



Exempt Action Final Regulation Agency Background Document

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) citation	Part IX, 9VAC5-170
Regulation title	Regulation for General Administration
Action title	General Administration, Conflict of Interest (Rev. F14)
Document preparation date	September 11, 2014

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 14 (2010) 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.

Section 110(a)(2)(E)(ii) of the federal Clean Air Act requires that each applicable state implementation plan (SIP) provide requirements that the state comply with the requirements respecting state boards under § 128 of the Act. Subdivision (a)(1) of § 128 requires that each SIP contain requirements that any board or body that approves permits or enforcement orders under the Act shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under the Act. In Virginia, this is addressed in Code of Virginia § 10.1-1302, which states that no person appointed to the board shall be employed by persons subject to permits or enforcement orders of the board or receive a significant portion of his income, whether directly or indirectly, from persons subject to permits or enforcement orders of the board. Subdivision (a)(2) of § 128 requires that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed. With respect to subdivision (a)(2), the director of the Virginia Department of Environmental Quality issues air permits (§ 10.1-1322 and 9VAC5-170-180), and the State Air Pollution Control Board may issue a permit under § 10.1-1322.01. The authority to issue enforcement orders resides with the board (§ 10.1-1307 D) and the department director (§ 10.1-1307.3 and 9VAC5-170-180). Because there are no provisions in Virginia code or the board's regulations that directly address § 128(a)(2), the Virginia SIP must be amended to

incorporate the requirements of § 128(a)(2); the mechanism for accomplishing this is through the Regulation for General Administration, which covers general administrative actions.

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 5, 2014, the State Air Pollution Control Board took final action to adopt amendments to the Regulation for General Administration, 9VAC5-170. 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 law.

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.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
9VAC5-170-220			Add definitions of "disclosure form" and "potential conflict of interest." Needed to ensure that the requirements of Virginia state code are met, and to ensure proper implementation in the absence of any specific federal requirements.
	Part IX		Add a new part that covers the Clean Air Act conflict of interest requirements of § 128(a)(2). Needed to meet the requirements of § 128(a)(2) of the federal Clean Air Act.
	9VAC5-170-210		As required by § 128(a)(2) of the federal Clean Air Act, require that the board and the director, in their capacity of approving permits or enforcement orders, adequately disclose any potential conflicts of interest. Needed to meet the requirements of § 128(a)(2) of the federal Clean Air Act.

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.

These regulation amendments have no impact on small business.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

These regulation amendments have no impact on families.

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.

EPA - U.S. Environmental Protection Agency
SIP - State Implementation Plan

TEMPLATES\EXEMPT\TH09
REGDEV\F14-08TF