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Exempt Action - Final Regulation Agency Background Document

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) citation(s)	Primary action: 9VAC5-20-21, Documents Incorporated by Reference
Regulation title(s)	Regulations for the Control and Abatement of Air Pollution
Action title	Technical Documents Incorporated by Reference, amend reference to 40 CFR Part 55 (Revision E19)
Final agency action date	December 6, 2019
Date this document prepared	November 12, 2019

While a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

Code of Virginia § 10.1-1307.03, Requirements applicable to Outer Continental Shelf sources, requires that the board adopt regulations to implement and enforce the requirements of § 328 of the federal Clean Air Act relating to requirements to control air pollution from Outer Continental Shelf (OCS) sources located offshore of the Commonwealth. The regulations may not differ materially from the regulations promulgated by the U.S. Environmental Protection Agency (EPA) in implementing § 328 of the Clean Air Act (40 CFR Part 55). Accordingly, 9VAC5-20-21 (Documents Incorporated by Reference) was amended to add 40 CFR Part 55. Subsequently, EPA informed the department that three specific sections of 40 CFR Part 55 were not delegable to the states--§ 55.5 (Corresponding onshore area designation), § 55.11 (Delegation), and § 55.12 (Consistency Updates)--because, as stated in 40 CFR 55.11(a), the authority to implement and enforce those provisions will not be delegated by EPA. This regulatory action clarifies that those provisions are not incorporated. The department is requesting approval of draft final regulation amendments that meet federal statutory and regulatory requirements. Approval of the amendments will ensure that the Commonwealth will be able to meet its obligations under the federal Clean Air Act.

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.

OCS - Outer Continental Shelf

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 December 6, 2019, the State Air Pollution Control Board took final action to adopt amendments to regulations entitled "Regulations for the Control and Abatement of Air Pollution," specifically, Technical Documents Incorporated by Reference (9VAC5-20-21). 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 because they consist only of the correction of a technical error.

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.

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, board decision, etc.). "Mandate" is defined as "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

Chapter 689, 2010 Acts of the Assembly amended the Code of Virginia by adding a new § 10.1-1307.03, Requirements applicable to Outer Continental Shelf sources. The code provisions require that the board, by January 1, 2011, adopt any regulations necessary to implement and enforce the requirements of § 328 of the federal Clean Air Act relating to requirements to control air pollution from Outer Continental Shelf (OCS) sources located offshore of the Commonwealth. The regulations may not differ materially from the regulations promulgated by the U.S. Environmental Protection Agency (EPA) in implementing § 328 of the Clean Air Act (that is, 40 CFR Part 55). The regulations of the board were therefore be revised such that the federal OCS program of 40 CFR Part 55 is adopted. This enables EPA to delegate implementation and enforcement of 40 CFR Part 55 to the Commonwealth, and, in turn, enables the Commonwealth to requires limitations on emissions as needed in order to attain and maintain the ambient air quality standards, and to meet prevention of significant deterioration (PSD) requirements.

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

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. Written assurance from the Office of the Attorney General that the State Air Pollution Control Board possesses the statutory authority to promulgate the proposed regulation amendments is available upon request.

Purpose

Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

The amendment consists of the correction of a technical error. This correction is needed in order for the OCS program, which is designed to extend onshore air pollution protections offshore, to operate correctly and effectively, thus protecting human health and welfare.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

9VAC5-20-21 E 1 a (3) is amended to specify that 40 CFR 55.5, 55.11, and 55.12 are not incorporated.

Issues

Please identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

Public: Advantages to the regulated community include more certainty, as consistency with EPA requirements enables assurance regarding specific federal and state requirements. The general public will benefit from a reduction in the health and welfare effects of air pollution. Properly implementing federal requirements will ensure the control of air pollution, which is proven to harm human health and welfare.

Department: The department will benefit by meeting its federal mandates in a consistent and clear manner.

There are no disadvantages associated with this regulatory action to either the public or the Commonwealth.

Agencies, Localities, and Other Entities Particularly Affected

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact, which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected:

No other state agencies will be particularly affected by this regulatory action.

Localities Particularly Affected:

There are no localities particularly affected.

Other Entities Particularly Affected:

There are no other entities particularly affected.

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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

This regulation meets the requirements of federal law and regulation. Any less stringent compliance requirements, any delays in adopting the standards, any different compliance or reporting requirements, any substitution of performance standards, and any exemption of small businesses from these requirements will not meet the minimum requirements of federal law and regulation. Any such changes would compromise the effectiveness of the regulation in protecting the health and welfare of the public.

Detail of All Changes Made in this Regulatory Action

*Please list all changes proposed in this exempt action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. *Please put an asterisk next to any substantive changes.*

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC5-20-21 E 1 a (3)	n/a	Incorporates 40 CFR Part 55 by reference.	Amend to specify that 40 CFR 55.5, 55.11, and 55.12 are not incorporated. Needed in order to ensure that Virginia's program is legally correct and to meet federal requirements. No significant impacts are anticipated.

Family Impact

In accordance with § 2.2-606 of the Code of Virginia, please assess the potential impact of the proposed 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 the proposal will have a direct impact on families.

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