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Exempt Action: Final Regulation Agency Background Document

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC5-20
VAC Chapter title(s)	General Provisions
Action title	Amend list of nonattainment areas (Rev. F22)
Final agency action date	October 5, 2022
Date this document prepared	October 1, 2022

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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.

On March 26, 2021 (86 FR 16055), the U.S. Environmental Protection Agency (EPA) promulgated air quality designations for the 2010 primary sulfur dioxide (SO₂) National Ambient Air Quality Standard (NAAQS). EPA has determined that a portion of Giles County, Virginia is not meeting the SO₂ NAAQS, and has designated it as a nonattainment area at 40 CFR 81.347. In order to implement the standard, Virginia's list of nonattainment areas (9VAC5-20-204) must be updated accordingly, and the new SO₂ nonattainment area must be added.

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). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

As required by §§ 109 and 110 of the federal Clean Air Act, EPA has designated certain areas as either nonattainment, attainment/unclassifiable, or unclassifiable for the 2010 SO₂ NAAQS. The designations are based on application of the EPA’s nationwide analytical approach and technical analysis, including evaluation of monitoring data and air quality modeling, to determine the appropriate designation and area boundary based on the weight of evidence for each area. Areas that are designated as nonattainment must undertake certain planning and pollution control activities to attain the SO₂ NAAQS as expeditiously as practicable. In order to implement these activities at the state level, the state list of nonattainment areas at 9VAC5-20-204 must correspond to EPA’s.

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.

EPA - U.S. Environmental Protection
NAAQS - National Ambient Air Quality Standard
SO₂ - sulfur dioxide

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.

On October 5, 2022, the State Air Pollution Control Board took final action to adopt amendments to the Regulations for the Control and Abatement of Air Pollution, specifically, General Provisions (9VAC5-20). 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. 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.

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.

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

Sections 109 and 110 of the federal Clean Air Act; 40 CFR 81.347.

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.

The purpose of the regulation amendment is to meet federal requirements for the protection of public health and welfare through the development of air quality standards and procedures for ensuring that those standards are being met.

SO₂ is one of a group of highly reactive gases known as sulfur oxides. Highly reactive gases have a high potential to change in composition under certain conditions of pressure, temperature, or light, or upon contact with another chemical. SO₂ is emitted from fossil fuel combustion at power plants and other industrial facilities. Other sources of SO₂ include industrial processes such as Kraft paper production and coke production as well as the combustion of high sulfur fuels by large maritime vessels. SO₂ can be carried by the wind and affect air quality in downwind locations.

Breathing SO₂ has been linked to an array of adverse respiratory effects including: narrowing of the airways leading to breathing difficulty; increased asthma symptoms, especially during exercise; and increased emergency department visits and hospital admissions for all respiratory illnesses and asthma. SO₂ is a primary contributor to acid rain, which causes acidification of lakes and streams, damages trees at high elevations, and damages sensitive forest soils. SO₂ can be transformed into sulfate particles that contribute to impaired visibility and regional haze. Acid rain and particles that fall to the ground can land on statues, monuments, buildings, and other structures, causing damage to surfaces and paints.

The current primary federal standard for SO₂, which was established in 2010, is 75 parts per billion based on the 3-year average of the 99th percentile of the yearly distribution of 1-hour daily maximum concentrations. Based on inventory data, air quality monitoring data, and air quality modeling information, Virginia recommended that a portion of Giles County (FIPS 51-071) be designated as nonattainment for the 2010 SO₂ NAAQS. This boundary, which was developed in accordance with EPA guidance, includes one large manufacturer: Lhoist North America - Kimballton. This facility has established a site-specific monitoring network, and has made great progress toward compliance with the standard. However, this progress has not yet been sufficient to achieve compliance with the NAAQS. The department continues to work with this facility to further improve local air quality.

Based on the state's recommendation, EPA designated the portion of Giles County that contains the Lhoist facility as nonattainment for the SO₂ NAAQS. Virginia must update its list of nonattainment areas to correspond with the EPA list in order that federal nonattainment area requirements may be implemented by the state. This will enable the department to work with the affected facility toward attaining the federally mandated clean air standard, which in turn will protect public health and welfare in Giles County as well as the rest of the Commonwealth.

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.

The list of nonattainment areas in 9VAC5-20-206 is updated to include the affected portion of Giles County for SO₂.

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.

Public: Advantages to the regulated community include more certainty, as consistency with EPA requirements enables assurance regarding specific federal and state requirements. Properly implementing federal requirements will ensure the control of SO₂, which is proven to harm human health and welfare. Finally, this action will help to ensure that the state retains the authority to implement the federal program. It is beneficial to all Virginians for the program to continue to be managed by the Commonwealth.

Department: The department will benefit by meeting its federal mandates in a consistent and clear manner.

There are no disadvantages associated with this regulatory action to either the public or the Commonwealth.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change that is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

There are no requirements of the regulatory change that are more restrictive than the federal.

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.

Other State Agencies Particularly Affected:

No other state agencies will be particularly affected by this regulatory action.

Localities Particularly Affected:

The regulation amendment affects one facility located in the area designated as nonattainment for SO₂: Lhoist North America - Kimballton. The specific nonattainment area is delineated by EPA at 40 CFR 81.347 using Geographic Coordinate System GCS_North_American_1983 and Datum D_North_American_1983, as the area bounded by the lines connecting the following coordinate points (Latitude, Longitude):

- 37.385249, - 80.718248
- 37.431656, - 80.619986
- 37.391368, - 80.597698
- 37.369986, - 80.649488
- 37.354441, - 80.642085
- 37.338479, - 80.676322
- 37.339474, - 80.676771
- 37.340652, - 80.677123

37.341580, - 80.677298
37.343330, - 80.678318
37.344937, - 80.679026
37.345866, - 80.679692
37.347105, - 80.680670
37.347976, - 80.681783
37.348229, - 80.682898
37.348480, - 80.683657
37.348185, - 80.684689
37.347824, - 80.685948
37.347241, - 80.687983
37.346509, - 80.689766
37.346075, - 80.691489
37.345317, - 80.693571
37.345091, - 80.694767
37.344900, - 80.696603
37.344679, - 80.697755
37.344700, - 80.698520
37.344989, - 80.699570
37.345395, - 80.700635
37.345740, - 80.701485
37.347021, - 80.701929
37.348308, - 80.701922
37.349556, - 80.701498
37.350789, - 80.701099
37.352718, - 80.700642
37.354894, - 80.700352
37.356601, - 80.700486
37.358442, - 80.700844
37.359567, - 80.701852
37.361185, - 80.702914
37.361950, - 80.703726
37.362516, - 80.705580
37.362901, - 80.707040
37.363285, - 80.708539

The remainder of the county is designated attainment/unclassifiable.

Other Entities Particularly Affected:
There are no other entities particularly affected.

Details of All Changes Proposed in this Regulatory Action

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
*9VAC5-20-204		Nonattainment areas.	Update list of nonattainment areas to include the new SO ₂ nonattainment areas. Needed to implement federal requirements. No significant impacts anticipated.

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 federal law and regulation. 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 regulation 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

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.

No family impacts are anticipated.

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