(30) "CO₂ budget permit" means a permit issued to a CO₂ budget source or CO₂ budget unit that specifies the requirements applicable to the source or to each CO₂ budget unit, *and to the owners and operators and the CO₂ authorized account representative of the CO₂ budget source or CO₂ budget unit.*

(31) — (33) (text unchanged)

(34) "CO₂ cost containment reserve tier 1 allowance or CO₂ CCR tier 1 allowance" means a CO₂ allowance that is offered for sale at an auction by the Department for the purpose of containing the cost of CO₂ allowances, *subject to the requirements of §B(34-2) of this regulation*, and is separate from, and additional to, a CO₂ allowance allocated from the Maryland CO₂ Budget Trading Program [base and adjusted] budgets.

(34-1) "*CO₂ cost containment reserve tier 2 allowance or CO₂ CCR tier 2 allowance*" means a CO₂ allowance that is offered for sale at an auction by the Department for the purpose of containing the cost of CO₂ allowances, *subject to the requirements of §B(34-3) of this regulation*, and is separate from, and additional to, a CO₂ allowance allocated from the Maryland CO₂ Budget Trading Program budgets.

[(34-1)] (34-2) "CO₂ cost containment reserve tier 1 trigger price, or CCR tier 1 trigger price" means the minimum price at which CO₂ CCR tier 1 allowances are offered for sale by the Department at an auction, and shall be:

(a) [\$10.00] \$19.50 per CO₂ allowance for calendar year [2017] 2027; and

(b) Each calendar year thereafter [through 2020], the CCR tier 1 trigger price shall be [1.025] 1.07 multiplied by the CCR tier 1 trigger price from the previous calendar year, rounded to the nearest whole cent as follows:

- (i) [\$10.25] \$20.87 for [2018] 2028;
- (ii) [\$10.51] \$22.33 for [2019] 2029; [and]
- (iii) [\$10.77] \$23.89 for [2020] 2030;
- (iv) \$25.56 for 2031;
- (v) \$27.35 for 2032;
- (vi) \$29.26 for 2033;
- (vii) \$31.31 for 2034;
- (viii) \$33.50 for 2035;
- (ix) \$35.85 for 2036; and
- (x) \$38.36 for 2037.

[(c) \$13.00 per CO₂ allowance for calendar year 2021; and

(d) 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 follows:

- (i) \$13.91 for 2022;
- (ii) \$14.88 for 2023;
- (iii) \$15.93 for 2024;

- (iv) \$17.04 for 2025;
- (v) \$18.23 for 2026;
- (vi) \$19.51 for 2027;
- (vii) \$20.88 for 2028;
- (viii) \$22.34 for 2029; and
- (ix) \$23.90 for 2030.]

[(34-2) "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.

(34-3) "CO₂ emissions containment reserve trigger price, or ECR trigger price" means the price below which CO₂ allowances will be withheld from sale by the Department or its agent at an auction. The ECR trigger price shall be:

(a) \$6.00 for calendar year 2021; and

(b) For 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 follows:

- (i) \$6.42 for 2022;
- (ii) \$6.87 for 2023;
- (iii) \$7.35 for 2024;
- (iv) \$7.86 for 2025;
- (v) \$8.42 for 2026;
- (vi) \$9.00 for 2027;
- (vii) \$9.63 for 2028;
- (viii) \$10.31 for 2029; and
- (ix) \$11.03 for 2030.]

(34-3) "*CO₂ cost containment reserve tier 2 trigger price, or CCR tier 2 trigger price*" means the minimum price at which CO₂ CCR tier 2 allowances are offered for sale by the Department at an auction, and shall be:

(a) \$29.25 per CO₂ allowance for calendar year 2027; and

(b) Each calendar year thereafter, the CCR tier 2 trigger price shall be 1.07 multiplied by the CCR tier 2 trigger price from the previous calendar year, rounded to the nearest whole cent as follows:

- (i) \$31.30 for 2028;
- (ii) \$33.49 for 2029;
- (iii) \$35.83 for 2030;
- (iv) \$38.34 for 2031;
- (v) \$41.02 for 2032;
- (vi) \$43.89 for 2033;
- (vii) \$46.96 for 2034;
- (viii) \$50.25 for 2035;
- (ix) \$53.77 for 2036; and
- (x) \$57.53 for 2037.

(34-4) (text unchanged)

(34-5) "CO₂ emission offset project" means:

(a) *A historical project that allowed the Department to determine how many CO₂ offset allowances to record to a sponsor's general account related specific emission reductions outside of the electricity sector;*

(b) *Can no longer be approved for the Maryland CO₂ Budget Trading Program; and*

(c) *CO₂ offset allowances created before January 1, 2027 are eligible to meet the compliance deduction and subject to the relevant compliance deduction limitations.*

(35) (text unchanged)

(36) "CO₂ offset allowance" means a CO₂ allowance that is:

(a) [Awarded to the project sponsor of a CO₂ emissions offset project] *Determined by the Department to have been recorded, by a participating state prior to January 1, 2027, in the*

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general account of the sponsor of a CO₂ emissions offset project; and

(b) [Subject] *Is subject* to the relevant compliance deduction limitations.

(37) — (40) (text unchanged)

(41) "Compliance account" means a budget source's CO₂ account in which the CO₂ allowances are held and made available for use by the source for a control period [and each] or interim control period for the purpose of meeting the source's CO₂ budget emissions limitation.

[(42)] "Conflict of interest" means a situation that may arise with respect to an individual in relation to any specific project sponsor, CO₂ emissions offset project or category of offset projects, such that the individuals other activities or relationships with other persons or organizations render or may render the individual incapable of providing an impartial certification opinion, or otherwise compromise the individuals objectivity in performing certain functions.

(43) "Consistency application" means all applicable information required by this subtitle and provided by a project sponsor to the Department for approval of a CO₂ offset project.

(44) "Consistency determination" means an approval given by the Department when the submitted information for a CO₂ offset project meets all of the applicable requirements of this subtitle.

(45) "Cooperating regulatory agency" means a regulatory agency in a state or other United States jurisdiction that is not a participating state that has entered into a memorandum of understanding with the appropriate regulatory agencies of all participating states to carry out certain obligations relative to CO₂ emissions offset projects in that state or United States jurisdiction, including but not limited to the obligation to perform audits of offset project sites, and report violations of this subtitle.]

[(46)] (42) — [(48)] (44) (text unchanged)

[(49)] "Cooperating regulatory agency" means a regulatory agency in a nonparticipating state or United States jurisdiction, that has entered into a memorandum of understanding with the appropriate regulatory agencies of all participating states to carry out certain obligations relative to CO₂ emissions offset projects in that state or United States jurisdiction, including the obligation to perform audits of offset project sites and report violations.]

[(49-1)] (45) — [(54)] (53) (text unchanged)

[(55)] "First control period adjustment for banked allowances" means, for allocation years 2014 through 2020, an adjustment, applied to the Maryland CO₂ Budget Trading Program base budget, to address the surplus allowances from allocation years 2009, 2010, and 2011 held in general and compliance accounts, including compliance accounts established pursuant to the CO₂ Budget Trading Program, that are in addition to the aggregate quantity of first control period CO₂ emissions from all CO₂ budget sources in all of the participating states. Allowances in accounts opened by participating states are not included.

(56) "Forest offset project" means an offset project involving reforestation, improved forest management, or avoided conversion.

(57) "Forest offset project data report" means the report prepared by a project sponsor each year that provides the information and documentation required by COMAR 26.09.03.04 or the forest offset protocol.

(58) "Forest offset protocol" means the protocol titled "Regional Greenhouse Gas Initiative Offset Protocol U.S. Forest Projects, June 13, 2013".]

[(59)] (54) — [(62)] (58) (text unchanged)

[(63)] "Global warming potential (GWP)" means a numerical measure of the radiative efficiency or heat-absorbing ability of a particular gas, relative to that of CO₂, after taking into account the decay rate of each gas, relative to that of CO₂, and consistent with

the values used in the Intergovernmental Panel on Climate Change, Fifth Assessment Report, Climate Change 2013: The Physical Science Basis, Chapter 8 "Anthropogenic and Natural Radiative Forcing", Section 8.7 "Emission Metrics" (pages 710-720).]

[(64)] (59) — [(65)] (60) (text unchanged)

[(66)] "Intentional Reversal" means any reversal of a forest offset project caused by a forest owner's negligence, gross negligence, or willful intent, including harvesting, development, and harm to the area within the offset project boundary.]

[(67)] (61) — [(68-1)] (63) (text unchanged)

[(69)] (64) "Limited Industrial Exemption [Set-aside Account]" means [a general account established by the Department from which allowances will be held for retirement for] industrial generators of at least 25 megawatts which have taken a permit condition that limits the unit's annual electrical output to the electric grid to less than or equal to 10 percent of its annual gross generation.

[(70)] (65) — [(71)] (66) (text unchanged)

[(72)] "Maryland CO₂ Budget Trading Program adjusted budget" means the number of CO₂ allowances available for allocation and auction annually, determined in accordance with COMAR 26.09.02.03I and the CO₂ Budget Trading Program. CO₂ allowances allocated under the Maryland CO₂ Budget Trading Program adjusted budget are separate from:

(a) CO₂ offset allowances allocated to project sponsors;

and

(b) CO₂ CCR allowances offered for sale at an auction.]

[(72-1)] (67) "Maryland CO₂ Budget Trading Program base budget" is specified in COMAR 26.09.02.03A, and does not include [the following additional allowances:] CO₂ CCR tier 1 and CO₂ CCR tier 2 allowances offered for sale at an auction.

[(a)] CO₂ offset allowances allocated to project sponsors;

and

(b) CO₂ CCR allowances offered for sale at an auction.]

[(72-2)] (68) "Minimum reserve price" shall be, except for CO₂ CCR tier 1 and CO₂ CCR tier 2 allowances:

(a) [\$2.00] \$9.00 in calendar year [2014] 2027; and

(b) For each calendar year thereafter, the minimum reserve price from the previous calendar year multiplied by [1.025] 1.07, rounded to the nearest whole cent as follows:

- (i) \$9.63 for 2028;
- (ii) \$10.30 for 2029;
- (iii) \$11.02 for 2030;
- (iv) \$11.79 for 2031;
- (v) \$12.62 for 2032;
- (vi) \$13.50 for 2033;
- (vii) \$14.45 for 2034;
- (viii) \$15.46 for 2035;
- (ix) \$16.54 for 2036; and
- (x) \$17.70 for 2037.

[(73)] (69) — [(75-2)] (73) (text unchanged)

[(76)] "Offset project" means all equipment, materials, items, or actions directly related to the reduction of CO₂ equivalent emissions or the sequestration of carbon specified in a consistency application.]

[(77)] (74) — [(81-1)] (79) (text unchanged)

[(82)] "Project commencement" means:

(a) For an offset project involving physical construction, other work at an offset project site, or installation of equipment or materials, the date of the beginning of the activity;

(b) For an offset project that involves the implementation of a management activity or protocol, the date on which the activity is first implemented or protocol first utilized; or

(c) For an offset project involving reforestation, improved forest management, or avoided conversion, the date specified in section 3.2 of the forest protocol.

(83) "Project sponsor" means the CO₂ authorized account representative for the general account of the relevant offset project or CO₂ emissions credit retirement.]

[(84)] (80) — [(86-2)] (86) (text unchanged)

[(86-3)] "Reporting Period" means the period of time covered by a forest offset project data report, where:

(a) The first reporting period for an offset project in an initial crediting period may consist of 6 to 24 consecutive months; and

(b) All subsequent reporting periods in an initial crediting and all reporting periods in any renewed crediting period must consist of 12 consecutive months.]

(87) "Reserve price" means the minimum acceptable price at which a CO₂ allowance will be sold in a given auction, defined as either the minimum reserve price, *the CCR tier 1 trigger price*, or the CCR *tier 2* trigger price.

(88) (text unchanged)

[(89)] "Reversal" means the intentional or unintentional release of CO₂ emissions from an offset project for which offset allowances have previously been issued.

(90) "Second control period adjustment for banked allowances" means, for allocation years 2015 through 2020, a reduction in the Maryland CO₂ Budget Trading Program base budget by the number of allowances equal to the number of 2012 and 2013 allowances held in general and compliance accounts established pursuant to the CO₂ Budget Trading Programs, that are in excess of the aggregate tons of 2012 and 2013 emissions from all CO₂ Budget sources in all of the participating states. Allowances in accounts opened by participating states are not included.]

[(91)] (89) (text unchanged)

[(92)] "Third adjustment for banked allowances" means, for allocation years 2021 through 2025, an adjustment applied to the Maryland CO₂ Budget Trading Program base budget 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, that are in addition to the aggregate quantity of emissions from all CO₂ budget sources in all of the participating states at the end of the fourth control period in 2020 and as reflected in the CO₂ Allowance Tracking System on March 17, 2021.]

[(93)] (90) — [(94)] (92) (text unchanged)

[(95)] "Unintentional Reversal" means any reversal of a forest offset project, including by wildfires or disease, that is not the result of the forest owners negligence, gross negligence, or willful intent.]

[(96)] (93) (text unchanged)

[(96-1)] "Verification" means the verification by an independent verifier that certain parts of a CO₂ emissions offset project consistency application and/or measurement, monitoring or verification report conforms to the requirements of this subtitle.]

[(96-2)] (94) — [(100)] (98) (text unchanged)

.03 Incorporation by Reference.

A. (text unchanged)

B. Documents Incorporated.

[(1)] 10 CFR Part 430, as amended.

(2) 40 CFR Part 60, Subpart Cc and Subpart WWW, as amended.]

[(3)] (1) — [(4)] (2) (text unchanged)

[(5)] American Society of Agricultural and Biological Engineers, ASABE D384.2, Manure Production and Characteristics, March 2005.]

[(6)] (3) [Antares Group, Inc., for New York State Energy Research and Development Authority,] New York State Renewable [Portfolio] Energy Standard [,] Biomass [Guidebook, Appendix B, May 2006] *Power Guide, June 2018.*

[(7)] Intergovernmental Panel on Climate Change, Fifth Assessment Report, Climate Change 2013: The Physical Science Basis, Chapter 8 "Anthropogenic and Natural Radiative Forcing", Section 8.7 "Emission Metrics" (pages 710-720)

(8) Regional Greenhouse Gas Initiative Offset Protocol U.S. Forest Projects, June 13, 2013.

(9) U.S. Environmental Protection Agency (EPA), Inventory of U.S. Greenhouse Gas Emissions and Sinks, 1990-2010, EPA (430-R-12-001), Annex 3, Table A-180, April 15, 2012.

(10) U.S. Environmental Protection Agency (EPA), Methods for the Chemical Analysis of Water and Wastes (MCAWW) (EPA/600/4-79-020), Method Number 160.4, "Volatile Residue by Muffle Furnace," 1971.

(11) U.S. Geological Survey (USGS), Marvin J. Fishman and Linda C. Friedman, editors, Methods for the Determination of Inorganic Substances in Water and Fluvial Sediments, Techniques of Water-Resources Investigations of the United States Geological Survey, Book 5, Chapter A1, Method Number I-3750, "Solids, residue on evaporation at 105 degrees C, total, gravimetric," 1985.]

.04 Selection and Responsibilities of CO₂ Budget Source Compliance Account Authorized Account Representatives.

A. —K. (text unchanged)

L. Delegation by CO₂ Authorized Account Representative or Alternate CO₂ Authorized Account Representative.

(1) (text unchanged)

(2) In order to delegate authority to make an electronic submission, the CO₂ authorized account representative or alternate CO₂ authorized account representative shall submit a notice of delegation in a format prescribed by the Department that includes the following:

(a)—(b) (text unchanged)

(c) For each electronic submission agent, a list of the [type] types of electronic submissions for which authority is delegated to that individual; and

(d) The following certification statements by the CO₂ authorized account representative or alternate CO₂ authorized account representative:

(i) "I agree that any electronic submission by an individual identified in this notice of delegation and of a type listed for the electronic submission agent in this notice of delegation and that is made [when] *while* I am a CO₂ authorized account representative or alternate CO₂ authorized account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation *under COMAR 26.09.01.04L* shall be deemed to be an electronic submission by me."; and

(ii) "Until this notice of delegation is superseded by another notice of delegation, I agree to maintain an email account and to notify the Department immediately of any change in email address unless all delegation authority by me *under COMAR 26.09.01.04L* is terminated".

(3) — (7) (text unchanged)

(8) In order to delegate authority to review information in the CO₂ allowance tracking system in accordance with §L(6) and (7) of this regulation, the CO₂ authorized account representative or alternate CO₂ authorized account representative, as appropriate, must submit to the Department a notice of delegation, in a format prescribed by the Department that includes the following:

(a) — (b) (text unchanged)

(c) For each such natural person, a list of the type of information under §L(6) and (7) of this regulation for which reviewing authority is delegated to him or her; and

(d) The following certification statements by such CO₂ authorized account representative or alternate CO₂ authorized account representative:

(i) "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] *while* I am a CO₂ authorized account representative or alternate CO₂ authorized account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under COMAR 26.09.01.04L shall be deemed to be reviewed by me."

(ii) "Until this notice of delegation is superseded by another notice of delegation under COMAR 26.09.01.04L, I agree to maintain an e-mail account and to notify the Department [or its agent] immediately of any change in my e-mail address unless delegation authority by me under COMAR 26.09.01.04L is terminated."

(9)—(10) (text unchanged)

26.09.02 Applicability, Determining Compliance, and Allowance Distribution

Authority: Environment Article, §§1-101, 1-404, 2-103, and 2-1002(g), Annotated Code of Maryland

.03 Distribution of CO₂ Allowances and Compliance.

A. The Maryland CO₂ Budget Trading Program consists of allowances to cover CO₂ emissions for the following:

- (1) [18,671,045] *12,663,369* tons for [2018] *2027*;
- (2) [17,931,922] *11,080,448* tons for [2019] *2028*;
- (3) [17,483,623] *9,497,527* tons for [2020] *2029*;
- (4) [16,790,271] *7,914,605* tons for [2021] *2030*;
- (5) [16,281,475] *6,331,684* tons for [2022] *2031*;
- (6) [15,772,679] *4,748,763* tons for [2023] *2032*;
- (7) [15,263,882] *3,165,842* tons for [2024] *2033*;
- (8) [14,755,086] *2,713,579* tons for [2025] *2034*;
- (9) [14,246,290] *2,261,316* tons for [2026] *2035*;
- (10) [13,737,494] *1,809,053* tons for [2027] *2036*; and
- (11) [13,228,698] *1,356,790* tons for [2028]; *2037 and each succeeding calendar year.*

[(12) 12,719,902 tons for 2029; and

(13) 12,211,106 tons for 2030 and each succeeding calendar year.]

B. CO₂ Allowances Available for Allocation. For *the* allocation [years 2014 through 2031] *year 2027 and each succeeding calendar year*, the Maryland CO₂ Budget Trading Program [adjusted] *base* budget shall be the maximum number of allowances available for allocation in a given allocation year, except for [CO₂ offset allowances and] *CO₂ CCR tier 1 and CO₂ CCR tier 2 allowances.*

C. Cost Containment Reserve Allocation. [The Department shall allocate CO₂ CCR allowances, separate from and in addition to the Maryland CO₂ Budget Trading Program base budget set forth in §A of this regulation, to the Consumer Energy Efficiency Account. The CCR allocation is for the purpose of containing the cost of CO₂ allowances. The Department shall allocate CO₂ CCR allowances in the following manner:]

(1) [The Department shall initially allocate 1,135,217 CO₂ CCR allowances for calendar year 2014] *The Department shall allocate CO₂ CCR tier 1 and CO₂ CCR tier 2 allowances, separate from and in addition to the Maryland CO₂ Budget Trading Program base budget set forth in §A of this regulation, to the Consumer Energy Efficiency Account. The CCR allocation is for the purpose of containing the cost of CO₂ allowances.*

[(2) On or before January 1, 2015, and each calendar year thereafter through 2020, the Department shall allocate CO₂ CCR allowances sufficient to replenish Maryland's 22.6 percent proportional share of the CCR.]

[(3)] (2) On or before January 1, [2021] *2027*, and each calendar year thereafter, the Department shall allocate *2,130,856* current vintage year [CCR allowances equal to the following:] *CO₂ CCR tier 1 and 2,130,856 CO₂ CCR tier 2 allowances, and withdraw the number of CO₂ CCR tier 1 and CO₂ CCR tier 2 allowances that remain in the Maryland CO₂ Budget Trading Program at the end of the prior calendar year.*

[(a) 2,236,466 CCR allowances for 2018, 2019, and 2020;

(b) 1,679,027 CCR allowances for 2021;

(c) 1,628,147 CCR allowances for 2022;

(d) 1,577,267 CCR allowances for 2023;

(e) 1,526,388 CCR allowances for 2024;

(f) 1,475,508 CCR allowances for 2025;

(g) 1,424,629 CCR allowances for 2026;

(h) 1,373,749 CCR allowances for 2027;

(i) 1,322,869 CCR allowances for 2028;

(j) 1,271,990 CCR allowances for 2029; and

(k) 1,221,110 CCR allowances for 2030 and each

succeeding calendar year.]

[(4)] (3) (text unchanged)

D. [Emissions Containment Reserve Withholding. The Department shall convert or transfer any CO₂ allowances that have been withheld from any auction(s) into the Emissions Containment Reserve Account. The ECR withholding is for the purpose of additional emissions reduction in the event of lower than anticipated emissions reduction costs. The Department shall withhold CO₂ ECR allowances in the following manner.

(1) If the condition in COMAR 26.09.04.06B(4)(a) 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 following, minus the total quantity of CO₂ ECR allowances that have been withheld from any prior auction(s) in that calendar year:

(i) 1,679,027 for 2021;

(ii) 1,628,148 for 2022;

(iii) 1,577,268 for 2023;

(iv) 1,526,388 for 2024;

(v) 1,475,509 for 2025;

(vi) 1,424,629 for 2026;

(vii) 1,373,749 for 2027;

(viii) 1,322,870 for 2028;

(ix) 1,271,990 for 2029; and

(x) 1,221,111 for 2030 and each succeeding calendar year.

(2) Any CO₂ ECR allowances withheld from an auction will be transferred into the Emission Containment Reserve Account.

(3) Allowances that have been transferred into the Emission Containment Reserve Account shall not be withdrawn.] *Repealed.*

E. (text unchanged)

F. [Adjustment for First Control Period Banked Allowances. By January 15, 2014, the Department shall establish the adjustment for first control period banked allowances as 1,863,361 allowances applicable to allocation years 2014 through 2020.] *Repealed.*

G. [Adjustment for Second Control Period Banked Allowances. On March 15, 2014, the Department shall establish the adjustment for second control period banked allowances as 3,106,578 allowances applicable to allocation years 2015 through 2020.] *Repealed.*

H. [Third Adjustment for Banked Allowances. On March 15, 2021, the Department shall establish the third 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:

(1) TABA is the third adjustment for banked allowances quantity in tons;

(2) TA, third 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 (COATS) on March 15, 2021;

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

(4) RS% is Maryland's budget divided by the regional budget.] *Repealed*

I. [CO₂ Budget Trading Program Adjusted Budgets.

(1) On April 15, 2019 the Department shall establish the Maryland CO₂ Budget Trading Program adjusted budgets for the 2018 through 2020 allocation years as follows:

- (a) 13,701,106 allowances in 2018;
- (b) 12,961,983 allowances in 2019; and
- (c) 12,513,684 allowances in 2020.

(2) On April 15, 2021, the Department shall establish the Maryland CO₂ Budget Trading Program adjusted budgets for the 2021 through 2025 allocation years by the following formula:

$$AB = BB \text{ TABA}$$

Where:

(a) AB is the Maryland CO₂ Budget Trading Program adjusted budget;

(b) BB is the Maryland CO₂ Budget Trading Program base budget; and

(c) TABA is the third adjustment for banked allowances quantity in tons.

(3) After making the determinations required by §I(1) and (2) of this regulation, the Department will post on the Department website the CO₂ trading program adjusted base budgets for the 2021 through 2025 allocation years.] *Repealed*.

J. General Distribution of CO₂ Allowances.

(1) The Department shall open and manage a general account for the following:

- [(a) The Limited Industrial Exemption Set-aside Account;]
- [(b)] (a) — [(d)] (c) (text unchanged)

(2) (text unchanged)

(3) The Department shall allocate CO₂ allowances from the Consumer Energy Efficiency Account to each of the following accounts, except as directed in [COMAR 26.09.02.09] *Regulation .09 of this chapter*, so that the total number of allowances in each account is:

[(a) The following number of allowances in the Limited Industrial Set-aside Account;

- (i) 3,465,101 for 2018;
- (ii) 2,976,734 for 2019;
- (iii) 2,488,367 for 2020;
- (iv) 2,000,000 for 2021 and each succeeding calendar

year.]

[(b)] (a) — [(c)] (b) (text unchanged)

(4) (text unchanged)

K. Demonstrating Compliance.

(1) (text unchanged)

(2) As of the CO₂ allowance transfer deadline for an interim control period, the owners and operators of each CO₂ budget source and each CO₂ budget unit at the source shall hold, in the sources compliance account for deduction under §K of this regulation, CO₂ allowances for no less than 50 percent of the total *number of tons of CO₂ emissions for the interim control period from all CO₂ budget units at the source.*

(3) — (4) (text unchanged)

(5) The identification of available CO₂ allowances for compliance deduction by serial number or by default is as follows:

(a) (text unchanged)

(b) In the absence of an identification or in the case of a partial identification of available CO₂ allowances by serial number, the Department shall deduct CO₂ allowances for a control period or interim control period in the following descending order:

(i) — (ii) (text unchanged)

(iii) Subject to the relevant compliance deduction limitations identified in §K(3)(c) of this regulation, any CO₂ offset allowances transferred and recorded in the compliance account, in chronological order, *or, in the event that some, but not all, CO₂ offset allowances from a particular allocation year are to be deducted, CO₂ offset allowances shall be deducted by serial number, with lower serial number CO₂ offset allowances deducted before higher serial number allowances;* and

(iv) (text unchanged)

(6) — (9) (text unchanged)

.06 Limited Industrial Exemption [Set-aside Account].

A. The Department shall administer the Limited Industrial Exemption [Set-aside Account] in accordance with the procedures of this regulation.

B. A CO₂ budget source is exempt from the requirements of Regulation [.03E] .03K of this chapter if it meets the following criteria:

(1) — (3) (text unchanged)

C. — E. (text unchanged)

F. [On the January 1 following the date that the Department granted an exemption to a CO₂ budget source and on January 1 each year after that, the Department shall retire the number of CO₂ allowances in the Limited Industrial Exemption Set-aside Account equal to the average number of CO₂ tons emitted by the exempt CO₂ budget source over the most recent 3 calendar years for which data are available. The Department shall retire CO₂ allowances from the Limited Industrial Exemption Set-aside Account to the CO₂ Allowance Retirement Account.] *On or after January 1, 2027, the Department may reallocate any CO₂ allowances previously allocated for retirement on behalf of CO₂ budget sources eligible for the Limited Industrial Exemption to the Consumer Energy Efficiency Account.*

[G. After the Department has retired CO₂ allowances from the Limited Industrial Exemption Set-aside Account for the preceding calendar year, the Department shall supplement the remaining allowances in the account by transferring from the Consumer Energy Efficiency Account the number of allowances needed to restore the balance of the Limited Industrial Exemption Set-aside Account to the amount described in Regulation .03J(3)(a) of this chapter for that calendar year.]

.07 Long Term Contract Set-aside Account.

A.—I. (text unchanged)

J. *The Long Term Contract Set-aside Account shall expire on January 1, 2027.*

.10 Monitoring Requirements.

[A. General Requirements and Prohibitions.

(1) The owner or operator of a CO₂ budget unit shall:

(a) Install monitoring systems to monitor CO₂ concentration, stack gas flow rate, oxygen concentration, heat input, and fuel flow rate;

(b) Install all monitoring systems in accordance with 40 CFR Part 75, except for equation G-1 in Appendix G;

(c) Record, report, and verify the data from the monitoring systems; and

(d) Install and certify the monitoring system on or before the following dates:

(i) For a CO₂ budget unit that commences commercial operation before July 1, 2008, the owner or operator shall comply on or before January 1, 2009; and

(ii) For a CO₂ budget unit that commences commercial operation or constructs a new stack or flue on or after July 1, 2008, the owner or operator shall comply by January 1, 2009, or 90 operating days after the date on which the unit commences commercial operation.

(2) The owner or operator of a CO₂ budget unit that does not meet the applicable compliance date shall, in accordance with the provisions in 40 CFR §75.31(b)(2) or (c)(3), or §2.4 of Appendix D, determine, record, and report maximum potential or, as appropriate, minimum potential for the following:

- (a) CO₂ concentration;
- (b) CO₂ emissions rate;
- (c) Stack gas moisture content;
- (d) Fuel flow rate; and
- (e) Any other parameter required to determine CO₂ mass emissions.

(3) The owner or operator of a CO₂ budget unit that does not meet the applicable compliance date for any monitoring system shall determine, record, and report substitute data using the applicable missing data procedures in 40 CFR Part 75 Subpart D, or Appendix D, instead of the maximum potential values 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.

(4) An owner or operator of a CO₂ budget unit or a non-CO₂ budget unit monitored under 40 CFR §75.72(b)(2)(ii) may not:

(a) Use any alternative monitoring system, alternative reference method, or any other alternative for the required continuous emissions monitoring system without having obtained prior written approval from the Department;

(b) Operate the unit so as to discharge, or allow to be discharged, CO₂ emissions to the atmosphere without accounting for all emissions in accordance with the applicable provisions of this chapter and 40 CFR Part 75;

(c) Disrupt the operation of the CEMS, any portion of the CEMS, 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; or

(d) Permanently discontinue use of the approved CEMS unless the owner or operator monitors emissions with a system approved in accordance with this chapter and 40 CFR Part 75.

B. Initial Certification and Recertification Procedures.

(1) For purposes of this subtitle only, the owner or operator of a CO₂ budget unit is exempt from demonstrating compliance with the initial certification requirements of 40 CFR §75.20 for a monitoring system if the following conditions are met:

(a) The monitoring system has been previously certified in accordance with 40 CFR §75.20; and

(b) 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.

(2) The recertification provisions of this regulation apply to a monitoring system exempt from the initial certification requirements of this regulation.

(3) If the Department has previously approved a petition under 40 CFR §75.72(b)(2)(ii) or 40 CFR §75.16(b)(2)(ii)(B) 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 resubmit the petition to the Department to determine whether the approval applies under this chapter.

(4) The owner or operator of a CO₂ budget unit shall comply with the initial certification and recertification procedures for a CEMS and an excepted monitoring system under 40 CFR Part 75, Appendix D.

(5) 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 40 CFR Part 75, Subpart E, shall comply with this regulation.

C. Requirements for Recertification.

(1) When the owner or operator replaces, modifies, or changes a CEMS that 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, the owner or operator shall recertify the monitoring system according to 40 CFR §75.20(b).

(2) When the owner or operator replaces, modifies, or changes the flue gas handling system or the unit's operation in a manner that the Department determines has significantly changed the flow or concentration profile, the owner or operator shall recertify the CEMS according to 40 CFR §75.20(b).

(3) Approval Process for Initial Certifications and Recertification. The procedures in 40 CFR §75.20(b)(5) and (g)(7) apply for recertifications. The CO₂ authorized account representative shall submit to the Department:

(a) A written notice of the dates of certification; and

(b) A recertification application for each monitoring system, including the information specified in 40 CFR §75.63.

(4) Provisional Certification Data.

(a) The provisional certification data for a monitor shall be determined in accordance with 40 CFR §75.20(a)(3).

(b) A provisionally certified monitor may be used for a period not to exceed 120 days after receipt of the complete certification application for the monitoring system or component.

(c) Data measured and recorded by the provisionally certified monitoring system or component is considered valid quality assured data, retroactive to the date and time of provisional certification, if the Department does not issue a notice of disapproval within 120 days of receipt of the complete certification application.

D. Certification Application Approval Process.

(1) The Department shall 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.

(2) If the Department does not issue the notice within the 120-day period, each monitoring system that meets the applicable performance requirements of 40 CFR Part 75 and is included in the certification application shall be deemed certified for use.

(3) If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR Part 75, the Department shall issue a written notice of approval of the certification application within 120 days of receipt.

(4) If the certification application is not complete, the Department shall issue a written notice of incompleteness that sets a reasonable date by which the CO₂ authorized account representative is to submit the additional information required to complete the certification application.

(5) If the CO₂ authorized account representative does not comply with the notice of incompleteness by the specified date, the Department may issue a notice of disapproval.

(6) If the Department issues a notice of disapproval of a certification application or a notice of disapproval of certification status, 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 75.20(g)(7):

(a) 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

(b) 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 40 CFR Part 75, Appendix A, §2.1.

(7) The CO₂ authorized account representative shall submit a notification of certification retest dates and a new certification application. 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, not later than 30 operating days after the date of issuance of the notice of disapproval.

E. Initial Certification and Recertification Procedures for Low Mass Emissions Units Using the Excepted Methodologies under 40 CFR §75.19.

(1) The owner or operator of a unit qualified to use the low mass emissions excepted methodology under 40 CFR §75.19 shall meet the applicable certification and recertification requirements of 40 CFR §§75.19(a)(2) and 75.20(h).

(2) If the owner or operator of this 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. Certification and Recertification Procedures for Alternative Monitoring Systems. For each unit for which the owner or operator intends to use an alternative monitoring system approved by the Department, 40 CFR Part 75, Subpart E, shall be used to comply with the applicable notification and application procedures of 40 CFR §75.20(f).

G. Out-of-Control Periods and Decertification Audit.

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

(2) Audit Decertification.

(a) 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 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 shall issue a notice of disapproval of the certification status of the monitoring system.

(b) By issuing the notice of disapproval, the certification status of the monitoring system is prospectively revoked.

(3) The data measured and recorded by the monitoring system may not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status.]

A. The owner or operator of a CO₂ budget unit shall install monitoring systems to monitor CO₂ mass emissions including CO₂ concentration, stack gas flow rate, oxygen concentration, heat input, and fuel flow rate.

B. The owner or operator of a CO₂ budget unit shall install all monitoring systems in accordance with 40 CFR Part 75.13, 75.71, and 75.72 except for equation G-1 in Appendix G.

C. The owner or operator of a CO₂ budget unit shall record, report, and verify the data from the monitoring systems in accordance with §§A and B of this regulation.

.11 Record Keeping and Reporting.

A. — C. (text unchanged)

D. CO₂ Budget Units that Burn Eligible Biomass.

(1) — (4) (text unchanged)

(5) Fuel sampling methods and fuel sampling technology shall be consistent with the New York State Renewable [Portfolio] Energy Standard Biomass [Guidebook, September 2011] *Power Guide, June 2018.*

E. Additional Requirements to Provide Output Data.

(1) — (2) (text unchanged)

(3) Report of Net Electrical Output. A CO₂ budget unit shall submit the net electrical output *to be used* to the Department in accordance with this regulation. A CO₂ budget source whose electrical output is not used in the independent system operator (ISO) energy market settlement determinations shall propose a method for quantification of net electrical output.

(4) (text unchanged)

F. — I. (text unchanged)

26.09.04 Auctions

Authority: Environment Article, §§1-101, 1-404, 2-103, and 2-1002(g), Annotated Code of Maryland

.03 Consumer Energy Efficiency Account.

A. (text unchanged)

B. The Department shall administer the Account in such a manner that allowances allocated to the Account or transferred to it from [the Limited Industrial Exemption Set-aside Account,] the Long Term Contract Set-aside Account, the Voluntary Renewable Set-aside Account, the Clean Generation Set-aside Account, or the [CO] CO₂ Allowance Contingency Account may be offered for sale in [CO] CO₂ allowance auctions as described in COMAR 26.09.02.

C. — D. (text unchanged)

.06 Auction of CO₂ Allowances.

A. (text unchanged)

B. General Requirements.

(1) The Department shall include the following information in the auction notice for each auction:

(a) The number of CO₂ allowances offered for sale at the auction, not including any CO₂ CCR *tier 1* or CO₂ CCR *tier 2* allowances;

(b) The number of CO₂ CCR *tier 1* allowances that will be offered for sale at the auction if the condition of §B(2)(a) of this regulation is met;

(c) *The number of CO₂ CCR tier 2 allowances that will be offered for sale at the auction if the condition of §B(2)(c) of this regulation is met;*

[(c)] (d) (text unchanged)

[(d)] (e) The CCR *tier 1* trigger price for the auction; and

[(e) The maximum number of CO₂ allowances that may be withheld from sale at the auction if the condition of §B(4)(a) of this regulation is met; and]

(f) The [ECR] CCR *tier 2* trigger price for the auction.

(2) The Department or its agent shall follow these rules for the sale of CO₂ CCR allowances:

(a) CO₂ CCR *tier 1* allowances shall only be sold at an auction in which total demand for allowances, above the CCR *tier 1* trigger price, exceeds the number of CO₂ allowances available for

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purchase at the auction, not including any CO₂ CCR tier 1 or tier 2 allowances;

(b) If the condition of §B(2)(a) of this regulation is met at an auction, then the number of CO₂ CCR tier 1 allowances offered for sale by the Department at the auction shall be equal to the number of CO₂ CCR tier 1 allowances in the Consumer Energy Efficiency Account at the time of the auction;

(c) CO₂ CCR tier 2 allowances shall only be sold at an auction in which total demand for allowances, above the CCR tier 2 trigger price, exceeds the number of CO₂ allowances available for purchase at the auction, not including any CO₂ CCR tier 2 allowances;

(d) If the condition of §B(2)(c) of this regulation is met at an auction, then the number of CO₂ CCR tier 2 allowances offered for sale by the Department at the auction shall be equal to the number of CO₂ CCR tier 2 allowances in the Consumer Energy Efficiency Account at the time of the auction;

[(c)] (e) After all of the CO₂ CCR tier 1 allowances in the Consumer Energy Efficiency Account have been sold in a given calendar year, no additional CO₂ CCR tier 1 allowances will be offered for sale at any auction for the remainder of that calendar year, even if the condition of §B(2)(a) of this regulation is met at an auction;

(f) After all of the CO₂ CCR tier 2 allowances in the Consumer Energy Efficiency Account have been sold in a given calendar year, no additional CO₂ CCR allowances will be offered for sale at any auction for the remainder of that calendar year, even if the condition of §B(2)(c) of this regulation is met at an auction;

[(d)] (g) At an auction in which CO₂ CCR tier 1 allowances are sold, but no CO₂ CCR tier 2 allowances are sold, the reserve price for the auction shall be the CCR tier 1 trigger price; [and]

(h) At an auction in which CO₂ CCR tier 2 allowances are sold, the reserve price for the auction shall be the CCR tier 2 trigger price;

[(e)] (i) If the condition of §B(2)(a) of this regulation is not satisfied, no CO₂ CCR tier 1 or CO₂ CCR tier 2 allowances shall be offered for sale at the auction, and the reserve price for the auction shall be equal to the minimum reserve prices; and

(j) If the condition of §B(2)(c) of this regulation is not satisfied, no CO₂ CCR tier 2 allowances shall be offered for sale at the auction, and the reserve price for the auction shall be determined as follows:

(i) If the condition of §B(2)(a) of this regulation is met, the reserve price shall be equal to the CCR tier 1 trigger price; and

(ii) If the condition of §B(2)(a) of this regulation is not met, the reserve price shall be equal to the minimum reserve price.

(3) (text unchanged)

[(4)] The Department or its agent shall follow these rules for the withholding of CO₂ ECR allowances from an auction:

(a) 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;

(b) If the condition in §B(4)(a) of this regulation 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 described in COMAR 26.09.02.03D(1) minus the total quantity of CO₂ ECR allowances that have been withheld from any prior auction in that calendar year; and

(c) Any CO₂ ECR allowances withheld from an auction will be transferred into the Emission containment reserve account.]

SERENA MCILWAIN
Secretary of the Environment

Notice of Proposed Action

[25-179-P]

The Secretary of the Environment proposes to amend:

(1) Regulation .19 under COMAR 26.11.02 Permits, Approvals, and Registration; and

(2) Regulation .02 under COMAR 26.28.02 Benchmarking and Reporting.

Statement of Purpose

The purpose of this action is to update permit and reporting fees per legislation recently passed in the 2025 session. The Maryland Department of the Environment (MDE or the Department) proposes to increase the emissions-based rate fee for our Air and Radiation Administration's Operating Permits and remove an expired maximum \$500,000 annual cap on permit to operate fees for any source as well as add an annual reporting fee under the Subtitle Building Energy Performance Standards (BEPS).

This action will not be submitted to the U.S. Environmental Protection Agency (EPA) for approval as part of Maryland's State Implementation Plan (SIP).

Background.

Per the Federal Clean Air Act (CAA) of 1989, facilities with significant sources of air pollution or those that have the potential to cause harm, based on the nature of their emissions, are required to obtain an operating permit. MDE has collected emissions-based fees from sources having a federal or a state operating permit, and these fees have been deposited into the Maryland Clean Air Fund ("the Fund" or "CAF") since that time. The Fund is a special revenue fund that began receiving receipts from penalties on July 1, 1988, and later from emission-based operating permit fees. The Fund's revenues are for activities under Title 2 of the Environment Article related to identifying, mitigating, monitoring, reducing, and regulating air pollution in Maryland, including program development of these activities. Historically, MDE's overall clean air programs were funded through a mixture of funding sources: the Clean Air Fund, federal grants, reimbursable funds from the Maryland Department of Transportation and the Maryland Department of Natural Resources, and general funds.

COMAR 26.11.02.19 establishes annual fees for pollution sources that are required to obtain a federal Title V - Part 70 Operating Permit or an Air Quality State Permit to Operate. The annual fee consists of a base fee plus an emissions-based fee for each ton of regulated emissions from the source. State Permit to Operate sources include asphalt plants, academic institutions, crematories, and aggregate operations. Title V - Part 70 Operating Permit sources are the largest air pollution sources in the State. These sources include power plants, cement plants, chemical plants, and federal facilities. In addition to large emission sources, certain smaller, environmentally significant sources are required to obtain Title V - Part 70 Operating Permits (e.g. incinerators and landfills).

Per the Climate Solutions Now Act (CSNA) of 2022, Maryland, specifically the Department, is required to establish BEPS for covered buildings to achieve zero net direct greenhouse gas emissions and energy use intensity standards by 2040. On May 25, 2025, House Bill 49 was enacted under the Environmental Article II, § 17(c) of the Maryland Constitution. Among other alterations to the BEPS program that will be enacted via future rulemakings after extensive study, House Bill 49 requires MDE to update COMAR 26.28 to include a \$100 annual reporting fee for a building subject to BEPS. This fee is indexed to the consumer price index and as such adjusted for inflation each year. The fee covers the administrative costs of implementing the BEPS program.

On May 13, 2025, Governor Moore signed Senate Bill 250 or the Department of the Environment - Fees, Penalties, Funding, and Regulation Act enacting into law an increase of the emissions-based