



Exempt Action Final Regulation Agency Background Document

Approving authority name	State Air Pollution Control Board
Primary action	Parts II, III and Part IV of 9VAC5-140
Secondary action(s)	None
Regulation title	Regulation for Emissions Trading
Action title	CAIR Nonattainment Area Requirements (B10)
Date this document prepared	June 10, 2010

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 all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The State Air Pollution Control Board adopted final regulations to implement the provisions of the Code of Virginia that address compliance in nonattainment areas for the state Clean Air Interstate Rule (CAIR) program on October 10, 2007. The regulations were adopted under the authority of the Code of Virginia that addressed compliance in nonattainment areas for the state CAIR program, as set forth in the 2006 Acts of Assembly (Chapters 867 and 920). The regulations were published in the Virginia Register on November 26, 2007. A petition was filed; the effective date of the regulations was suspended, and litigation over the provisions continued through 2008 and 2009. On February 25, 2010, a final decision of the Court of Appeals of Virginia remanded the regulation and vacated the nonattainment provisions in both the Nitrogen Oxides (NO_x) Annual Trading Program (9VAC5-140-1061) and the NO_x Ozone Season Trading Program (9VAC5-140-2061). These provisions must now therefore be repealed from the regulations of the board. Senate Bill 128 and House Bill 1300 of the 2010 Acts of the Assembly amended § 10.1-1328 A 5 by removing the Board's authority to restrict the purchase of allowances for compliance obligations for NO_x and sulfur dioxide (SO₂) sources in nonattainment areas. Therefore, the nonattainment provisions of 9VAC5-140-3061 of Article 5 (CAIR SO₂ Allowance Allocations) of the SO₂ Annual Trading Program are not consistent with the Code of Virginia and must also be repealed.

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 June 4, 2010, the State Air Pollution Control Board took final action to adopt amendments to regulations entitled "Regulations for Emissions Trading," specifically, CAIR Nonattainment Area Requirements (9VAC5-140-1061, 9VAC5-140-1062, 9VAC5-140-2061, 9VAC5-140-2062, 9VAC5-140-3061, and 9VAC5-140-3062). 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 a, and § 2.2-4006 A 4 b of the Administrative Process Act because they are necessary to conform to Virginia statutory law, and are necessary to conform to an order of the court.

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.

NO_x Annual Trading Program (Part II)

Delete section number	Deleted requirement	Rationale for deleted requirement
1061	Provisions which establish compliance requirements in nonattainment areas in Virginia.	Necessary to ensure compliance with court order and new legislation passed by the 2010 General Assembly.
1062	Provisions which provide procedures for compliance demonstrations in nonattainment areas in Virginia.	Necessary to ensure compliance with court order and new legislation passed by the 2010 General Assembly.

NO_x Ozone Season Trading Program (Part III)

Delete section number	Deleted requirement	Rationale for deleted requirement
2061	Provisions which establish compliance requirements in nonattainment areas in Virginia.	Necessary to ensure compliance with court order and new legislation passed by the 2010 General Assembly.
2062	Provisions which provide procedures for compliance demonstrations in nonattainment areas in Virginia.	Necessary to ensure compliance with court order and new legislation passed by the 2010 General Assembly.

SO₂ Annual Trading Program (Part IV)

Delete section number	Deleted requirement	Rationale for deleted requirement
3061	Provisions which establish compliance requirements in nonattainment areas in Virginia.	Necessary to ensure compliance with court order and new legislation passed by the 2010 General Assembly.
3062	Provisions which provide procedures for compliance demonstrations in nonattainment areas in Virginia.	Necessary to ensure compliance with court order and new legislation passed by the 2010 General Assembly.

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 regulatory amendments are a direct result of both a court order and state legislative changes; therefore, no alternative regulatory methods are appropriate.

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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