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Exempt Action: Final Regulation
Agency Background Document

Agency name	Department of Environmental Quality
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC5-140
VAC Chapter title(s)	Regulation for Emissions Trading Programs
Action title	Amend CO_2 Budget Trading Program Regulation to Align with the Regional Greenhouse Gas Initiative (RGGI) Updated Model Rule as required by Virginia's 2026-2028 Biennial Budget (Rev. D26).
Final agency action date	September 24, 2026
Date this document prepared	September 22, 2026

This information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to 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 this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

Governor Spanberger approved Virginia's 2026-2028 Biennial Budget (Chapter 1 of the 2026 Special Session I Acts of Assembly) on June 29, 2026. Item 368 O of Chapter 1 of the 2026 Special Session I Acts of Assembly directs "All agencies or authorities of the Commonwealth with responsibilities identified in § 10.1-1330 of the Code of Virginia" to align Virginia's CO_2 Budget Trading Program regulation with the latest Regional Greenhouse Gas Initiative (RGGI) program review and revised Model Rule. Further, Item 368 O establishes that "[a]ny regulatory actions necessary to effectuate the requirements of this item are hereby exempted from the provisions of the Virginia Administrative Process Act (§ 2.2-4000 et seq.)" and notes that such amendment shall be completed "without further action by the State Air Pollution Control Board."

In order to meet the requirements of Item 368 O, this regulatory action amends Part VIII of 9VAC5-140 to align Virginia's CO_2 Budget Trading Program regulation with RGGI's updated Model Rule, which resulted from a RGGI program review completed in 2025. The Virginia CO_2 Budget Trading Program Regulation is the mechanism through which the RGGI program is implemented in Virginia. The following overarching amendments have been made:

- In 9VAC5-140-7020, removed or revised obsolete terms, added cost containment reserve (CCR) tier 2 terms and trigger-price references, and clarified several definitions, including the allowance transfer deadline;
- Throughout the regulation, removed "or its agent" in allowance offering, sale, or distribution contexts;
- In Article 4, added 9VAC5-140-7175 to clarify compliance obligations for the one-time six-month control period in 2026;
- In Article 5, updated base budgets, added CCR tier 1 and tier 2 references, removed bank-adjustment details, and removed emission containment reserve (ECR) references;
- In Article 8, removed certification, recertification, data substitution, and notification requirement provisions already addressed under 40 CFR Part 75 to streamline requirements; and
- In Article 9, added CCR tier 2 mechanics, updated CCR tier 1 language, removed ECR references, and revised allowance-offering language.

CO_2 base budgets and CCR allowance allocations in the amended regulation maintain consistency with RGGI's latest program review and updated Model Rule, as required by Item 368 O. The latest program review stipulates that participating states' base budgets are based on a trajectory to zero allowances by 2035 from 2027-2033 and a slower trajectory toward zero allowances by 2040 from 2033-2037, then remain level beginning in 2037. Using Virginia's 2026 base budget of 22.96 million tons to calculate a trajectory to zero allowances by 2035 from 2027-2033, 2.55 million tons are reduced annually. Using Virginia's 2033 base budget of 5.10 million tons to calculate trajectory toward zero allowances by 2040 from 2033-2037, 0.73 million tons are reduced annually. Then, Virginia's 2037 base budget of 2.19 million tons does not change. Virginia's CCR tier 1 and CCR tier 2 allowance allocations are based on the fixed regional CCR tier 1 and CCR tier 2 volumes of 15.18 million tons from 2027-2037 (which are determined by RGGI). They are calculated based on the state's 22.62% contribution to the regional cap in 2027, which is 3.43 million tons annually as a portion of the fixed regional CCR tier 1 and CCR tier 2 volumes.

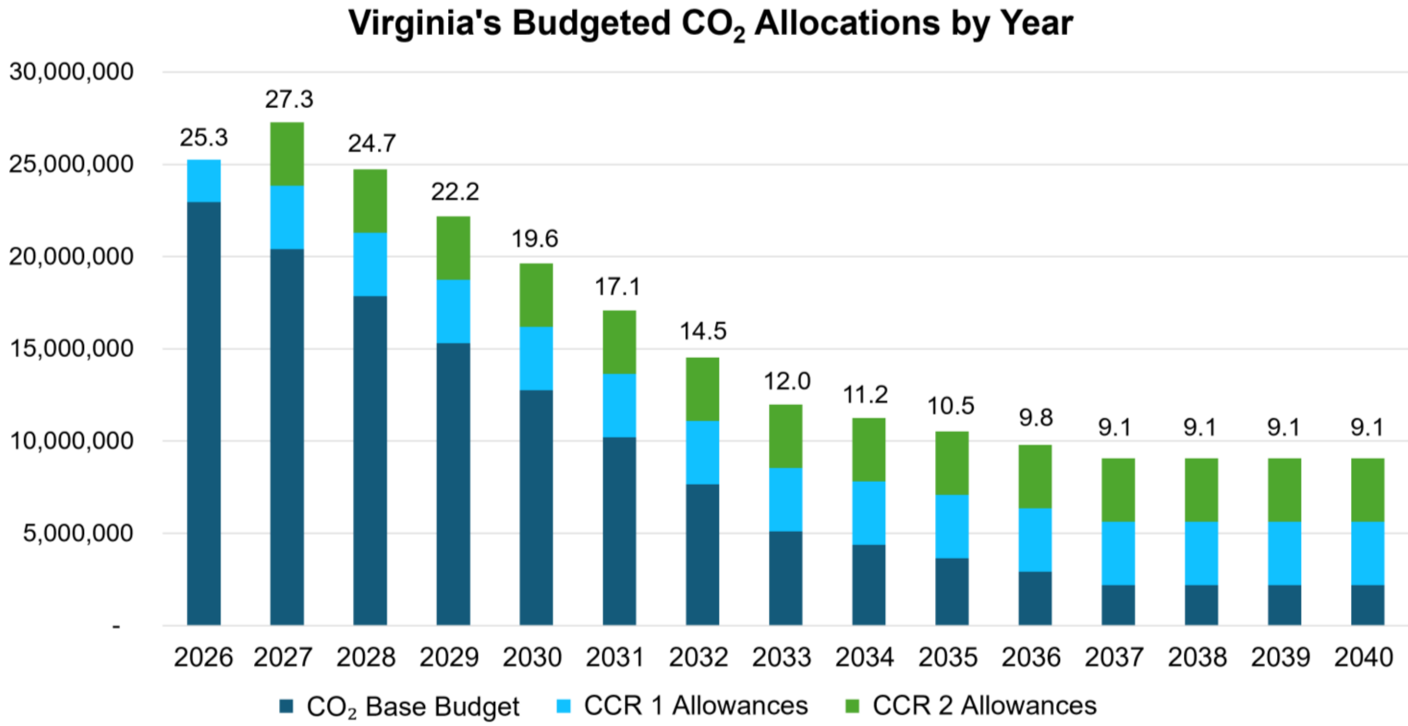
This table showcases the trajectory Virginia's overall CO_2 allocations based on the above discussion:

Year	Virginia Base Budget	Yearly Reduction	Trajectory	CCR Tier 1 Allowances	CCR Tier 2 Allowances	Total Allowances Available
2026	22,960,000**			2,296,000**	0	25,256,000**
2027	20,408,889	2,551,111	0 by 35	3,434,188	3,434,188	27,277,265
2028	17,857,778	2,551,111	0 by 35	3,434,188	3,434,188	24,726,154
2029	15,306,667	2,551,111	0 by 35	3,434,188	3,434,188	22,175,043
2030	12,755,556	2,551,111	0 by 35	3,434,188	3,434,188	19,623,932
2031	10,204,445	2,551,111	0 by 35	3,434,188	3,434,188	17,072,821
2032	7,653,334	2,551,111	0 by 35	3,434,188	3,434,188	14,521,710
2033	5,102,223	2,551,111	0 by 35	3,434,188	3,434,188	11,970,599
2034	4,373,334	728,889	0 by 40	3,434,188	3,434,188	11,241,710
2035	3,644,445	728,889	0 by 40	3,434,188	3,434,188	10,512,821
2036	2,915,556	728,889	0 by 40	3,434,188	3,434,188	9,783,932
2037	2,186,667	728,889	0 by 40	3,434,188	3,434,188	9,055,043
2038	2,186,667	0	No Change	3,434,188	3,434,188	9,055,043

2039	2,186,667	0	No Change	3,434,188	3,434,188	9,055,043
2040	2,186,667	0	No Change	3,434,188	3,434,188	9,055,043

** The Virginia CO_2 Budget Trading Program base budget is half of 22.96 million tons, or 11.48 million tons, for the period from July 1, 2026, to December 31, 2026, inclusive. Virginia's CCR tier 1 allocations are half of 2.30 million tons, or 1.15 million tons, for the period from July 1, 2026, to December 31, 2026, inclusive.

A graph summarizing Virginia's overall CO_2 allocations resulting from this action is included below:



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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, internal staff review, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" means "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."

The mandate for this regulatory action is Item 368 O of Chapter 1 of the 2026 Special Session I Acts of Assembly (Virginia's 2026-2028 Biennial Budget).

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) that the agency has "adopted final amendments" to the regulation; 3) the name of the agency taking the action; and 4) the title of the regulation. A suggested statement is, "On [insert date] the Board/Department of [insert name] adopted final amendments to the [title of regulation(s)]."

On September 24, 2026, the Director of the Virginia Department of Environmental Quality (DEQ) adopted final amendments to the Regulation for Emissions Trading (9VAC5-140), to be effective January 1, 2027, to align Virginia's CO_2 Budget Trading Program regulation with the latest Regional Greenhouse Gas Initiative (RGGI) program review and revised Model Rule. Pursuant to Item 368 O of Chapter 1 of the 2026 Special Session I Acts of Assembly, the regulation amendments are exempt from the provisions of the Administrative Process Act and shall be completed without further action by the State Air Pollution Control Board.

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