

Virginia Regulatory Town Hall

Exempt Action Final Regulation Agency Background Document

Agency Name:	State Air Pollution Control Board
Regulation Title:	Regulations for the Control and Abatement of Air Pollution
Primary Action:	9 VAC 5 Chapter 60, Article 3 (9 VAC 5-60-120 through -180)
Secondary Action(s):	None
Action Title:	Control Technology Determinations for Major Sources of Hazardous Air Pollutants (Rev. J03)
Date:	March 29, 2004

Where an agency or regulation is exempt in part or in whole from the requirements of the Administrative Process Act (§ 2.2-4000 *et seq.* of the *Code of Virginia*) (APA), the agency may provide information pertaining to the action to be included on the Regulatory Town Hall. The agency must still comply the requirements of the Virginia Register Act (§ 2.2-4100 *et seq.* of the *Code of Virginia*) and file with the Registrar and publish their regulations in a style and format conforming with the *Virginia Register Form, Style and Procedure Manual*. The agency must also comply with Executive Order Fifty-Eight (99) which requires an assessment of the regulation's impact on the institution of the family and family stability.

This agency background document may be used for actions exempt pursuant to § 2.2-4006 A 1 through 4 at the final stage. Note that agency actions exempt pursuant to § 2.2-4006 A 1 through 4 of the APA do not require filing with the Registrar at the proposed stage.

Summary

Please provide a brief summary of the regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment.

As required under the federal Clean Air Act, the federal § 112(j) rule applies if EPA misses a deadline for the promulgation of a standard established in the source category schedule for standards. In such a case, the owner of a major source in a source category for which EPA has failed to promulgate a standard is required to submit a Title V permit application 18 months after the missed promulgation deadline. If the applicable criteria for voluntary early reductions are met, then this alternative emission limit satisfies the requirements of § 112(j) provided that the emission reductions are achieved by the missed promulgation date.

The federal § 112(j) rule establishes requirements for the content of permit applications, contains provisions governing the establishment of the maximum achievable control technology (MACT)-equivalent emission limitations by a state, includes the criteria for

the state to determine completeness, allows the applicant up to six months to revise and resubmit the application, and establishes compliance dates.

9 VAC 5 Chapter 60, Article 3 (9 VAC 5-60-120 et seq.) is Virginia's equivalent to this federal rule. Adopted by the State Air Pollution Control Board on January 1, 2001, this regulation now needs to be updated to conform to recent changes in the federal regulations.

The amendments establish a new timetable for the submission of section 112(j) Part 2 applications, which is based on the timetable that EPA agreed to follow for promulgation of the remaining NESHAP, and modify the content requirements for Part 2 applications. The amendments also establish revised procedures for requests for applicability determinations previously submitted under the section 112(j) rule, and for section 112(j) applications submitted by sources that previously obtained a case-by-case determination under CAA section 112(g).

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency, including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On March 29, 2004, the State Air Pollution Control Board adopted final amendments to regulations entitled "Regulations for the Control and Abatement of Air Pollution," specifically Control Technology Determinations for Major Sources of Hazardous Air Pollutants 9 VAC 5 Chapter 60, Article 3 (9 VAC 5-60-120 et seq.) The regulation amendments are to be effective on July 1, 2004.

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. Environmental Protection Agency (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.

Additional Information

Please indicate that the text of the regulation, the reporting forms the agency intends to incorporate or use in administering the proposed regulation, a copy of any documents to be incorporated by reference are attached.

Please state that the Office of the Attorney General (OAG) has certified that the agency has the statutory authority to promulgate the regulation and that it comports with applicable state and/or federal law.

If the exemption claimed falls under § 2.2-4006 A 4 c of the APA please identify the federal law or regulations being relied upon for the final agency action.

The text of the regulation is attached.

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. Letters providing written assurance from the Office of the Attorney General that (i) the Board has statutory authority to promulgate the final regulation amendments and (ii) the amendments qualify as an exemption under § 2.2-4006 A 4 c of the Administrative Process Act are available upon request.

The regulation amendments update a state regulation that essentially duplicates federal regulatory provisions concerning control technology determinations for major sources of hazardous air pollutants under § 112(j) of the federal Clean Air Act. The original state

regulation was based on 40 CFR 63.2 and 40 CFR 63.50-63.56. These regulation amendments are based on changes to the federal regulations promulgated on May 30, 2003 (68 FR 32586).

Family Impact Statement

Please provide an analysis of the impact of the 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; 4) increase or decrease disposable family income.

It is not anticipated that these regulation amendments will have a direct impact on families. However, there will be positive indirect impacts in that the regulation amendments will ensure that the Commonwealth's air pollution control regulations will function as effectively as possible, thus contributing to reductions in related health and welfare problems.

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