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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) citation(s)	Part VII, 9VAC5-140
Regulation title(s)	Regulation for Emissions Trading
Action title	Establish a new regulation to reduce and cap carbon dioxide (CO ₂) from fossil fuel fired electric power generating facilities by means of an interstate trading program (Revision C17)
Date this document prepared	May 22, 2017

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Subject matter and intent

Please describe briefly the subject matter, intent, and goals of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of the proposed action is to develop a regulation, in accordance with Executive Directive 11 (2017), "Reducing Carbon Dioxide Emissions from Electric Power Facilities and Growing Virginia's Clean Energy Economy," that (i) ensures that Virginia is trading-ready to allow for the use of market-based mechanisms and the trading of carbon dioxide (CO₂) allowances through a multi-state trading program, and (ii) establishes abatement mechanisms that provide for a corresponding level of stringency to CO₂ limits imposed in other states with such limits.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

CO₂ - carbon dioxide

RGGI - Regional Greenhouse Gas Initiative

Legal basis

Please identify (1) the agency (includes any type of promulgating entity) and (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Statutory Authority

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

Promulgating Entity

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

State Requirements

Executive Directive 11 (2017), "Reducing Carbon Dioxide Emissions from the Electric Power Sector and Growing Virginia's Clean Energy Economy," directs the Director of the Department of Environmental Quality, in coordination with the Secretary of Natural Resources, to take the following actions in accordance with the provisions and requirements of Virginia Code § 10.1-1300 et seq., and Virginia Code § 2.2-4000, et seq.:

1. Develop a proposed regulation for the State Air Pollution Control Board's consideration to abate, control, or limit CO₂ from electric power facilities that:
 - a. Includes provisions to ensure that Virginia's regulation is "trading-ready" to allow for the use of market-based mechanisms and the trading of CO₂ allowances through a multi-state trading program; and
 - b. Establishes abatement mechanisms providing for a corresponding level of stringency to limits on CO₂ emissions imposed in other states with such limits.
2. By no later than December 31, 2017, present the proposed regulation to the State Air Pollution Control Board for consideration for approval for public comment in accordance with the Board's authority pursuant to Virginia Code § 10.1-1308.

Purpose

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

Governor McAuliffe's Executive Directive 11 (2017), "Reducing Carbon Dioxide Emissions from the Electric Power Sector and Growing Virginia's Clean Energy Economy" states:

There is no denying the science and the real-world evidence that climate change threatens the Commonwealth of Virginia, from our homes and businesses to our critical military installations and ports. Rising storm surges and flooding could impact as many as 420,000 properties along Virginia's coast that would require \$92 billion of reconstruction costs.

The challenges and costs of bolstering resilience and minimizing risk are too great for any locality to bear alone. While the impacts are significant, there are technologies in the clean energy sector that could help mitigate these impacts while simultaneously creating jobs in twenty-first century industries. The number of solar jobs in Virginia has grown by 65 percent in the last year alone, and Virginia is now the ninth fastest growing solar jobs market in the country. Revenue for clean energy businesses in Virginia has increased from \$300 million in 2014 to \$1.5 billion in 2016. Through state leadership, Virginia can face the threats of climate change head on and do so in a way that makes clean energy a pillar of our future economic growth and a meaningful part of our energy portfolio.

With these considerations in mind, I issued Executive Order 57 (EO 57) on June 28, 2016. Under EO 57, I directed the Secretary of Natural Resources to convene a work group to study and recommend methods to reduce carbon dioxide emissions from electric power facilities and grow the clean energy economy within existing state authority. The group consisted of the Secretary of Natural Resources, the Secretary of Commerce and Trade, the Director of the Virginia Department of Environmental Quality, the Director of the Virginia Department of Mines, Minerals and Energy, and the Deputy Attorney General for Commerce, Environment, and Technology. This group facilitated extensive stakeholder engagement over the last year, including six in-person meetings and a ninety-day public comment period, before compiling its recommendations and submitting a final report to me on May 12, 2017.

Among the most significant recommendations from the group is the need to develop regulations limiting the total amount of carbon dioxide emitted from electric power facilities. Given the nature of the climate change threat and the promise of clean energy solutions, I agree with this recommendation.

Accordingly, pursuant to the authority vested in me as the Chief Executive Officer of the Commonwealth, and pursuant to Article V of the Constitution and the laws of Virginia, I hereby direct the Director of the Department of Environmental Quality, in coordination with the Secretary of Natural Resources, to take the following actions in accordance with the provisions and requirements of Virginia Code § 10. 1-1300, et seq. and Virginia Code § 2.2-4000, et seq.:

1. Develop a proposed regulation for the State Air Pollution Control Board's consideration to abate, control, or limit carbon dioxide emissions from electric power facilities that:

- a. Includes provisions to ensure that Virginia's regulation is "trading-ready" to allow for the use of market-based mechanisms and the trading of carbon dioxide allowances through a multi-state trading program; and
- b. Establishes abatement mechanisms providing for a corresponding level of stringency to limits on carbon dioxide emissions imposed in other states with such limits.

2. By no later than December 31, 2017, present the proposed regulation to the State Air Pollution Control Board for consideration for approval for public comment in accordance with the Board's authority pursuant to Virginia Code § 10. 1-1308.

Additionally, Executive Order 57 Work Group's "Report and Final Recommendations to the Governor" states that:

The Work Group received a number of presentations and written comments from stakeholders advocating for a regulation to limit carbon dioxide from power plants. These comments included recommendations that the Commonwealth join or participate in the Regional Greenhouse Gas Initiative (RGGI) or another regional trading program, that a price be put on carbon, and that Virginia strive to reduce its greenhouse gases by 30 to 40 percent by the year 2030. Although many stakeholders provided feedback focused on specific in-state targets (such as 30x30), the Work Group believes that it is important and necessary that Virginia work through a regional model, like the established and successful RGGI, in order to achieve lower compliance costs and address the interstate nature of the electric grid.

The Work Group recommends that the Governor consider taking action via a regulatory process to establish a 'trading-ready' carbon emissions reduction program for fossil fuel fired electric generating facilities that will enable participation in a broader, multi-state carbon market.

Substance

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

The following is a general outline of the likely main elements of the new regulation directed by the Governor.

- CO₂ Budget Trading Program General Provisions (Purpose; Definitions; Measurements, abbreviations and acronyms; Applicability; Standard Requirements; Computation of time; Severability)
- Authorized Account Representative for CO₂ Budget Sources (Authorization and responsibilities of the CO₂ authorized account representative; Alternate CO₂ authorized account representative; Changing the CO₂ authorized account representatives and the alternate CO₂ authorized account representative; changes in the owner as and operators; Account certificate of representation; Objections concerning the CO₂ authorized account representative; Delegation by CO₂ authorized account representative and alternate CO₂ authorized account representative)
- Permits (General CO₂ budget permit requirements; Submission of CO₂ budget permit applications; Information requirements for CO₂ budget permit applications)
- Compliance Certification (Compliance certification report; Agency's action on compliance certifications)
- CO₂ Allowance Allocations (Virginia CO₂ trading program base budget; Timing requirements for CO₂ allowance allocations; CO₂ allowance allocations)
- CO₂ Allowance Tracking System (CO₂ Allowance Tracking System accounts; Establishment of accounts; CO₂ Allowance Tracking System responsibilities of CO₂ authorized account representative; Recordation of CO₂ allowance allocations; Compliance; Banking; Account error; Closing of general accounts)
- CO₂ Allowance Transfers (Submission of CO₂ allowance transfers; Recordation; Notification)
- Monitoring and Reporting (General requirements; Initial certification and recertification procedures; Out-of-control periods; Notifications; Recordkeeping and reporting; Petitions; CO₂ budget units that co-fire eligible biomass; Additional requirements to provide output data)

- CO₂ Emissions Offset Projects (Purpose, Definitions, General requirements, Application process, CO₂ emissions offset project standards, Accreditation of independent verifiers, Award and Recordation of CO₂ offset allowances)

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.

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. Adopt the regulations to satisfy the provisions of Executive Directive 11 (2017). This option is being selected because it meets the stated purpose of the regulatory action: to develop a regulation that (i) ensures that Virginia is trading-ready to allow for the use of market-based mechanisms and the trading of carbon dioxide (CO₂) allowances through a multi-state trading program, and (ii) establishes abatement mechanisms that provide for a corresponding level of stringency to CO₂ limits imposed in other states with such limits.
2. Make alternative regulatory changes to those required by Executive Directive 11 (2017). This option is not being selected because it would not meet the stated purpose of the regulatory action.
3. Take no action to adopt the regulation. This option is not being selected because it would not satisfy the provisions of Executive Directive 11 (2017).

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: (1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; (2) a panel will not be used; or (3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

The agency is seeking comments on this regulatory action, including but not limited to: (1) ideas to be considered in the development of this proposal; (2) the costs and benefits of the alternatives stated in this background document or other alternatives; (3) potential impacts of the regulation; and, (4) impacts of the regulation on farm and forest land preservation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

The agency is seeking specific comment on how credits under a trading program should be allocated.

Anyone wishing to submit written comments may do so by mail, email or fax to Karen G. Sabasteanski, Department of Environmental Quality, P.O. Box 1105, Richmond VA 23218, phone 804-698-4426, fax 804-698-4510, email karen.sabasteanski@deq.virginia.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site (<http://www.townhall.virginia.gov>). Written comments must include the name and address of the commenter. In order to be considered, comments must be received before midnight on the last day of the public comment period.

Public hearing at proposed stage

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

Regulatory panel

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

The Board is using a panel to develop a proposal. The primary function of the panel is to develop a recommended regulation for Department consideration through the collaborative approach of regulatory negotiation and consensus. Notification of the composition of the panel will be sent to all panel members. Panel meetings are open to the public and will be announced via the Department website (<http://deq.virginia.gov/Programs/Air/PublicNotices/AirRegulations.aspx>) and on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>).

Family Impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

It is not anticipated that the proposal will have a direct impact on families.

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