

MEMORANDUM

FROM: Jerald R. Hess
Assistant Attorney General

DATE: December 13, 2021

RE: Exempt Regulations - 9 Va. Admin. Code 5 §§ 95-10 *et seq.*

Please note that this memorandum does not constitute an opinion, formal or informal, of the Attorney General. Rather, this memorandum contains the legal analysis of the individual staff member providing it.

It is my view that the State Air Pollution Control Board (“Board”) has the authority to promulgate these proposed regulations in 9 Va. Admin. Code 5 §§ 95-10 *et seq.*

It is also my view that these regulations are exempted from the Virginia Administrative Process Act, §§ 2.2-4000 *et seq.* by its enabling legislation. Section B of newly enacted Virginia Code Section 10.1-1307.04 requires the Board to adopt such regulations. Virginia Code Section 10.1-1307.04.B.2 then states, “the regulations required to be adopted by the State Air Pollution Control Board pursuant to § 10.1-1307.04 of the Code of Virginia, as created by this act, shall be exempt from the requirements of the Administrative Process Act (§ 2.2-4000 *et seq.* of the Code of Virginia).” Thus, these initial regulations are exempt from the Virginia Administrative Process Act.

The foregoing conclusion is my own. It does not constitute an opinion, formal or informal, of the Attorney General.