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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Air Pollution Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	Primary: Article 5 (9VAC5-50-400 et seq.), 9VAC5-50 Secondary: Article 1 (9VAC5-60-60 et seq.) and Article 2 (9VAC5-60-90 et seq.)
<b>VAC Chapter title(s)</b>	New and Modified Stationary Sources (9VAC5-50), Hazardous Air Pollutant Sources (9VAC5-60)
<b>Action title</b>	Federal Documents Incorporated by Reference (Rev. D23)
<b>Final agency action date</b>	December 1, 2023
<b>Date this document prepared</b>	November 16, 2023

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*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.*

The regulation amendments update state regulations that incorporate by reference certain federal regulations to reflect the Code of Federal Regulations as published on July 1, 2023. The date of the Code of Federal Regulations book being incorporated by reference is being updated to the latest version. Finally, two new federal standards have been added.

### Mandate and Impetus

*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, or*

*board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."*

Section 111 of the federal Clean Air Act requires that EPA develop new source performance standards (NSPSs). The Standards of Performance for New Stationary Sources are found in 40 CFR Part 60. Emissions guidelines for existing sources are also codified under 40 CFR Part 60.

Hazardous air pollutants (HAPs) are pollutants for which no ambient air quality standard is applicable, yet pose the risk of serious health problems. EPA's program for dealing with HAPs is established in § 112 of the Clean Air Act. The National Emission Standards for Hazardous Air Pollutants are found in 40 CFR Part 61. In addition, EPA controls HAPs for specific source categories as required under § 112. The National Emission Standards for Hazardous Air Pollutants for Source Categories are more familiarly referred to as Maximum Achievable Technology Standards (MACT), and are found in 40 CFR Part 63.

The Act provides that each state may develop and submit to EPA a procedure for implementing and enforcing these standards. If EPA finds the state procedures adequate, the state is delegated the authority to implement and enforce the standards. Virginia has sought and received this authority. In order to retain this authority, the state's regulations must be consistent with the federal requirements.

**Acronyms and Definitions**

*Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

- CFR - Code of Federal Regulations
- HAP - hazardous air pollutant
- MACT - Maximum Achievable Control Technology
- NESHAP - National Emissions Standards for Hazardous Air Pollutants
- NSPS - New Source Performance Standard

**Statement of Final Agency Action**

*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 November 16, 2023, the State Air Pollution Control Board took final action to adopt amendments to the Regulations for the Control and Abatement of Air Pollution, specifically federal regulations incorporated by reference (Article 5 of 9VAC5-50, and Articles 1 and 2 of 9VAC5-60). 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 U.S. Environmental Protection Agency (EPA) regulations.

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.

**Legal Basis**

*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.*

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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**

*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’s intended to solve.*

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The regulatory changes are needed in order to meet the mandates of the federal Clean Air Act and its implementing regulations in order to protect public health and welfare from hazardous air pollutants and pollution generated by categories of new sources, which are proven to be detrimental to both health and welfare. The goal of the regulatory changes is to address air pollution throughout the Commonwealth by controlling emissions of hazardous air pollutants and pollution emitted by categories of new and existing sources. The regulation amendments update the version of regulations being implemented in Virginia to the most current federal versions, as required by the Clean Air Act and the state’s delegation agreement with EPA.

**Substance**

*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.*

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The regulation amendments update state regulations that incorporate by reference certain federal regulations (NSPS, NESHAP and MACT) to reflect the Code of Federal Regulations as published on July 1, 2023. The date of the Code of Federal Regulations book being incorporated by reference is being updated to the latest version. In addition, two new NSPSs have been added: Subpart KKa of 40 CFR Part 60, Standards of Performance for Lead Acid Battery Manufacturing Plants for Which Construction, Modification or Reconstruction Commenced After February 23, 2022, and Subpart MMA of 40 CFR Part 60, Standards of Performance for Automobile and Light Duty Truck Surface Coating Operations for which Construction, Modification or Reconstruction Commenced After May 18, 2022.

**Issues**

*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.*

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Public: Advantages to the regulated community include more certainty, as consistency with EPA requirements provides assurance regarding specific federal and state requirements. The general public will benefit from a reduction in the health and welfare effects of air pollution, as the most current standards are more protective of human health and welfare. Properly implementing federal requirements will ensure the control of numerous types of air pollutants, which are proven to harm human health and welfare. There is an overall benefit to all sectors of the public in that the Commonwealth is retaining its ability to directly manage its sources of air pollution rather than relying on the federal government.

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.

**Requirements More Restrictive than Federal**

*Identify and describe any requirement of the regulatory change that is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.*

There are no requirements more restrictive than the federal.

**Agencies, Localities, and Other Entities Particularly Affected**

*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.

**Details of All Changes Proposed in this Regulatory Action**

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* 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
*9VAC5-50-400	n/a	General requirements for NSPSSs.	Updates referenced Code of Federal Regulations to the most current version. Needed in order to meet federal requirements for protecting human health and welfare. No significant impacts are anticipated.
*9VAC5-50-410	n/a	Designated standards of performance.	Adds 2 new standards to list of federal standards implemented by the state on the behalf of EPA. Needed in order to meet federal requirements for protecting human health and welfare. No significant impacts are anticipated.
*9VAC5-60-60	n/a	General requirements for NESHAPs.	Updates referenced Code of Federal Regulations to the most current

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			version. Needed in order to meet federal requirements for protecting human health and welfare. No significant impacts are anticipated.
*9VAC5-60-90	n/a	General requirements for MACTs.	Updates referenced Code of Federal Regulations to the most current version. Needed in order to meet federal requirements for protecting human health and welfare. No significant impacts are anticipated.

**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.*

These regulation amendments meet 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 regulations in protecting the health and welfare of the public.

**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.*

No family impacts are anticipated.