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Exempt Action Final Regulation Agency Background Document

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| Agency name | State Air Pollution Control Board |
| Virginia Administrative Code (VAC) citation(s) | Parts II through IV, 9VAC5-140 |
| Regulation title(s) | Regulations for the Control and Abatement of Air Pollution |
| Action title | Repeal regulations governing the Clean Air Interstate Rule (CAIR) Program (Rev. D16). |
| Final agency action date | September 9, 2016 |

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA) or an agency's basic statute, the agency is not required, however, 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, Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 Clean Air Interstate Rule (CAIR) was an emissions trading program intended to control nitrogen oxides (NO_x) and sulfur dioxide (SO₂) which contribute to harmful levels of fine particle matter and ozone in downwind states. On August 8, 2011 (76 FR 48208), EPA replaced CAIR with the Cross-State Air Pollution Rule (CSAPR). CSAPR Phase 1 implementation was scheduled for 2015, with Phase 2 beginning in 2017. CSAPR is being implemented in Virginia under the associated federal implementation plan (FIP) and no further regulatory action is needed at the state level for this purpose. [Chapter 291](#) of the 2011 Acts of Assembly requires that §§ [10.1-1327](#) and [10.1-1328](#), and any regulations implementing the Clean Air Interstate Rule (CAIR), be repealed when facilities in the Commonwealth become subject to the requirements of a FIP adopted by EPA in response to the remand of CAIR. Because CAIR has been replaced by CSAPR, and Virginia is subject to the CSAPR FIP, Virginia may now, as required by Chapter 291, repeal its CAIR regulations.

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.

CAIR - Clean Air Interstate Rule
 CSAPR - Cross-State Air Pollution Rule
 EPA - U.S. Environmental Protection Agency
 FIP - federal implementation plan
 NO_x - nitrogen oxides
 SO₂ - sulfur dioxide

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 September 9, 2016, the State Air Pollution Control Board took final action to adopt amendments to regulations entitled "Regulation for Emissions Trading," specifically, NO_x Annual Trading Program, NO_x Ozone Season Trading Program, and SO₂ Annual Trading Program (Parts II, III, and IV of 9VAC5-140). 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 a and c of the Administrative Process Act because they are necessary to conform to Virginia statutory law, and are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the pertinent 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.

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.

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 |
|------------------------|--|---|---|
| Part II of 9VAC5-140 | | Implement the CAIR NO _x Annual Trading Program | Repeal the part in its entirety. Needed in order to remove a federal requirement that is no longer in place, and to meet the requirements of state law. |
| Part III of 9VAC5-140 | | Implement the CAIR NO _x Ozone Season Trading Program | Repeal the part in its entirety. Needed in order to remove a federal requirement that is no longer in place, and to meet the requirements of state law. |
| Part IV of 9VAC5-140 | | Implement the CAIR SO ₂ Annual Trading Program | Repeal the part in its entirety. Needed in order to remove a federal requirement that is no longer in place, and to meet the requirements of state law. |

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.

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.

These regulation amendments meet the minimum requirements of the federal Clean Air Act and state law, and do not differ materially from the pertinent EPA regulations. Because outdated regulatory provisions are being removed, there is no impact on compliance or reporting requirements, schedules or deadlines, and no impact on small businesses.

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