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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Air Pollution Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	Primary action: 9VAC5-145
<b>VAC Chapter title(s)</b>	Regulations for Control of Greenhouse Gases
<b>Action title</b>	Prohibitions on Use of Certain Hydrofluorocarbons in Specific End-uses (Rev. D20)
<b>Final agency action date</b>	April 23, 2021
<b>Date this document prepared</b>	March 25, 2021

Although a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

A new regulation (9VAC5-145) has been established in order to meet a legislative mandate, the purpose of which is to control greenhouse gas emissions from the use of HFCs. The prohibitions and restricted end-uses of 40 CFR Part 82, Subpart G, Appendices U and V are incorporated into the regulation by reference. Exemptions are provided for sell-through and use of products and equipment manufactured prior to the compliance dates in the regulation; exemptions required by the federal American Innovation and Manufacturing (AIM) Act of 2020; and extruded polystyrene boardstock products, and equipment manufactured in Virginia intended only for sale and distribution outside of Virginia. Compliance dates begin as of January 1, 2022 and any later compliance dates provided in Appendices U and V are preserved. A compliance date feasibility study is required from Virginia manufacturers of extruded polystyrene boardstock products so that, if possible, a feasible compliance date earlier than January 1, 2036 can be determined after the regulation is effective.

**Mandate and Impetus**

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). “Mandate” is defined as “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

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The 2020 Acts of Assembly Chapter 1289 (Budget Bill), Item 378, subdivision B 2 required the State Air Pollution Control Board to adopt regulations to prohibit the sale, lease, rent, installation or entry into commerce in Virginia of any products or equipment that use or will use hydrofluorocarbons (HFCs) for the applications and end uses restricted by Appendix U and Appendix V of Subpart G of 40 CFR. Part 82, as those read on January 3, 2017. Additionally, in subdivision B 3, it provided that regulations adopted by the State Air Pollution Control Board to initially implement the provisions of this item be exempt from Chapter 40 of Title 2.2, Code of Virginia, and also provided that the regulation become effective no later than July 1, 2021.

An amendment to Item 378 was enacted during the subsequent Special Session I of the 2020 General Assembly (Chapter 56 of the 2020 Special Session I Acts of Assembly) requiring that the board not prohibit the use of hydrofluorocarbons in the manufacturing process by extruded polystyrene (XPS) boardstock and billet manufacturers located in Virginia until the Board has solicited input from those manufacturers in order to determine and set a feasible date by which such manufacturers must be required to comply. The amendment also directed the board to solicit input from a workgroup of relevant stakeholders in developing the regulation.

**Acronyms and Definitions**

*Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.*

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AIM – American Innovation and Manufacturing Act

CFR – U. S. Code of Federal Regulations

EPA – U. S. Environmental Protection Agency

H. R. – U. S. House of Representatives bill

HFC – Hydrofluorocarbons

XPS – Extruded polystyrene

**Statement of Final Agency Action**

*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.*

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On April 23, 2021, the State Air Pollution Control Board took final action to adopt the Regulation for Control of Greenhouse Gases (9VAC5-145). The regulatory action is to be effective on June 1, 2021.

The regulation is exempt from the state administrative procedures for adoption of regulations contained in the Administrative Process Act by the provisions of the 2020 Acts of Assembly Chapter 1289 (Budget Bill), Item 378, subdivision B 3.

## Legal Basis

*Identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.*

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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 regulation is available upon request.

### Promulgating Entity

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

### State Requirements

Chapter 1289 of the 2020 Acts of Assembly (the Budget Bill), Item 376, as amended by Chapter 56 of the 2020 Special Session I Acts of Assembly requires that: (i) the Board adopt regulations to prohibit the sale, lease, rent, installation or entry into commerce in Virginia of any products or equipment that use or will use hydrofluorocarbons for the applications and end uses restricted by Appendix U and Appendix V of Subpart G of 40 CFR Part 82, as those read on January 3, 2017; (ii) the regulations adopted by the State Air Pollution Control Board to initially implement the regulation be exempt from Chapter 40 of Title 2.2, Code of Virginia, and (iii) the regulation shall become effective no later than July 1, 2021. As amended, the budget bill also required that the Board (i) solicit input from extruded polystyrene boardstock and billet manufacturers located in Virginia in order to determine and set by regulation a feasible date by which such manufacturers must be required to comply, and (ii) solicit input from a workgroup of relevant stakeholders when developing those regulations.

### Federal Requirements

There is no applicable federal law or regulation requiring adoption of this regulation.

## Purpose

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.*

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This regulation is needed to meet specific requirements of the 2020 Acts of Assembly, as amended.

Greenhouse gases have been identified by the U. S. Environmental Protection Agency (EPA) as contributing to global warming, rise in sea levels, and localized climate changes. HFCs are a potent greenhouse gas. Accordingly, the prohibition of certain hydrofluorocarbons in certain specific end uses in Virginia regulations, such as those promulgated by the EPA in 40CFR Part 82, Subpart G, Appendices U and V will help to protect the health, safety, and welfare of the citizens of the Commonwealth.

This regulation incorporates the prohibitions and restrictions on those certain hydrofluorocarbons and end-uses that are listed in 40 CFR Part 82, Subpart G, Appendices U and V and meets the requirements of state law.

## Substance

*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.*

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This new regulation incorporates the prohibitions and restricted end-uses of 40 CFR Part 82, Subpart G, Appendices U and V into the regulation by reference.

Exemptions are provided for (i) sell-through of products and equipment manufactured prior to the compliance dates provided in the regulation; (ii) use of products and equipment manufactured prior to the compliance dates provided in the regulation; (iii) exemptions required by the federal American Innovation and Manufacturing (AIM) Act of 2020 (Section 103 of Division S of H.R. 133, Consolidated Appropriations Act, 2021); and (iv) extruded polystyrene boardstock products and equipment manufactured in Virginia intended only for sale and distribution outside of Virginia.

Definitions of the terms used in the Appendices and the regulation are only those necessary to implement the regulation.

Compliance dates that were prescribed in 40 CFR Part 82, Subpart G, Appendices U and V as being before January 1, 2022 were changed in this regulation to require compliance by January 1, 2022. Any compliance dates provided in Appendices that are on or later than January 1, 2022 are preserved in the regulation.

A compliance date of January 1, 2036 has been established for Virginia manufacturers of extruded polystyrene boardstock products and in order to determine if an earlier compliance date is possible, the regulation includes a requirement for a compliance date feasibility study. Only one Virginia manufacturer of extruded polystyrene boardstock products has been identified.

## Issues

*Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.*

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The primary advantage of this regulation to the public is improved resistance to the effects of climate change resulting from greenhouse gases that would otherwise be worse without these changes. The primary disadvantage to the public is increased cost of any products or equipment using acceptable substitutes for the prohibited HFCs in the specified restricted end uses.

The primary advantage of this regulation to the Commonwealth and the agency is that greenhouse gas emissions are being controlled without the need for additional personnel or funds to administer the program. There are no disadvantages to the Commonwealth or the agency.

A work group of relevant stakeholders was convened to provide input to the department concerning the substance of the regulation and a feasible compliance date for XPS boardstock and billet manufacturers located in Virginia as required by the 2020 Special Session I. The work group was comprised of representatives from XPS boardstock manufacturers located in Virginia, other HFC product and equipment manufacturers, and non-governmental environmental organizations. The work group was able to provide input on a feasible compliance date for XPS boardstock manufacturers of January 1, 2036 and a recommendation that a study be conducted to provide input for any earlier compliance date that might

be possible. The work group also discussed issues associated with the proposed regulation and reached consensus on recommended language and provisions that were used by the agency to develop this regulation.

**Agencies, Localities, and Other Entities Particularly Affected**

*Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact, which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

This regulation applies statewide and affects any entity that manufactures, sells, leases, rents, installs or enters into commerce in Virginia any product or equipment that uses or will use HFCs for the applications and end uses restricted Appendix U and Appendix V of Subpart G of 40 CFR Part 82, as those read on January 3, 2017, equally.

Other State Agencies Particularly Affected: There are no other state agencies particularly affected.

Localities Particularly Affected: The requirements apply to all localities equally, however, a locality with a tax base or population dependent upon manufacturing, sale, lease, rental, installation, or commerce of products or equipment containing the prohibited HFCs in the regulated end-uses may be affected in various ways, depending on price, production, and competition from manufacturers located outside of Virginia.

Other Entities Particularly Affected: Businesses involved with manufacturing, sale, lease, rental, installation or commerce of regulated products or equipment are likely to be affected by the regulation.

**Detail of All Changes Proposed in this Regulatory Action**

*List all changes proposed in this exempt action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \*Please put an asterisk next to any substantive changes.*

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements
9VAC5 Chapter 145, Control of Greenhouse Gases.			
*100.	Applicability, prohibitions, and exemptions.	None.	This section provides the information necessary to determine who must follow the chapter's prohibition and restriction requirements and who is exempt. The impact is likely limited to persons regulated under this chapter

<b>New chapter-section number</b>	<b>New requirements</b>	<b>Other regulations and law that apply</b>	<b>Intent and likely impact of new requirements</b>
*100 A.	Applicability. The use of certain HFCs in specific end-uses are prohibited by reference by incorporating 40 CFR Part 82, Subpart G, Appendices U and V into the regulation by reference.	None.	This subsection provides the identification of who is subject to the requirements of the chapter and refers the reader to the CFR for particulars about which HFCs are prohibited and which end-uses are restricted. This applicability is intended to include the manufacture, but not the storage and transport, of the prohibited products and equipment in Virginia. The impact is likely limited to persons regulated under this chapter.
*100 B.	Exemption for the continued use of products and equipment manufactured before the effective date of the prohibitions and restrictions on those HFCs and end-uses.	None.	This subsection ensures that users of equipment and products manufactured before the applicable effective dates specified in section 120 of this chapter don't have to cease using that equipment or product unless it is retrofitted after the effective date of those prohibitions or restrictions specified in section 120. The impact is likely limited to persons regulated under this chapter.
*100 C.	Exemption for sale, lease, rental, installation, or entry into commerce of equipment or products manufactured prior to the effective date of the prohibitions and restrictions on those HFCs and end-uses.	None.	This subsection ensures that equipment and products manufactured before the applicable effective dates specified in section 120 of this chapter are excluded from the prohibitions and restrictions of subsection A. The impact is likely limited to persons regulated under this chapter.

<b>New chapter-section number</b>	<b>New requirements</b>	<b>Other regulations and law that apply</b>	<b>Intent and likely impact of new requirements</b>
*100 D.	Additional exemptions for two additional sets of products and equipment.	None.	This subsection includes an exemption for certain non-compliant products and equipment manufactured in Virginia that are intended for distribution only outside of Virginia, and an exemption for end uses exempted by the federal AIM Act. In the case of the exemption for products and equipment manufactured in Virginia for distribution only outside of Virginia, storage and transfer of those products in Virginia is also intended to be exempt. The impact is likely limited to persons regulated under this chapter.
*110.	Definitions.	None.	This section provides for the definitions of terms used in the regulation. The impact is likely limited to persons regulated under this chapter.
*110 A.	Definitions of terms used in the regulation and in the Appendices incorporated by reference that are defined in subsection C.	None.	This subsection clarifies that definitions in subsection C apply for the purposes of implementing this chapter and are intended to take precedence over definitions of the same terms if they are defined differently elsewhere in regulations. The impact is likely limited to persons regulated under this chapter.
*110 B.	Definitions of terms used in the regulation but not defined in subsection C.	None.	This subsection clarifies that for terms used in this chapter that are not defined in subsection C, the terms defined in 9VAC5-10 take precedence over definitions found in other sources, except where context requires a different definition. The impact is likely limited to persons regulated under this chapter.

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements
*110 C.	Terms defined.	None.	This subsection defines terms used in this regulation or used in Appendices U and V. These terms are only those necessary for implementing this regulation in Virginia and shall take precedence over different definitions that may be found in other sources. The impact is likely limited to persons regulated under this Chapter.
*120.	Compliance.	None.	This section specifies the particulars for demonstrating compliance with the prohibitions in Appendices U and V and the requirements of the regulation. The impact is likely limited to persons regulated under this Chapter.
*120 A.	Specification of what constitutes a violation of the prohibitions prescribed.	None.	This subsection clarifies what constitutes a violation of the prohibitions specified in this Chapter. The impact is likely limited to persons regulated under this Chapter.
*120 B.	Effective dates of the prohibitions.	None.	This subsection specifies that compliance with the prohibitions listed in the Appendices isn't required back to effective dates specified in Appendices U and V that are before January 1, 2022. Instead of those earlier effective dates, the effective date for those prohibitions is January 1, 2022. Compliance is required with all effective dates specified in Appendices U and V that are on or after January 1, 2022 except as specified in section 130. The impact is likely limited to persons regulated under this Chapter.

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements
*120 C.	Use of credible evidence for determining compliance.	None.	This subsection specifies that the department can choose and use any credible evidence for determining compliance with the prohibitions and is not limited to the evidence required in sections 140 and 150. The impact is likely limited to persons regulated under this Chapter.
*130.	Special provisions applicable to XPS boardstock and billet manufacturers,	None.	This section provides special compliance provisions applicable to XPS boardstock and billet manufacturers located in Virginia. The impact is likely limited to persons regulated under this Chapter.
*130 A.	Compliance feasibility study.	None.	In 9VAC5-100 D 1, XPS boardstock and billet manufacturers located in Virginia have an exemption from the prohibition in the Appendices that expires on January 1, 2036. This subsection requires that a compliance feasibility study be completed by those manufacturers and submitted to the department with the purpose of determining if there is a compliance date earlier than the January 1, 2036 (specified in subsection B of this section) that is feasible. This subsection allows for a mitigation action plan as a part of that study. The impact is likely limited to persons regulated under this Chapter.
*130 B.	Effective date for prohibitions for manufacturers of XPS boardstock and billet products.	None.	This subsection provides a termination date of January 1, 2036 for the exemption for XPS boardstock and billet manufacturers located in Virginia. Thereafter, those manufacturers must comply with the prohibition listed in Appendices U and V. The impact is likely limited to persons regulated under this Chapter.

<b>New chapter-section number</b>	<b>New requirements</b>	<b>Other regulations and law that apply</b>	<b>Intent and likely impact of new requirements</b>
*140.	Labeling and administrative requirements.	None.	This section prescribes certain requirements to ensure that compliance with the prohibitions listed in the Appendices for certain end-uses can be determined. The impact is likely limited to persons regulated under this chapter.
*140 A.	Written disclosure requirements.	None.	In this subsection, specific labeling requirements are specified for each of the following end-uses: motor-bearing refrigeration and air-conditioning equipment that are not precharged, motor-bearing refrigeration and air-conditioning equipment that are precharged with HFCs, foam products, and aerosol propellants. The impact is likely limited to persons regulated under this chapter.
*140 B.	Written disclosure certification statements.	None.	This subsection requires a certification statement be provided. Where one is not combined with a certification statement from another jurisdiction, specific wording is required to be used. The impact is likely limited to persons regulated under this chapter.
*140 C.	Provisions for using date codes.	None.	This subsection allows manufacturers to substitute a date code representing the date of manufacture for a date of manufacture that is required in subsection A of this section. The impact is likely limited to persons regulated under this chapter.
*150.	Records and reporting.	None.	This section specifies the records that must be kept to demonstrate compliance with this chapter, how long they must be kept, and when they must be provided to the department.

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements
*150 A.	Record-keeping requirements.	None.	This subsection requires that certain specified information be recorded and kept for five years: the date of manufacture, the HFC the product or equipment is designed to use, the HFC that is in the product or equipment, and such other information as is necessary to demonstrate that the product of equipment is either in compliance or exempt. The impact is likely limited to persons regulated under this chapter.
*150 B.	Availability of records.	None.	This subsection specifies that the required records be made available to the department upon request. The impact is likely limited to persons regulated under this chapter.
*150 C.	Requirement for a date code explanation.	None.	This subsection specifies that if a manufacturer uses a date code to label products or equipment, an explanation of the date code must be provided to the department upon request. The impact is likely limited to persons regulated under this chapter.
*9999.	Documents incorporated by reference.	None.	Links to Appendices U and V that are incorporated by reference will be provided in this section when the final regulation is published. The impact is likely limited to persons regulated under this chapter.

**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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.*

This regulation meets the requirements of state law. The compliance requirements are the minimum possible consistent with the requirements of the 2020 Acts of Assembly, Chapter 1289, (Budget Bill) Item 378, as amended. Any delays in adopting the standards would not meet the requirements of subdivision B 3 of that Item. The recordkeeping and reporting requirements were selected to be the minimum necessary to ensure compliance and any further changes would add complexity. Any substitution of performance standards, and any additional exemptions of small businesses from these requirements will not meet the minimum requirements of the 2020 Acts of Assembly.

### **Family Impact**

*In accordance with § 2.2-606 of the Code of Virginia, please assess the potential impact of the proposed 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.*

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This regulation may increase or decrease disposable family income since different products or equipment may have to be acquired. There are no other expected impacts upon the institution of the family or family stability expected resulting from this regulation.