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## Periodic Review and Small Business Impact Review Report of Findings

<b>Agency name</b>	State Air Pollution Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC5-70 (Air Pollution Episode Prevention)
<b>VAC Chapter title(s)</b>	Regulations for the Control and Abatement of Air Pollution
<b>Date this document prepared</b>	September 7, 2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), 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, 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*.

## Acronyms and Definitions

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

CFR - Code of Federal Regulations  
EPA - U.S. Environmental Protection Agency  
NAAQS - National Ambient Air Quality Standards  
SIP - State Implementation Plan

## Legal Basis

*Identify (1) the promulgating agency, 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 agency to regulate this specific subject or program, as well as a reference to the agency'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.

Promulgating Entity

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

Federal Requirements

Section 110(a) of the federal Clean Air Act (CAA) mandates that each state adopt and submit to the U.S. Environmental Protection Agency (EPA) a plan which provides for the implementation, maintenance, and enforcement of each primary and secondary air quality standard within each air quality control region in the state. The plan shall include provisions to accomplish, among other tasks, the following:

1. Establish enforceable emission limitations and other control measures as necessary to comply with the provisions of the CAA, including economic incentives such as fees, marketable permits, and auctions of emissions rights;
2. Establish schedules for compliance;
3. Prohibit emissions which would contribute to nonattainment of the standards or interference with maintenance of the standards by any state; and
4. Require sources of air pollution to install, maintain, and replace monitoring equipment as necessary and to report periodically on emissions-related data.

40 CFR Part 50 specifies the NAAQS: sulfur dioxide, particulate matter, carbon monoxide, ozone (its precursors are nitrogen oxides and volatile organic compounds), nitrogen dioxide, and lead.

40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of state implementation plans. These requirements mandate that any such plan shall include a number of provisions, including those of Subpart H (Prevention of Air Pollution Emergency Episodes). Subpart H deals with prevention of air pollution emergency episodes. 40 CFR 51.150 provides a classification system for episode plans. Significant harm levels are established in 40 CFR 51.151, and requirements for contingency plans are described in 40 CFR 51.152. 40 CFR 51.153 requires that states periodically review these plans. Finally, Appendix L provides example regulations for prevention of air pollution episodes.

Subpart L of 40 CFR Part 51 (Legal Authority) specifies that the state implementation plan must show that the state has legal authority to implement the plans, including the authority to:

1. Adopt emission standards and limitations and any other measures necessary for the attainment and maintenance of the national ambient air quality standards;
2. Enforce applicable laws, regulations, and standards, and seek injunctive relief;
3. Abate pollutant emissions on an emergency basis to prevent substantial endangerment to the health of persons;
4. Prevent construction, modification, or operation of a facility, building, structure, or installation, or combination thereof, which directly or indirectly results or may result in emissions of any air pollutant at any location which will prevent the attainment or maintenance of a national standard;

5. Obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require record-keeping and to make inspections and conduct tests of air pollution sources;

6. Require owners or operators of stationary sources to install, maintain, and use emission monitoring devices and to make periodic reports to the state on the nature and amounts of emissions from such stationary sources; and

7. Make emissions data available to the public as reported and as correlated with any applicable emission standards or limitations.

Section 51.231 under Subpart L requires the identification of legal authority: (i) the provisions of law or regulation which the state determines provide the authorities required under this section must be specifically identified, and copies of such laws or regulations must be submitted with the plan; and (ii) the plan must show that the legal authorities specified in this subpart are available to the state at the time of submission of the plan.

State Requirements

Code of Virginia § 10.1-1300 defines 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 of life or property." Excess emissions from general process operations are harmful to human health and can significantly interfere with the people's enjoyment of life and property.

Code of Virginia § 10.1-1307 A provides that the board may, among other activities, develop a comprehensive program for the study, abatement, and control of all sources of air pollution in the Commonwealth.

Code of Virginia § 10.1-1308 provides that the board shall have the power to promulgate regulations abating, controlling, and prohibiting air pollution throughout or in any part of the Commonwealth in accordance with the provisions of the Administrative Process Act.

**Alternatives to Regulation**

*Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.*

Alternatives to the proposal have been considered by the department. The department has determined that the retention of the regulation (the first alternative) is appropriate, as it is the least burdensome and least intrusive alternative that fully meets statutory requirements and the purpose of the regulation. The alternatives considered by the department, along with the reasoning by which the department has rejected any of the alternatives considered, are discussed below.

1. Retain the regulation without amendment. This option is being selected because the current regulation provides the least onerous means of complying with the minimum requirements of the legal mandates.

2. Make alternative regulatory changes to those required by the provisions of the legally binding state and federal mandates, and associated regulations and policies. This option was not selected because it could result in the imposition of requirements that place unreasonable hardships on the regulated community without justifiable benefits to public health and welfare.

3. Repeal the regulation or amend it to satisfy the provisions of legally binding state and federal mandates. This option was not selected because the regulation is effective in meeting its goals and already satisfies those mandates.

**Public Comment**

*Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency's response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Kathy	Retain and make stronger: We need to protect our air quality at all costs.	The agency agrees that the regulation is needed for the protection of public health and welfare and should be retained.
Southern Environmental Law Center	The Air Pollution Prevention Episode regulations are fundamental to Virginia's implementation of the Clean Air Act. These regulations are a key part of how Virginia meets the National Ambient Air Quality Standards, and are critical safeguards for public health and welfare. These regulations should not be weakened in any way. To do so would public health and the environment at risk.	The agency agrees that the regulation is needed for the protection of public health and welfare and should be retained.
Sierra Club	A study by EPA scientists published in the American Journal of Public Health found that facilities emitting dangerous particulate air pollution disproportionately impact low-income communities and communities of color. After assessing particulate matter emissions from facilities in a nationwide study -- and the characteristics of the communities at the highest risk of health consequences due to exposure to it -- the study found that communities living below the poverty line have a 35% higher burden from particulate matter emissions than the overall population. Non-whites had a 28% higher health burden and African Americans, specifically, had a 54% higher burden than the overall population. For these reasons, the Air Pollution Prevention Episode	The agency agrees that the regulation is needed for the protection of public health and welfare and should be retained. Implementation of this regulation and all regulations of the board is subject to the Virginia Environmental Justice Act, which requires that the Commonwealth promote environmental justice and ensure that it is carried out throughout the Commonwealth, with a focus on environmental justice communities and fence-line communities.

	<p>regulation is key to retaining cleaner air and better health for communities in Virginia. The regulation should be retained and strengthened where possible through priority on health impacts to human beings. This regulation is necessary for the protection of public health, safety, and welfare. The regulation is fundamental to Virginia's implementation of the Clean Air Act. This regulation is a key part of how Virginia meets the NAAQS, is a critical safeguard for public health and welfare, and should not be weakened in any way. To do so, would put public health and the environment at risk. There are many possibilities for strengthening the regulations for impacted communities. We recommend the incorporation of tools such as EPA's new EJ Screening Tool, or other similar tools, to be utilized to analyze the impacts to BIPOC communities and low-income communities.</p>	
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**Effectiveness**

*Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.*

The regulation is necessary for the protection of public health and welfare, as it is needed to meet the primary goals of the federal Clean Air Act: the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) and the prevention of significant deterioration of air quality in areas cleaner than the NAAQS.

The NAAQS, developed and promulgated by the EPA, establish the maximum limits of pollutants that are permitted in the ambient air in order to protect public health and welfare. EPA requires that each state submit a State Implementation Plan (SIP), including any laws and regulations necessary to enforce the plan, which shows how the air pollution concentrations will be reduced to levels at or below these standards (attainment). Once the pollution levels are within the standards, the SIP must also demonstrate how the state will maintain the air pollution concentrations at the reduced levels (maintenance).

A SIP is the key to the state's air quality programs. The Clean Air Act is specific concerning the elements required for an acceptable SIP. If a state does not prepare such a plan, or EPA does not approve a submitted plan, then EPA itself is empowered to take the necessary actions to attain and maintain the air quality standards--that is, it would have to promulgate and implement an air quality plan for that state. EPA is also, by law, required to impose sanctions in cases where there is no approved plan or the plan is not being implemented, the sanctions consisting of loss of federal funds for highways and other projects

and/or more restrictive requirements for new industry. Generally, the plan is revised, as needed, based upon changes in the federal Clean Air Act and its requirements.

The basic approach to developing a SIP is to examine air quality across the state, delineate areas where air quality needs improvement, determine the degree of improvement necessary, inventory the sources contributing to the problem, develop a control strategy to reduce emissions from contributing sources enough to bring about attainment of the air quality standards, implement the strategy, and take the steps necessary to ensure that the air quality standards are not violated in the future.

The heart of the SIP is the control strategy. The control strategy describes the emission reduction measures to be used by the state to attain and maintain the air quality standards. There are three basic types of measures: stationary source control measures, mobile source control measures, and transportation source control measures. Stationary source control measures limit emissions primarily from commercial/industrial facilities and operations and include emission limits, control technology requirements, preconstruction permit programs for new industry and expansions, and source-specific control requirements. Stationary source control measures also include area source control measures which are directed at small businesses and consumer activities. Mobile source control measures are directed at tailpipe and other emissions primarily from motor vehicles. Transportation control measures limit the location and use of motor vehicles.

Federal guidance on states' approaches to the inclusion of control measures in the SIP has varied considerably over the years, ranging from very general in the early years of the CAA to very specific in more recent years. Many regulatory requirements were adopted in the 1970s when no detailed guidance existed. The legally binding federal mandate for these regulations is general, not specific, consisting of the Clean Air Act's broad-based directive to states to attain and maintain the air quality standards. However, in recent years, the CAA, along with EPA regulations and policy, has become much more specific, thereby removing much of the states' discretion to craft their own air quality control programs.

Generally, a SIP is revised, as needed, based upon changes in air quality or statutory requirements. For the most part the SIP has worked, and the standards have been attained for most pollutants in most areas. Therefore, these specific SIP provisions, including implementation of this regulation, are necessary for the protection of public health and welfare.

The regulation has been effective in protecting public health and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth. It establishes procedures to be taken when an "air pollution episode" occurs as required under Subpart H of 40 CFR Part 51. An air pollution episode is a situation which is declared by responsible authorities when weather or air pollution conditions or both indicate a potential threat to human health. This regulation describes the escalating stages of air conditions, and the concurrent control requirements. The purpose of the regulation is to prevent the excessive buildup of air pollutants during air pollution episodes, thereby preventing the occurrence of an emergency due to the effects of the pollutants on human health.

The department has determined that the regulation is clearly written and easily understandable by the individuals and entities affected. It is written so as to permit only one reasonable interpretation, is written to adequately identify the affected entity, and, insofar as possible, is written in non-technical language.

**Decision**

*Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).*

*If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.*

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This regulation satisfies the provisions of the law and legally binding state and federal requirements, and is effective in meeting its goals; therefore, the regulation is being retained without amendment.

### Small Business Impact

*As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.*

This regulation continues to be needed. It provides sources with the most cost-effective means of fulfilling ongoing state and federal requirements that protect air quality.

The regulation's level of complexity is appropriate to ensure that the regulated entities are able to meet their legal mandates as efficiently and cost-effectively as possible.

This regulation does not overlap, duplicate, or conflict with any state law or other state regulation.

This regulation was last reviewed in 2018. Over time, it generally becomes less expensive to characterize, measure, and mitigate the regulated pollutants that contribute to poor air quality. This regulation continues to provide the most efficient and cost-effective means to determine the level and impact of excess emissions and to control those excess emissions.

The department, through examination of the regulation, has determined that the regulatory requirements currently minimize the economic impact of emission control regulations on small businesses and thereby minimize the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.