

**COMMONWEALTH OF VIRGINIA  
STATE AIR POLLUTION CONTROL BOARD  
REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION**

**PRELIMINARY DETERMINATION REVIEW DOCUMENT FOR  
PROPOSED REGULATION REVISION J97  
CONCERNING**

**NEW SOURCE REVIEW FOR  
SOURCES OF HAZARDOUS AIR POLLUTANTS  
(9 VAC 5 CHAPTER 80)**

**PROVISIONS AFFECTED (PRELIMINARY DETERMINATION)**

New source review for sources of hazardous air pollutants (9 VAC 5 Chapter 80, Article 7).

**REASON FOR PROPOSED REGULATION**

The regulation amendments (adoption of the provisions cited above) are being proposed because they have been determined to be required by federal mandate (ϩ 112(g) of the federal Clean Air Act).

**STATEMENT OF LEGAL 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.

**STATEMENT OF STATUTORY MANDATES**

The contemplated regulatory action is mandated by federal law or regulation. A succinct statement of the source (including legal citation) and scope of the mandate may be found below. A copy of all cited legal provisions is attached.

Under ϩ 112 of the Clean Air Act, EPA is required to develop and maintain a list of hazardous air pollutants (HAPs), and to develop emission standards for these pollutants.

After the effective date of a Title V operating permit program, ϩ 112(g) requires new and modified major sources to apply maximum achievable control technology (MACT). As described in ϩϩ 112(g)(2)(A) and (B), modifying sources must meet the MACT for existing sources, and new sources must meet the MACT for new sources. If no applicable emissions limitations have been established, MACT must be determined on a case-by-case basis by states with approved title V programs. Section 112(g)(1)(A) also allows sources to avoid requirements for modifications through the substitution of offsets; ϩ 112(g)(1)(B) requires EPA to publish guidance that identifies

the relative hazard to human health resulting from HAP emissions in order to facilitate any offset.

National Emission Standards for Hazardous Air Pollutants for Source Categories are found in 40 CFR Part 63. Thus far, final MACT standards have been issued for over 30 source types. The requirements of § 112 are also implemented in 40 CFR 63.40 through 63.44, Requirements for control technology. This final rule was published in 61 FR 68384 (December 27, 1996). It establishes requirements and procedures for owners or operators to follow to comply with § 112(g), as well as guidance for permitting authorities in implementing § 112(g).

### **STATEMENT OF CONCLUSIONS**

The contemplated regulation is essential (i) to protect the health, safety or welfare of citizens and (ii) for the efficient and economical performance of an important governmental function. The reasoning for this conclusion is set forth below.

Hazardous air pollutants are known or suspected of causing cancer, nervous system damage, birth defects, and other serious health effects. Control of major sources of these pollutants will reduce and prevent such serious health effects.

Failure to develop an adequate regulation will also result in imposition of a federal program. Meeting the basic requirements of the law and its associated regulations will ensure that Virginia retains its rights to govern Virginia sources.

### **STATEMENT OF PROCESS FOR CONSIDERING ALTERNATIVES**

Alternatives to the proposed regulatory action is being considered by the Department. The Department has tentatively determined that the first alternative is appropriate, as it is the least burdensome and least intrusive alternative that fully meets the purpose of the regulatory action. The alternatives being considered by the Department are discussed below.

1. Amend the regulations to satisfy the provisions of the law and associated regulations and policies. This option is being selected because it meets the stated purpose of the regulatory action: to comply with the requirements of the federal Clean Air Act.
2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. This option is not being selected because it will not ensure consistency with federal requirements.
3. Take no action to amend the regulations. This option is not being selected because it will result in the imposition of a federal program.

As provided in the public participation procedures of the State Air Pollution Control Board, the Department will include, in the subsequent Notice of Intended Regulatory Action, a description of the above alternatives and a request for comments on other alternatives and the costs and benefits of the above alternatives or the other alternatives that the commenters may provide.

## **STATEMENT OF IMPACT ON FAMILY FORMATION, STABILITY AND AUTONOMY**

In the formulation of these regulation amendments, the Department will consider the impact of the regulatory action on family formation, stability and autonomy. It is not anticipated that these regulation amendments will have a direct impact on families. However, there may be positive indirect impacts in that the regulatory action will contribute to the prevention of air pollution, thus also contributing to reductions in associated fertility disorders, fetal mutation and deformity, disease, and premature death.

## **CONTACT PERSON**

Questions on the proposal should be referred to:

Karen G. Sabasteanski  
Policy Analyst  
Office of Air Program Development  
Department of Environmental Quality  
P. O. Box 10009  
Richmond, Virginia 23240  
Phone: (804) 698-4426

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