



Exempt Action Final Regulation Agency Background Document

Approving authority name	State Air Pollution Control Board
Primary action	Article 2, 9VAC5-60
Secondary action(s)	Article 5, 9VAC5-50; Article 1, 9VAC5-60
Regulation title	Regulations for the Control and Abatement of Air Pollution
Action title	Federal Documents Incorporated by Reference (Rev. I08)
Date this document prepared	January 20, 2009

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Please provide a brief summary of the regulation, amendments to an existing regulation, or the regulation being repealed.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

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, 2008. Below is a list of the new standards the department is recommending be incorporated into the state regulations by reference:

1. No new NSPSs are being incorporated. Standards that are not being incorporated are listed with a note that enforcement of the standard rests with EPA. This is done for consistency with Article 1 of 9VAC5-60 (NESHAPs) and in order to make the rules more user-friendly. The date of the Code of Federal Regulations book being incorporated by reference is also being updated to the latest version.

2. No new NESHAPs are being incorporated. The date of the Code of Federal Regulations book being incorporated by reference is being updated to the latest version.

3. 13 new MACTs are being incorporated: Clay Ceramics Manufacturing Area Sources (Subpart RRRRRR, 40 CFR 63.11435-11447); Glass Manufacturing Area Sources (Subpart SSSSSS, 40 CFR 63.11448-11461); Secondary Nonferrous Metals Processing Area Sources (Subpart TTTTTT, 40 CFR 63.11462-11474); Hospital Ethylene Oxide Sterilizer Area Sources (Subpart WWWW, 40 CFR 63.10382-10448); Electric Arc Furnace Steelmaking Facility Area Sources (Subpart YYYYYY, 40 CFR 63.1068-10692); Iron and Steel Foundries Area Sources (Subpart ZZZZ, 40 CFR 63.10880-10906);

Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities, Area Sources (SubpartBBBBBB ,40 CFR 63.11080-11100); Acrylic and Modacrylic Fibers Production Area Sources (Subpart LLLLLL, 40 CFR 63.11393-11399); Carbon Black Production Area Sources (Subpart MMMMMM, 40 CFR 63.11400-11406); Chemical Manufacturing Area Sources: Chromium Compounds (Subpart NNNNNN, 40 CFR 63.11407-63.11413); Flexible Polyurethane Foam Production and Fabrication Area Sources (Subpart OOOOOO, 40 CFR 63.11414-11420); Lead Acid Battery Manufacturing Area Sources (Subpart PPPPPP, 40 CFR 63.11421-11427); and Wood Preserving Area Sources (Subpart QQQQQQ, 40 CFR 63.11428-11434). Standards that are not being incorporated are listed with a note that enforcement of the standard rests with EPA. This is done for consistency with Article 1 of 9VAC5-60 (NESHAPs) and in order to make the rules more user-friendly. The date of the Code of Federal Regulations book being incorporated by reference is being updated to the latest version.

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 December 15, 2008, 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, federal regulations incorporated by reference (9VAC5-50, Article 5 and 9VAC5-60, Articles 1 and 2). 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.

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. 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 4 c of the Administrative Process Act are available upon request.

Section 111 of the Clean Air Act requires that EPA develop standards of performance for new stationary sources (new source performance standards, or NSPSs). NSPSs are found in 40 CFR Part 60. Section 112 of the Clean Air Act requires that EPA develop and maintain a list of hazardous air pollutants (HAPs), and develop national emission standards (NESHAPs) for these pollutants. NESHAPs are found in 40 CFR 61. In § 112(d)(1), EPA is required to promulgate regulations establishing emission standards for each category or subcategory of major and area sources of HAPs listed according to the requirements of §§ 112(b) and (c). Once EPA has identified the specific source categories of major and area sources that it intends to regulate, it must promulgate MACT standards for each. MACT standards are found in 40 CFR Part 63.

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.

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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