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Exempt Action Final Regulation Agency Background Document

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) citation(s)	Part I of 9VAC5-140 (Regulation for Emissions Trading)
Regulation title(s)	Regulation for Emissions Trading
Action title	NO _x Budget Program (Rev. B17)
Final agency action date	September 21, 2017
Date this document prepared	August 21, 2017

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA) or an agency's basic statute, the agency is not required, however, 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, Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The transport of nitrogen oxides (NO_x) across state lines, which contributes to the formation of ozone, was first addressed by EPA's NO_x Budget Trading Program as implemented via the NO_x State Implementation Plan (SIP) Call. This program controlled NO_x emissions primarily from electric generating units (EGUs) as well as certain types of non-EGUs. In turn, the State Air Pollution Control Board implemented these federal requirements under its own NO_x SIP Call Rule (Part I of 9VAC5-140). Subsequently, EPA's NO_x SIP Call Rule was superseded by the Clean Air Interstate Rule (CAIR), which was in turn superseded by the Cross-State Air Pollution Rule (CSAPR). Although the state is now subject to CSAPR, and both the NO_x SIP Call Rule (with respect to EGUs) and CAIR are no longer in effect, non-EGUs cannot be brought into the Transport Rule trading programs, and the NO_x SIP Call regulations applicable to non-EGUs must be retained. The purpose of this action is to remove unnecessary federal requirements while retaining those requirements needed to control emissions from non-EGUs. This will ensure that Virginia is properly meeting federal requirements for the control of NO_x.

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.

- Btu--British thermal unit.
- CAIR - Clean Air Interstate Rule
- CO₂--carbon dioxide.
- CSAPR - Cross-State Air Pollution Rule
- EGU - electric generating unit
- EPA - Environmental Protection Agency
- mmBtu--million Btu.
- MWe – megawatt electrical
- NO_x - nitrogen oxides
- O₂--oxygen.
- SO₂ - sulfur dioxide

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 September 21, 2017, the State Air Pollution Control Board took final action to adopt amendments to regulations entitled "Regulation for Emissions Trading," specifically, the NO_x Budget Trading Program, Part I of 9VAC5-140. 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 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.

Family impact

Please assess the impact of this 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 these regulation amendments will have a direct impact on families.

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.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
Article 1. NO _x Budget Trading Program General Provisions			
9VAC5-140-10		Describes purpose of Part I.	Amended to remove trading elements for which non-EGUs are ineligible. Needed in order to be consistent with federal requirements.
9VAC5-140-20 A		General description of definitions section	Minor editorial change. Needed for consistency with other regulations of the board.
9VAC5-140-20 B		Definitions of "account number"; "acid rain emissions limitation"; "adjusted trading program budget"; "allocate" or "allocation"; "allocation set-aside budget"; "compliance account"; "compliance certification"; "core trading program budget"; "Energy Information Administration"; "excess emissions"; "general account"; "firm power contractual arrangement"; "most stringent State of Federal NO _x emissions limitation"; "New source review program"; "NO _x allowance"; "NO _x allowance deduction" or "deduct NO _x allowances"; "NO _x Allowance Tracking System"; "NO _x Allowance Tracking System account"; "NO _x allowance transfer deadline"; "NO _x allowances held" or "hold NO _x allowances"; "NO _x Budget emissions limitation"; "NO _x Budget opt-in permit"; "NO _x	Definitions pertaining to a trading program for which non-EGUs are ineligible are removed. Needed in order to be consistent with federal requirements.

		Budget opt-in source"; "operating"; "opt-in"; "overdraft account"; "recordation"; "record" or "recorded"; "serial number"; "set-aside percentage"; "state trading program budget"; "unit load"; "utilization"	
9VAC5-140-20 B		Definitions of "commence operation"; "NO _x authorized account representative"; "NO _x Budget permit"; "NO _x Budget Trading Program"; "NO _x Budget unit"; "Operator"; "Owner"; "Ton";	Amended to enable non-EGUs to continue to operate under this regulation while removing reference to a trading program in which they are not qualified to participate. Needed in order to be consistent with federal requirements.
9VAC5-140-31		Federal regulations incorporated by reference	Amended to update the specific version of the federal regulations adopted by reference. Needed in order for the regulation to operate properly.
9VAC5-140-40		Describes applicability of the regulation.	Amended to enable non-EGUs to continue to operate under this regulation while removing reference to a trading program in which they are not qualified to participate. Needed in order to be consistent with federal requirements.
9VAC5-140-50		Retired unit exemption.	Amended to enable non-EGUs to continue to operate under this regulation while removing reference to a trading program in which they are not qualified to participate. Needed in order to be consistent with federal requirements.
9VAC5-140-60.		Standard requirements explained.	Amended to enable non-EGUs to continue to operate under this regulation while removing reference to a trading program in which they are not qualified to participate. Needed in order to be consistent with federal requirements.
9VAC5-140-100.		Authorization and responsibilities of the NO _x authorized account representative.	Amended to enable non-EGUs to continue to operate under this regulation while removing reference to a trading program in which they are not qualified to participate. Needed in order to be consistent with federal requirements.
9VAC5-140-110		Requirements for the alternate NO _x authorized account representative.	Amended to enable non-EGUs to continue to operate under this regulation while removing reference to a trading program in which they are not qualified to participate. Needed in order to be consistent with federal requirements.
9VAC5-140-120		Requirements for changing the NO _x authorized account representative and the alternate NO _x authorized account representative;	No amendments; included for information only.

		changes in the owners and operators.	
9VAC5-140-130		Account certificate of representation described.	Amended to enable non-EGUs to continue to operate under this regulation while removing reference to a trading program in which they are not qualified to participate. Needed in order to be consistent with federal requirements.
9VAC5-140-140		Requirements for objections concerning the NO _x authorized account representative	Amended to enable non-EGUs to continue to operate under this regulation while removing reference to a trading program in which they are not qualified to participate. Needed in order to be consistent with federal requirements.
9VAC5-140-200		General NO _x Budget trading Program permit requirements.	Amended to enable non-EGUs to continue to operate under this regulation while removing reference to a trading program in which they are not qualified to participate. Needed in order to be consistent with federal requirements.
9VAC5-140-210		Requirements for submission of NO _x Budget permit applications.	No amendments; included for information only.
9VAC5-140-220		Information requirements for NO _x Budget permit applications described.	Amended to enable non-EGUs to continue to operate under this regulation while removing reference to a trading program in which they are not qualified to participate. Needed in order to be consistent with federal requirements.
9VAC5-140-230		NO _x Budget permit contents described.	Amended to enable non-EGUs to continue to operate under this regulation while removing reference to a trading program in which they are not qualified to participate. Needed in order to be consistent with federal requirements.
9VAC5-140-240		Effective date of initial NO _x Budget permit described.	No amendments; included for information only.
9VAC5-140-250		Requirements for NO _x Budget permit revisions.	No amendments; included for information only.
9VAC5-140-300		Compliance certification report requirements.	Repealed. Needed in order to be consistent with federal requirements.
9VAC5-140-310		Permitting authority's and administrator's action on compliance certifications	Repealed. Needed in order to be consistent with federal requirements.
9VAC5-140-400		State trading program budget requirements.	Repealed. Needed in order to be consistent with federal requirements.
9VAC5-140-410		Timing requirements for NO _x allowance allocations.	Repealed. Needed in order to be consistent with federal requirements.
9VAC5-140-420		NO _x allowance allocations described.	Repealed. Needed in order to be consistent with federal requirements.
9VAC5-140-430		Compliance supplement pool described.	Repealed. Needed in order to be consistent with federal requirements.
9VAC5-140-500		NO _x Allowance Tracking System accounts described.	Repealed. Needed in order to be consistent with federal requirements.

9VAC5-140-510		Requirements for establishment of accounts.	Repealed. Needed in order to be consistent with federal requirements.
9VAC5-140-520		NO _x Allowance Tracking System responsibilities of NO _x authorized account representative.	Repealed. Needed in order to be consistent with federal requirements.
9VAC5-140-530		Recordation of NO _x allowance allocations described.	Repealed. Needed in order to be consistent with federal requirements.
9VAC5-140-540		Compliance requirements described.	Repealed. Needed in order to be consistent with federal requirements.
9VAC5-140-550		Requirements for banking of allowances.	Repealed. Needed in order to be consistent with federal requirements.
9VAC5-140-560		Requirements in the event of account error.	Repealed. Needed in order to be consistent with federal requirements.
9VAC5-140-570		Requirements for closing of general accounts.	Repealed. Needed in order to be consistent with federal requirements.
9VAC5-140-600		Requirements for submission of NO _x allowance transfers.	Repealed. Needed in order to be consistent with federal requirements.
9VAC5-140-610		EPA recordation requirements.	Repealed. Needed in order to be consistent with federal requirements.
9VAC5-140-620		Notification requirements.	Repealed. Needed in order to be consistent with federal requirements.
9VAC5-140-700		General requirements for monitoring and reporting.	Amended to enable non-EGUs to continue to operate under this regulation while removing reference to a trading program in which they are not qualified to participate. Needed in order to be consistent with federal requirements.
9VAC5-140-710		Initial certification and recertification procedures.	Amended to enable non-EGUs to continue to operate under this regulation while removing reference to a trading program in which they are not qualified to participate. Needed in order to be consistent with federal requirements.
9VAC5-140-720		Requirements for out of control periods.	No amendments; included for information only.
9VAC5-140-730		Requirements for notifications.	Amended to enable non-EGUs to continue to operate under this regulation while removing reference to a trading program in which they are not qualified to participate. Needed in order to be consistent with federal requirements.
9VAC5-140-740		Recordkeeping and reporting requirements.	Amended to enable non-EGUs to continue to operate under this regulation while removing reference to a trading program in which they are not qualified to participate. Needed in order to be consistent with federal requirements.
9VAC5-140-750		Requirements for petitions.	Amended to enable non-EGUs to continue to operate under this regulation while removing reference to a trading program in which they are not qualified to participate. Needed in order to be consistent with

			federal requirements.
9VAC5-140-760		Additional requirements to provide heat input data for allocations purposes.	Repealed. Needed in order to be consistent with federal requirements.
9VAC5-140-800		Applicability requirements for Individual Unit Opt-ins.	Repealed. Needed in order to be consistent with federal requirements.
9VAC5-140-810		General requirements for Individual Unit Opt-ins.	Repealed. Needed in order to be consistent with federal requirements.
9VAC5-140-820		NO _x authorized account representative described.	Repealed. Needed in order to be consistent with federal requirements.
9VAC5-140-830		Applying for NO _x Budget opt-in permit described.	Repealed. Needed in order to be consistent with federal requirements.
9VAC5-140-840		Opt-in process described.	Repealed. Needed in order to be consistent with federal requirements.
9VAC5-140-850		NO _x Budget opt-in permit contents described.	Repealed. Needed in order to be consistent with federal requirements.
9VAC5-140-860		Requirements for withdrawal from NO _x Budget Trading Program.	Repealed. Needed in order to be consistent with federal requirements.
9VAC5-140-870		Requirements for change in regulatory status.	Repealed. Needed in order to be consistent with federal requirements.
9VAC5-140-880		NO _x allowance allocations to opt-in units described.	Repealed. Needed in order to be consistent with federal requirements.
9VAC5-140-900		State trading program budget described.	Repealed. Needed in order to be consistent with federal requirements.
9VAC5-140-910		Compliance supplement pool budget for years 2004 and 2005 described.	Repealed. Needed in order to be consistent with federal requirements.
9VAC5-140-920		Total electric generating unit allocations described.	Repealed. Needed in order to be consistent with federal requirements.
9VAC5-140-930		Total non-electric generating unit allocations described.	Repealed. Needed in order to be consistent with federal requirements.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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.

An analysis of the proposal was completed for alternative regulatory methods that will minimize the adverse impact on small businesses without compromising health, safety, environmental and economic welfare.

These regulation amendments meet the minimum requirements of the federal Clean Air Act, and do not differ materially from the pertinent EPA regulations. Because outdated regulatory provisions are being

removed, there is no impact on compliance or reporting requirements, schedules or deadlines, and no impact on small businesses.

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