

## MEMORANDUM

**FROM:** Gray O'Dwyer  
Assistant Attorney General

**DATE:** September 22, 2020

**RE:** Proposed Exempt Regulations - 9VAC5-50-400 *et seq.*; 9VAC5-20-21, 9VAC5-40-5970; 9VAC5-60-60 *et seq.*; and 9VAC5-60-90 *et seq.*

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*Please note that this memorandum does not constitute an opinion, formal or informal, of the Attorney General. Rather, this memorandum contains the legal analysis of the individual staff member providing it.*

It is my view that the Virginia Air Pollution Control Board ("Board") has the authority to promulgate these proposed changes to its regulations in 9VAC5-50-400 *et seq.*; 9VAC5-20-21, 9VAC5-40-5970; 9VAC5-60-60 *et seq.*; and 9VAC5-60-90 *et seq.*

It is also my view that these changes are exempted from the Virginia Administrative Process Act, §§ 2.2-4000 *et seq.*, because they are required to conform with federal law and regulations. Virginia Code § 2.2-4006, subsection 4(c) exempts regulatory changes "[n]ecessary to meet the requirements of federal law or regulations."

The foregoing conclusion is my own. It does not constitute an opinion, formal or informal, of the Attorney General.