



Virginia
Regulatory
Town Hall

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Exempt Action Final Regulation Agency Background Document

Approving authority name	State Air Pollution Control Board
Primary action	9 VAC 5-40
Secondary action(s)	9 VAC 5-50
Regulation title	Regulations for the Control and Abatement of Air Pollution
Action title	Opacity Source Surveillance Methods (Rev. F07)
Date this document prepared	October 22, 2007

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006(A) of the Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 36 (06) and 58 (99)

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Please provide a brief summary of the regulation, amendments to an existing regulation, or the regulation being repealed.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.

Chapter 148 of the 2007 Acts of the Assembly adds § 10.1-1307.3 B to the Code of Virginia, which provides authority for the Executive Director or his authorized representative to pursue enforcement action for a violation of opacity requirements or limits based on (i) visual observations conducted according to EPA methods, (ii) information from certified continuous opacity monitors, or (iii) other methods approved by EPA.

The special provisions of the regulations concerning existing/new and modified stationary sources (Part I of 9 VAC 5 Chapters 40/50) have been amended to incorporate the requirements of Chapter 148 of the 2007 Acts of the Assembly. Specifically, 9 VAC 5-40-20 A 3/9 VAC 5-50-20 A 3 have been modified to indicate that compliance with opacity may be determined in one of the following ways: (i) compliance with Reference Method 9 or any alternative method approved by EPA. (ii) evaluation of data resulting from use of continuous monitoring providing that certain criteria are met, or (iii) use of any other method approved by EPA.

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 October 10, 2007, the State Air Pollution Control Board adopted final amendments to the regulation entitled "Regulations for the Control and Abatement of Air Pollution", specifically the special provisions for existing/new and modified stationary sources (Part I of 9 VAC 5 Chapter 40/50). The regulation amendments are 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 a, of the Administrative Process Act because they are necessary to conform to Virginia statutory law.

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 a of the Administrative Process Act are available upon request.

Family Impact

Assess the impact of this 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.

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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