



Exempt Action Final Regulation Agency Background Document

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) citation	Article 8, 9VAC5-80
Regulation title	Regulations for the Control and Abatement of Air Pollution
Action title	Major New Source Review (Rev. A13)
Document preparation date	March 2013

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 14 (2010) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Article 8 of 9VAC5 Chapter 80 (Permits for Stationary Sources) applies to the construction or reconstruction of new major stationary sources or major modifications to existing ones in prevention of significant deterioration (PSD) areas. This major new source review (NSR) permitting program requires that the owner obtain a permit prior to the construction or modification of a major source, including information as may be needed in order to determine compliance with applicable control technology and other standards, and to assess the impact of the emissions from the facility on air quality.

On October 25, 2012 (77 FR 65107), the U.S. Environmental Protection Agency (EPA) promulgated final amendments revising the NSR permitting program for PSD areas. The amendments revise the definition of "regulated NSR pollutant" to remove the term "particulate matter emissions" from the requirement to include the condensable particulate matter fraction. "Particulate matter emissions" refers to the non-criteria indicator for particulate matter (PM) that is regulated under new source performance standards (NSPSs). EPA has determined that only PM₁₀ and PM_{2.5} may include condensable PM, unless a specific NSPS or applicable implementation plan otherwise requires the condensable portion to be included. In Virginia, where the state is administering the NSR program under an approved state implementation plan (SIP), the state may adopt and submit revisions to the SIP to reflect the rule revisions. The revised SIP should be the same as or equivalent to the revised federal program.

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 March 13, 2013, 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, Permits for Major Stationary Sources and Major Modifications Locating in Prevention of Significant Deterioration Areas (9VAC5-80, Article 8). 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 and 4 c of the Administrative Process Act because they correct a technical error, and 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.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
9VAC5-80-1615 B			Correction of a typographical error. Needed in order for the proper cross-reference to be used.
9VAC5-80-1615 C			Indicate that only PM ₁₀ and PM _{2.5} may consider condensable forms of particulate matter in the context of new source review for PSD areas. Needed in order to properly implement the federal PSD permitting program and for the state to retain its ability to implement the program.

Regulatory flexibility analysis

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) the establishment of less stringent compliance or reporting requirements; (2) the establishment of less

stringent schedules or deadlines for compliance or reporting requirements; (3) the consolidation or simplification of compliance or reporting requirements; (4) the establishment of 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 proposed regulation.

An analysis of the proposal was completed for alternative regulatory methods that will minimize the adverse impact on small businesses without compromising health, safety, environmental and economic welfare.

This regulation meets the minimum requirements of the federal Clean Air Act and the minimum requirements of 40 CFR Part 51, and does not differ materially from the pertinent EPA regulations. 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 federal requirements. Any such changes would compromise the effectiveness of the new requirements in protecting the health and welfare of the public, and could potentially subject the Commonwealth to federal control over the state permitting program.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

It is not anticipated that these regulation amendments will have a direct impact on families.

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.

EPA - U.S. Environmental Protection Agency

NSPS - new source performance standard

NSR - new source review

PM - particulate matter

PM₁₀ - particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers

PM_{2.5} - particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers

SIP - state implementation plan

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