

Administrative Procedures – Adopted Rule Filing

Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” adopted by the Office of the Secretary of State, this filing will be considered complete upon filing and acceptance of these forms with the Office of the Secretary of State, and the Legislative Committee on Administrative Rules.

All forms requiring a signature shall be original signatures of the appropriate adopting authority or authorized person, and all filings are to be submitted at the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week.

The data provided in text areas of these forms will be used to generate a notice of rulemaking in the portal of “Proposed Rule Postings” online, and the newspapers of record if the rule is marked for publication. Publication of notices will be charged back to the promulgating agency.

**PLEASE REMOVE ANY COVERSHEET OR FORM NOT
REQUIRED WITH THE CURRENT FILING BEFORE DELIVERY!**

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

Amendments to the Vermont CO2 Budget Trading Program Regulations

_____, on 8/30/2018.
(signature) (date)

Printed Name and Title:

Julie Moore, Secretary, Agency of Natural Resources

1. TITLE OF RULE FILING:

Amendments to the Vermont CO2 Budget Trading Program Regulations

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

18P-019

3. ADOPTING AGENCY:

Agency of Natural Resources

4. RECORDS EXEMPTION INCLUDED WITHIN RULE:

(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE EXEMPTING IT FROM INSPECTION AND COPYING?) No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

5. LEGAL AUTHORITY / ENABLING LEGISLATION:

(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).

10 V.S.A. §558 and 30 V.S.A. §255

6. THE FILING HAS CHANGED SINCE THE FILING OF THE FINAL PROPOSED RULE.

7. THE AGENCY HAS INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE, INCLUDING CHANGES IN ECONOMIC IMPACT.

8. THE LEGISLATIVE COMMITTEE ON ADMINISTRATIVE RULES DID NOT OBJECT TO THE FINAL PROPOSAL.

9. PROCEDURAL HISTORY OF ADOPTION:

ICAR Filing: 04/27/2018

Proposal Filed with Office of the Secretary of State: 05/16/2018

Notices Posted Online: 05/23/2018

Notices Published in the Newspapers of Record: 05/31/2018

A Hearing WAS Held.

Adopted Rule Filing

Hearings Held (*PLEASE USE ADDITIONAL SHEETS TO PROVIDE THE DATE, TIME AND LOCATION OF ALL HEARINGS, IF THIS FORM IS INSUFFICIENT TO LIST ALL HEARINGS HELD*):

Date: 7/9/2018

Time: 11:00 AM

Street Address: Vermont Dept of Environmental Conservation
1 National Life Drive, Davis 2
Montpelier, Vermont
Zip Code: 05620

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Deadline for Public Comment: 7/16/2018

Final Proposal —

Filed with Secretary of State: 08/01/2018

Filed with LCAR: 08/01/2018

Dates of LCAR Review: 08/23/2018, , , ,

Adopted Rule —

Filed with Secretary of State: 08/31/2018

Filed with LCAR: 08/31/2018

10. EFFECTIVE DATE: 09/15/2018

(A RULE MAY TAKE EFFECT 15 DAYS AFTER ADOPTION IS COMPLETE OR AT A LATER TIME PROVIDED IN THE TEXT OF THE RULE SEE 3 V.S.A. §845(d) FOR DETAILS).

Administrative Procedures – Adopting Page

Instructions:

This form must accompany each filing made during the rulemaking process:

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible, the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. TITLE OF RULE FILING:

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2. ADOPTING AGENCY:

Agency of Natural Resources

3. AGENCY REFERENCE NUMBER, IF ANY:

4. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment as long as the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **AN AMENDMENT OF AN EXISTING RULE** .

5. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND EFFECTIVE DATE OF THE LAST ADOPTION FOR THE EXISTING RULE*):

SOS Log #13-037, Vermont CO2 Budget Trading Program Regulations, adopted 2008; amended 2013

Administrative Procedures – Economic Impact Analysis

Instructions:

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn't appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

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3. CATEGORY OF AFFECTED PARTIES:

LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:

Based on modeling, regional monthly electric bills are predicted to be, on average, about 0.8% higher for residential customers, 1.6% higher for commercial customers, and 1.2% higher for industrial customers from 2017 to 2031 as compared to a scenario without the proposed rule changes. Modeling results for Vermont show that electric bills are predicted to be 1.2% higher for residential customers, 1.6% higher for commercial customers, and 2% higher for industrial

customers, but the model did not account for consumer savings due to fossil fuel energy efficiency investments, which are what Vermont's RGGI proceeds are directed to fund. These investments, plus Vermont's investments in end-use electric efficiency from other state programs and Vermont's relatively high percentage of electricity generated from low-emitting sources will likely mitigate the potential increase in customer electric bills.

Overall, the proposed amendments are modeled to have an overall positive effect on the regional economy. Through the investment of program proceeds in initiatives such as end-use energy efficiency and renewable energy, the program is projected to result in an additional \$8.64 billion (+0.013%) in gross state product across the region; 130,120 job-years (+ 0.016%) spread across the region; and a \$9.8 billion (+0.012%) increase in real personal income. For additional information about the estimated costs and anticipated benefits of the proposed rule, see Attachment A.

4. **IMPACT ON SCHOOLS:**

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS CLEARLY STATING ANY ASSOCIATED COSTS:

Like other ratepayers, public schools may experience a modest (1.6%) increase in their electric bills as described in the section "Potential Impacts to Ratepayers" (see Attachment A).

5. **ALTERNATIVES: CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.**

School districts could reduce the burden of any increase in electricity costs by implementing energy efficiency measures.

6. **IMPACT ON SMALL BUSINESSES:**

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):

One alternative would be for Vermont to not adopt the proposed amendments to the RGGI program. This option

would be in direct conflict with the mandate of 30 V.S.A. §255(c) and therefore not legally appropriate. This would also be in conflict with the RGGI Principles to Accompany Model Rule Amendments (December 2017). 30 V.S.A. §255(c) directs the Agency to participate in the RGGI program and to adopt rules establishing a cap-and-trade program to reduce carbon emissions from electricity power plants, and the RGGI Principles document commits the participating states to implement the agreed upon changes to the program. As discussed below, the proposed rule amendments do not impose requirements on small businesses. Consequently ANR did not consider an alternative rule with separate requirements for small businesses.

7. **SMALL BUSINESS COMPLIANCE:** *EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.*

Small businesses could reduce the burden of any increase in electricity costs by implementing energy efficiency measures.

8. **COMPARISON:**

COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:

One alternative would be for Vermont to not adopt the proposed amendments to the RGGI program. This option would be in direct conflict with the mandate of 30 V.S.A. §255(c) and therefore not legally appropriate. This would also be in conflict with the RGGI Principles to Accompany Model Rule Amendments (December 2017). 30 V.S.A. §255(c) directs the Agency to participate in the RGGI program and to adopt rules establishing a cap-and-trade program to reduce carbon emissions from electricity power plants, and the RGGI Principles document commits the participating states to implement the agreed upon changes to the program. As discussed below, the proposed rule amendments do not impose requirements on small businesses. Consequently ANR did not consider an alternative rule with separate requirements for small businesses.

9. SUFFICIENCY: *EXPLAIN THE SUFFICIENCY OF THIS ECONOMIC IMPACT ANALYSIS.*

This analysis adequately addresses the impact, including overall burden and benefit, to affected parties in Vermont by discussing the ways in which the overall benefits from the RGGI program can be balanced with short term economic impact.

Administrative Procedures – Environmental Impact Analysis

Instructions:

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

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3. GREENHOUSE GAS: *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*
The purpose of this rule is to reduce greenhouse gas emissions from electricity generating units in Vermont.

4. WATER: *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*
This rule will have no impact on water quality.

5. LAND: *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*
The proposed amended rule would continue to allow regulated power plants to offset a small percentage of their carbon dioxide emissions through forestry offset projects either implemented by them or by a third party. It is possible that the rule could lead to increased sequestration of carbon in Vermont forests. However, regulated units throughout the region have to

Environmental Impact Analysis

date not utilized forest offsets and allowance price modeling indicates that the likelihood of a project being proposed will remain low through 2030. Therefore it is unlikely that the proposed rule would have significant impact on greenhouse gas emissions from the land use and development sector.

6. RECREATION: *EXPLAIN HOW THE RULE IMPACT RECREATION IN THE STATE:*

This rule would not impact recreation in the state.

7. CLIMATE: *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*

Given that the purpose of the rule is to reduce greenhouse gas emissions, and greenhouse gas emissions are known to cause changes to the earth's climate, this rule will impact Vermont's climate by reducing greenhouse gas emissions that are known to change earth's climate.

8. OTHER: *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*

The proposed amended rule is designed to reduce greenhouse gas emissions from electricity generation. The amended rule would lower the existing cap on the mass of carbon dioxide that may be emitted from fossil-fuel fired electric generating units with a capacity of 25 megawatts or more. The 2021 regional cap would be set at 75,147,784 short tons, and decrease by 2,275,000 short tons a year through 2030. Region-wide this is expected to reduce regional carbon dioxide emissions from electricity generation by over 115 million short tons from 2022 to 2031 as compared to a reference case without these amendments.

9. SUFFICIENCY: *EXPLAIN THE SUFFICIENCY OF THIS ENVIRONMENTAL IMPACT ANALYSIS.*

This analysis adequately addresses the impact that this rule will have on Vermont's environment by reducing greenhouse gas emissions that are known to cause changes to earth's climate.

Administrative Procedures – Public Input

Instructions:

In completing the public input statement, an agency describes the strategy prescribed by ICAR to maximize public input, what it did do, or will do to comply with that plan to maximize the involvement of the public in the development of the rule.

This form must accompany each filing made during the rulemaking process:

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3. PLEASE DESCRIBE THE STRATEGY PRESCRIBED BY ICAR TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE:

While ICAR did not prescribe a specific strategy to maximize public involvement in the development of the proposed rule, the strategy that was presented during the ICAR hearing did not receive any objections or generate any questions from the committee.

4. PLEASE LIST THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:

The proposed amendments would adopt changes to the RGGI program that were developed by the RGGI participating states during a comprehensive program review that took place in 2016-2017. This effort was supported by an extensive regional stakeholder process that engaged the regulated community, environmental nonprofits, consumer and industry advocates, other organizations with technical expertise in the design of cap-and-trade programs, and other interested stakeholders. The participating RGGI states have been working with program review stakeholders since 2016, convening 13 stakeholder meetings, webinars and learning sessions. All of the stakeholder materials are available at: <https://www.rggi.org/program->

overview-and-design/program-review. The Agency held a Vermont stakeholder information session on March 22, 2018 and intends to hold a public hearing on the proposed rule amendments during the rulemaking process. Details about the public hearing will be made available in public notices as required by the Administrative Procedures Act. Additionally, the proposed rule and rule adoption schedule will be available online at the Air Quality and Climate Division web site <http://dec.vermont.gov/air-quality/climate-change/rggi>.

5. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:

Numerous people and organizations have been or will be involved in the development of the proposed amendments, including environmental and energy advocates, electricity generators, distribution companies, the New England Independent System Operator ISO-NE, non-electric generator business interests, consumer representatives, offset stakeholders, government stakeholders, other stakeholders and individuals interested in reducing greenhouse gas emissions.

Administrative Procedures – Scientific Information

THIS FORM IS ONLY REQUIRED WHEN INCORPORATING MATERIALS BY REFERENCE. PLEASE REMOVE PRIOR TO DELIVERY IF IT DOES NOT APPLY TO THIS RULE FILING:

Instructions:

In completing the Scientific Information Statement, an agency shall provide a brief summary of the scientific information including reference to any scientific studies upon which the proposed rule is based, for the purpose of validity.

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3. BRIEF EXPLANATION OF SCIENTIFIC INFORMATION:

The rationale for the RGGI program to reduce greenhouse gas emissions from electricity generation is based on a large body of scientific research documenting the relationship between atmospheric carbon dioxide concentration and climate change. The latest report from the Intergovernmental Commission on Climate Change (AR5, November 2014) concludes that "Human influence has been detected in warming of the atmosphere and the ocean, in changes in the global water cycle, in reductions in snow and ice, in global mean sea level rise, and in changes in some climate extremes. This evidence for human influence has grown since the previous report of the IPCC. It is extremely likely that human influence has been the dominant cause of the observed warming since the mid-20th century. Continued emissions of greenhouse gases will cause further warming and changes in all components of the climate system. Limiting climate change will require substantial and sustained reductions of greenhouse gas emissions."

4. CITATION OF SOURCE DOCUMENTATION OF SCIENTIFIC INFORMATION:

IPCC, 2014: Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, R.K. Pachauri and L.A. Meyer (eds.)]. IPCC, Geneva, Switzerland, 151 pp.

5. INSTRUCTIONS ON HOW TO OBTAIN COPIES OF THE SOURCE DOCUMENTS OF THE SCIENTIFIC INFORMATION FROM THE AGENCY OR OTHER PUBLISHING ENTITY:

Available online for download at:
<https://www.ipcc.ch/report/ar5/syr/>