



Virginia
Regulatory
Town Hall

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Exempt Action Final Regulation Agency Background Document

Approving authority name	State Air Pollution Control Board
Primary action	9 VAC 5-140-900, 9 VAC 5-140-920, 9 VAC 5-140-930
Secondary action(s)	None
Regulation title	Regulation for Emissions Trading (9 VAC 5 Chapter 140)
Action title	NO _x SIP Call Budget (Rev. K08)
Date this document prepared	November 4, 2008

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Please provide a brief summary of the regulation, amendments to an existing regulation, or the regulation being repealed.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 (Part I of 9 VAC 5 Chapter 140) establishes a NO_x Budget Trading Program (i.e., NO_x SIP Call program) as a means of mitigating the interstate transport of ozone and nitrogen oxides including the following provisions: permitting allowance methodology, monitoring, banking, compliance supplement pool, compliance determination and opt-in provisions for sources not covered by the regulation.

Beginning May 31, 2004, electric generating units with a nameplate capacity greater than 25 MWe and non-electric generating units above 250 mmBtu will be subject to the provisions of the regulation. NO_x emissions from subject units shall be subject to a specific limited budget (measured in tons) during the summer months of May 1 through September 31, otherwise known as the control period. The NO_x budget shall be determined through a methodology based upon emission rates multiplied by heat input. If a unit does not use all of its allowances for a specific control period, those extra tons may be banked for future use or sold. If a unit exceeds the budget limit, additional allowances may be purchased or the source may use banked allowances to offset the amount of NO_x generated above the budget limit.

An allocation set-aside budget is available to accommodate new sources that receive permits and commence operation after the distribution to the qualifying units (those in operation at least two years before the distribution date).

On May 12, 2005 (70 FR 25162), EPA published the final Clean Air Interstate Rule (CAIR), designed to reduce the interstate transport of sulfur dioxide (SO₂) and nitrogen oxides (NO_x) across the eastern portion of the United States and help states and localities attain the 8-hour ozone and fine particles (PM_{2.5}) standards. In essence, this program was intended to replace the seasonal NO_x SIP Call program as well as create an annual trading program for NO_x and SO₂, starting in 2009.

On July 11, 2008, a three member panel of the U.S. Court of Appeals for the D.C. Circuit vacated the entire EPA CAIR regulation. In the absence of the EPA regulation, VA Code § 10.1-1328 does not provide a legal basis for a state CAIR regulation (Parts II, III and IV of 9VAC5-140) which is based upon the federal regulation; thus, state CAIR regulation can not be implemented.

The NO_x SIP Call program is still in effect and can be used to help the Commonwealth meet its obligation to reduce the transport of upwind NO_x emissions to downwind states. In reviewing the NO_x SIP Call regulation it was determined that regulatory language inadvertently ended the state budget in 2008.

To rectify this oversight, NO_x Trading Budgets for both EGU and non-EGU sources have been extended beyond 2008; however, the size of the NO_x Trading Budgets remain unchanged.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On October 23, 2008, the State Air Pollution Control Board took final action to adopt amendments to the regulation entitled "Regulation for Emissions Trading", specifically 9 VAC 5-140-900, 920 and 930 of the NOx SIP Call Trading Program (Part I of 9 VAC 5 Chapter 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 3 of the Administrative Process Act because they are corrections of technical errors.

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.

Additional Information

Please indicate that the text of the regulation, the reporting forms the agency intends to incorporate or use in administering the proposed regulation, a copy of any documents to be incorporated by reference are attached.

Please state that the Office of the Attorney General (OAG) has certified that the agency has the statutory authority to promulgate the regulation and that it comports with applicable state and/or federal law.

If the exemption claimed falls under § 2.2-4006 A 4 c of the APA please identify the federal law or regulations being relied upon for the final agency action.

The text of the regulation is attached.

Section 10.1-1308 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare. Letters providing written assurance from the Office of the Attorney General that (i) the Board has statutory authority to promulgate the final regulation amendments and (ii) the amendments qualify as an exemption under § 2.2-4006 A 3 of the Administrative Process Act are available upon request.

Family Impact

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. 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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