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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

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| <b>Agency name</b>  | State Air Pollution Control Board   |
| <b>Virginia Administrative Code (VAC) Chapter citation(s)</b> | Part VII of 9VAC5-140   |
| <b>VAC Chapter title(s)</b>                                   | Regulation for Emissions Trading  |
| <b>Action title</b>   | Repeal CO <sub>2</sub> Budget Trading Program as required by Executive Order 9 (Revision A22) |
| <b>Date this document prepared</b>                            | September 6, 2022   |

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

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).*

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

## Acronyms and Definitions

*Define all acronyms or technical definitions used in this form.*

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DOE - U.S. Department of Energy  
EO-9 - Executive Order 9 (2022)  
RGGI - Regional Greenhouse Gas Initiative  
SCC - State Corporation Commission

## Mandate and Impetus

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

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

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

Simply stated, the benefits of RGGI have not materialized, while the costs have skyrocketed. Re-evaluation of the Initiative represents a meaningful step toward alleviating this financial burden on the Commonwealth's businesses and households. Regulations must be evaluated in view of the costs and benefits to all Virginians.

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

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

According to the most recent data supplied by the Federal Energy Information Administration (2020), the average annual household consumption of electricity in Virginia is 13,140 kilowatt hours. Historically, the average energy consumption in Virginia has increased by 1.38% per year. The cumulative impact of the

adjustments described above would increase the average household's bill by approximately \$294 per year, but will increase as consumption continues to increase.

The current energy framework in Virginia allows energy providers to also charge ratepayers for the transition and expansion of clean energy infrastructure, resulting in no incentive for utilities to reduce emissions or compliance costs. For example, the SCC recently approved an application by Dominion for cost recovery associated with its proposed Coastal Virginia Offshore Wind Project. The project consists of 176 wind turbines, each designed to generate 14.7 megawatts, to be located about 27 miles off the coast of Virginia Beach. The project is expected to have a capital cost of \$9.8 billion and will likely be the largest capital investment, and single largest project, in Dominion's history. The SCC approved a revenue requirement of \$78.702 million for the rate year of September 1, 2022, to August 31, 2023, to be recovered through a new rate adjustment clause. Over the projected 35-year lifetime of the project, for a residential customer using 1,000 kilowatt-hours of electricity per month, the rate adjustment is projected to result in an average monthly bill increase of \$4.72 and a peak monthly bill increase of \$14.22 in 2027. This is another instance of upward pressure on utility costs with a direct impact on consumers. This is something that is making Virginia less competitive with other states in our ability to reduce energy costs, make the energy economy competitive, and bring new investment into the state.

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

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

EO-9 directed the department to provide the Governor with a full report re-evaluating the costs and benefits of participation in RGGI in view of all available data. As detailed above, it is clear that in effect participation in RGGI operates as a direct tax on households and businesses. Since the consumers are utility-captive ratepayers that do not have the opportunity to switch electric providers, they are unable to avoid the pass-through of RGGI costs—whether through a direct rate adjustment clause or incorporation into the base rate of their electricity bill. Emission allowance prices have increased over 146% since Virginia joined RGGI in 2020, and these substantial increases are expected to continue, which in turn will result in increased rates to ratepayers.

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

## Legal Basis

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

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Statutory Authority

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

Promulgating Entity

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

State Requirements

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

**Purpose**

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

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

**Substance**

*Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.*

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The purpose of this regulatory action is to repeal Part VII of 9VAC5-140 in its entirety.

**Alternatives to Regulation**

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

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

1. Repeal the regulation to satisfy the provisions of EO-9. This option is being selected because it meets the stated purpose of the regulatory action.

2. Make alternative regulatory changes to those required by EO-9. This option is not being selected because it would not meet the stated purpose of the regulatory action.

3. Take no action. This option is not being selected because it would not satisfy the provisions of EO-9.

### **Periodic Review and Small Business Impact Review Announcement**

*If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”*

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

### **Public Participation**

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.*

The board is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

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

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