



## Exempt Action Final Regulation Agency Background Document

<b>Approving authority name</b>	State Air Pollution Control Board
<b>Primary action</b>	Article 2 (9VAC5-60-90 et seq.), 9VAC5-60
<b>Secondary action(s)</b>	Article 5 (9VAC5-50-400 et seq.), 9VAC5-50; Article 1 (9VAC5-60-60 et seq.), 9VAC5-60
<b>Regulation title</b>	Regulations for the Control and Abatement of Air Pollution
<b>Action title</b>	Federal Documents Incorporated by Reference (Rev. H09)
<b>Date this document prepared</b>	November 23, 2009

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 A of the Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 36 (06) and 58 (99)

### Summary

*Please provide a brief summary of the regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment.*

The regulation amendments update state regulations that incorporate by reference certain federal regulations to reflect the Code of Federal Regulations as published on July 1, 2009. Below is a list of the new standards in the federal regulations that are being incorporated into the regulations by reference.

1. 40 CFR Part 60, Standards of performance for new stationary sources: Two new NSPSs are being incorporated: Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006 (Subpart VVa, 40 CFR 60.480a -489a); and Equipment Leaks of VOC in Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced After November 7, 2006 (Subpart GGGa, 40 CFR 60.590a-593a). The date of the Code of Federal Regulations book being incorporated by reference is also being updated to the latest version.

2. 40 CFR Part 61, National emissions standards for hazardous air pollutants - No new NESHAPs are being incorporated; however, the date of the Code of Federal Regulations book being incorporated by reference is being updated to the latest version.

3. 40 CFR Part 63, national emissions standards for hazardous air pollutants for source categories: 2 new MACTs are being incorporated: Plating and Polishing Operations, Area Sources (Subpart WWWWWW, 40 CFR 63.11504-11513), and Ferroalloys Production Facilities, Area Sources (Subpart YYYYYY, 40 CFR 63.11524-11543). Two new MACTs are not being incorporated at this time: Nine Metal Fabrication and Finishing Source Categories, Area Sources (Subpart XXXXXX, 40 CFR 63.11514 -11523), and Aluminum, Copper, and Other Nonferrous Foundries, Area Sources (Subpart ZZZZZZ, 40 CFR 63.11544-11558); those standards are listed with a note that enforcement of the standard rests with EPA. The date of the Code of Federal Regulations book being incorporated by reference is being updated to the latest version.

**Statement of final agency action**

*Please provide a statement of the final action taken by the agency, including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

On November 20, 2009, the State Air Pollution Control Board took final action to adopt amendments to regulations entitled "Regulations for the Control and Abatement of Air Pollution," specifically, federal regulations incorporated by reference (9VAC5 Chapter 50, Article 5 and 9VAC5 Chapter 60, Articles 1 and 2). The regulatory action is to be effective as provided in the Administrative Process Act.

The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 4 c of the Administrative Process Act because they are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the pertinent U.S. Environmental Protection Agency (EPA) regulations.

In adopting these amendments, the board affirmed that it will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the Administrative Process Act.

**All changes made in this regulatory action**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.*

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
9VAC5-50-400		Incorporation of most current NSPSs listed in 9VAC5-50-410.	Date of most current CFR updated. Needed to enable use of the most current standards.
9VAC5-50-410		List of designated standards of performance (NSPSs).	List updated to include new NSPSs. Needed to maintain authority to implement the new standards.
9VAC5-60-60		Incorporation of most current NESHAPs listed in 9VAC5-60-70.	Date of most current CFR updated. Needed to enable use of the most current standards.
9VAC5-60-90		Incorporation of most current MACTs listed in	Date of most current CFR updated. Needed to enable use of the most current standards.

		9VAC5-60-100.	
9VAC5-60-100		List of designated emission standards (MACTs).	List updated to include new MACTs. Needed to maintain authority to implement the new standards.

**Regulatory flexibility analysis**

*Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

The regulations apply to all facilities, including small businesses. Any (1) establishment of less stringent compliance or reporting standards; (2) establishment of less stringent schedules or deadlines for compliance or reporting requirements; (3) consolidation or simplification of compliance or reporting requirements; (4) establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; or (5) exemption of small businesses from all or any part of the requirements contained in the proposed regulation for all small businesses would directly, significantly and adversely affect the benefits that would be achieved through the implementation of the regulations.

**Family impact**

*Assess the impact of this regulatory action on the institution of the family and family stability.*

It is not anticipated that these regulation amendments will have a direct impact on families. However, there will be positive indirect impacts in that the regulation amendments will ensure that the Commonwealth's air pollution control regulations will function as effectively as possible, thus contributing to reductions in related health and welfare problems.

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