

## MEMORANDUM

**FROM:** Gray O'Dwyer  
Assistant Attorney General

**DATE:** January 6, 2020

**RE:** Revising Regulations for Ozone Implementation – 9 Va. Admin. Code §§ 5-20 *et seq.*

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*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.*

The Virginia Air Pollution Control Board (“Board”) has the authority to revise 9 Va. Admin. Code § 5-20 *et seq.* to bring that regulation into conformity with federal law. Here, the Board’s proposed amendment will bring this regulation up to date with the latest update to regulations concerning the ozone National Ambient Air Quality Standard in response to a court decision issued February 16, 2018.

The Administrative Process Act, in § 2.2-4006(A)(4)(b), allows the Board to adopt this regulatory amendment as a final exempt action as the changes are necessary to conform to an order of a federal court of competent jurisdiction where no agency discretion is involved. Additionally, the Administrative Process Act, in § 2.2-4006(A)(4)(c), allows the Board to adopt this regulatory amendment as a final exempt action as the changes are necessary to conform to federal law.

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