



## Exempt Action Final Regulation Agency Background Document

<b>Approving authority name</b>	State Air Pollution Control Board
<b>Primary action</b>	9 VAC 5-140-3400
<b>Secondary action(s)</b>	None
<b>Regulation title</b>	Regulation for Emissions Trading (9 VAC 5 Chapter 140)
<b>Action title</b>	CAIR SO <sub>2</sub> Budget (Rev. E07)
<b>Date this document prepared</b>	October 22, 2007

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*Please provide a brief summary of the regulation, amendments to an existing regulation, or the regulation being repealed.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.*

Chapter 867 of the 2006 Acts of the Assembly adds § 10.1-1328 A 2 to the Code of Virginia, which establishes the first phase start date (2010) for the CAIR SO<sub>2</sub> Annual trading budget.

However, 9 VAC 5-140-3400 of Article 5 (CAIR SO<sub>2</sub> Allowance Allocations) of the SO<sub>2</sub> Annual Trading Program (Part IV of 9 VAC 5 Chapter 140) is not consistent with Code of Virginia in that the start date for the first phase CAIR SO<sub>2</sub> Annual trading budget is 2009. Various other provisions of the regulation and supporting documents accompanying the adoption of the regulation indicate that the start date should be 2010 not 2009; thus, the start date of 2009 specified in the regulation for the CAIR SO<sub>2</sub> budget is a technical error.

**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 10, 2007, the State Air Pollution Control Board adopted final amendments to the regulation entitled "Regulation for Emissions Trading", specifically 9 VAC 5-140-3400 of Article 5 (CAIR SO<sub>2</sub> Allowance Allocations) of the SO<sub>2</sub> Annual Trading Program (Part IV of 9 VAC 5 Chapter 140). The regulation amendments are 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. Section 10.1-1328 A requires that the Board adopt a regulation that will allow the state to implement the EPA Clean Air Interstate Rule (CAIR) and facilitate the trading of allowances within the United States. 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.*

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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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