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Fast-Track Regulation Agency Background Document

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| Agency name | State Air Pollution Control Board |
| Virginia Administrative Code (VAC) citation(s) | 9VAC5-10 (General Definitions) |
| Regulation title(s) | Regulations for the Control and Abatement of Air Pollution |
| Action title | Amend the definition of VOC to include a substance no longer considered to be a VOC (Rev. I16) |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The general definitions of 9VAC5-10 impose no regulatory requirements in and of themselves but provide support to other provisions of the Regulations for the Control and Abatement of Air Pollution. The U.S. Environmental Protection Agency (EPA) has revised the definition of volatile organic compound (VOC) to add 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane (also known as HFE-347pcf2) to the list of substances excluded from the definition of VOC on the basis that this substance make a negligible contribution to tropospheric ozone formation. The state definition must now be revised accordingly.

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
NAAQS - National Ambient Air Quality Standards
SIP - state implementation plan
VOC - volatile organic compound

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 [after board action insert date of board action], the State Air Pollution Control Board:

1. Authorized the department to promulgate the attached proposal for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The Board's authorization constituted its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.

2. Authorized the department to set an effective date 15 days after close of the 30-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the department does not find it necessary to make any changes to the proposal.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

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.

Promulgating Entity

The promulgating entity for this regulation is the State Air Pollution Control Board.

Federal Requirements

Section 109 (a) of the federal Clean Air Act requires EPA to prescribe national ambient air quality standards (NAAQS) to protect public health. Section 110 mandates that each state adopt and submit to EPA a state implementation plan (SIP) which provides for the implementation, maintenance, and enforcement of the NAAQS. Ozone, one of the pollutants for which there is a NAAQS, is in part created by emissions of VOCs. Therefore, in order to control ozone, VOCs must be addressed in Virginia's SIP.

40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of SIPs. Subpart F of Part 51, Procedural Requirements, includes § 51.100, which consists of a list of definitions. 40 CFR 51.100 contains a definition of VOC. This definition is revised by EPA in order to add or remove VOCs as necessary. If it can be demonstrated that a particular VOC is "negligibly reactive"--that is, if it can be shown that a VOC is not as reactive and therefore does not have a significant effect on tropospheric ozone (ground-level smog)--then EPA may remove that substance from the definition of VOC.

On August 1, 2016 (81 FR 50330), EPA revised the definition of VOC to exclude 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane (also known as HFE-347pcf2), which became effective on September 30, 2016.

State Requirements

This specific amendment is not required by state mandate. Rather, Virginia's Air Pollution Control Law gives the State Air Pollution Control Board the discretionary authority to promulgate regulations "abating, controlling and prohibiting air pollution throughout or in any part of the Commonwealth" (§ 10.1-1308 A). The law defines such air pollution as "the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people or life or property" (§ 10.1-1300).

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the general definitions chapter is not to impose any regulatory requirements in and of itself, but to provide a basis for and support to other provisions of the Regulations for the Control and Abatement of Air Pollution, which are in place in order to protect public health and welfare. The proposed amendment is being made to ensure that the definition of VOC, which is crucial to most of the regulations, is up-to-date and scientifically accurate, as well as consistent with the overall EPA requirements under which the regulations operate.

Rationale for using fast-track process

Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

The definition of VOC is being revised to add a less-reactive substance to the list of substances not considered to be VOCs. As discussed elsewhere, this amendment is not expected to affect a significant number of sources or have any significant impact, other than a positive one, on air quality overall. Additionally, removal of this substance at the federal level was accompanied by detailed scientific review and public comment. Therefore, no additional information on the reactivity of this substance or the appropriateness of its removal is anticipated.

Substance

Please 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.

The general definitions impose no regulatory requirements in and of themselves but provide support to other provisions of the Regulations for the Control and Abatement of Air Pollution. The list of substances not considered to be VOCs in Virginia has been revised to add 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane.

Issues

Please identify the issues associated with the proposed regulatory action, 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, please indicate.

1. Public: The general public health and welfare will benefit because the revision may encourage the use of the delisted substance in place of products containing more reactive and thereby more polluting substances. This substance is considered to be negligibly reactive in the formation of ground level (tropospheric) ozone, and is not considered to be a hazardous air pollutant. Therefore, this substance does not have a negative effect on human health or the environment.

Excluding this substance as a VOC will make it easier and less expensive for industry to use it. Companies that use this substance in place of more reactive substances may also benefit by reducing their VOC emissions and concomitant reductions in permitting and other regulatory requirements.

2. Department: The amendment will allow the department to focus VOC reduction strategies on substances that have a negative impact on human health and the environment.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include 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 statement to that effect.

The proposed regulation amendments are not more restrictive than the applicable legal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There is no locality which will bear any identified disproportionate material air quality impact due to the proposed regulation which would not be experienced by other localities.

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) 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.

The regulation applies to all facilities, including small businesses. Any (1) establishment of less stringent compliance or reporting standards; (2) establishment of less stringent schedules or deadlines for compliance or reporting requirements; (3) consolidation or simplification of compliance or reporting requirements; (4) establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; or (5) exemption of small businesses from all or any part of the requirements contained in the proposed regulation for all small businesses would directly, significantly and adversely affect the benefits that would be achieved through the implementation of the regulation.

Public participation

Please include a statement that in addition to any other comments on the regulation, the agency is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community and the impacts of the regulation on farm or forest land preservation.

In addition to any other comments, the board is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community and on any impacts of the regulation on farm and forest land preservation. Also, the board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reported, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Karen G. Sabasteanski, Policy Analyst, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, Virginia, 23218 (email karen.sabasteanski@deq.virginia.gov, fax 804-698-4510). Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at www.townhall.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Public participation notice

If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules; or the Department finds it necessary, based on public comments or for any other reason, to make any changes to the proposal, the agency shall: 1) file notice of the objection/reason with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

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| <p>Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p> | <p>It is not expected that the regulation will result in any cost to the department beyond that currently in the budget. The sources of department funds to carry out this regulation are the general fund and the federal trust (grant money provided by EPA under § 105 of the federal Clean Air Act or permit fees charged to affected entities under the permit program). The activities are budgeted under the following program (code)/subprogram (code): (i) Environmental and Resource Management (51300)/Air Protection Permitting (51325) and Air Protection Compliance and Enforcement (51326) and Air Protection Planning and Policy (51328). The costs are expected to be ongoing.</p> |
| <p>Projected cost of the new regulations or changes to existing regulations on localities.</p> | <p>The projected cost of the regulation on localities is not expected to be beyond that of other affected entities.</p> |
| <p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p> | <p>Asahi Glass Company, AGC Chemicals America, Inc., manufactures 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane (HFE-347pcf2; CAS number 406-78-0). The company has indicated that HFE-347pcf2 may be used in a variety of applications as a precision cleaning agent to remove contaminants including oil, flux, and fingerprints from items like medical devices, artificial implants, military and aerospace items, electric components, printed circuit boards, optics, jewelry, ball bearings, aircraft guidance systems, film, relays, and a variety of metal components, among others.</p> |
| <p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p> | <p>HFE-347pcf2 is not manufactured in Virginia, and there are no facilities in Virginia known to be using this substance. A facility located in Virginia that uses precision cleaning agents may some day eventually wish to use this substance; however, the department has not identified any specific facilities that plan to do so.</p> |
| <p>All projected costs of the new regulations or changes to existing regulations for affected</p> | <p>Because there are currently no facilities in the state known to be using this substance, no facility would</p> |

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| <p>individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p> | <p>realize any cost savings associated with the removal of this substance as a VOC. A facility that is not currently using this substance but at some point does choose to do so may realize a cost savings; in the absence of any currently interested facilities, the department has no way of quantifying any potential savings.</p> |
| <p>Beneficial impact the regulation is designed to produce.</p> | <p>The general public health and welfare will likely benefit because the revision may encourage the use of the affected substance in place of products containing more reactive and thereby more polluting substances. Due to its low photochemical reactivity, this substance is considered to be negligibly reactive in the formation of ground level ozone, and is not considered to be hazardous. Therefore, this substance does not have a negative effect on human health or the environment.</p> <p>Excluding this substance as VOC will make it easier and less expensive for industry to use it. Companies that use this substance in place of more reactive substances may also benefit by reducing their VOC emissions and concomitant reductions in permitting and other regulatory requirements.</p> <p>The amendment will allow the department to focus VOC reduction strategies on substances that have a negative impact on human health and the environment.</p> |

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

Alternatives to the proposed regulation amendment were considered by the board. The board determined that the first alternative is appropriate, as it is the least burdensome and least intrusive alternative that fully meets the purpose of the regulation. The alternatives considered by the board, along with the reasoning by which the board has rejected any of the alternatives being considered, are discussed below.

1. Amend the regulation to satisfy the provisions of the law and associated regulations and policies. This option was chosen because it meets the stated purpose of the regulation: to protect public health and welfare by encouraging the use of a substance that has less impact on ground-level ozone.

2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. This option was not chosen because it would not meet the stated purpose of the regulation.

3. Take no action to amend the regulation and continue to use an outdated definition. This option was not chosen because it would not meet stated purpose of the regulation.

Family impact

Please 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.

Detail of changes

*Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please list separately: (1) all differences between the **pre-emergency** regulation and this proposed regulation; and 2) only changes made since the publication of the emergency regulation.*

| Current section number | Proposed new section number, if applicable | Current requirement | Proposed change, intent, rationale, and likely impact of proposed requirements |
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| 9VAC5-10-20, definition of "volatile organic compound" | subdivision iii | Definition does not include HFE-347pcf2. | Revise definition to add HFE-347pcf2 to the list of substances not considered to be VOC. Needed for public health and welfare benefit, and consistency with federal requirements. |