



Exempt Action Final Regulation Agency Background Document

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| Approving authority name | State Air Pollution Control Board |
| Primary action | Article 2, 9 VAC 5-60 |
| Secondary action(s) | Article 5, 9 VAC 5-50; Article 1, 9 VAC 5-60 |
| Regulation title | Regulations for the Control and Abatement of Air Pollution |
| Action title | Federal Documents Incorporated by Reference (Rev. E06) |
| Document preparation date | March 29, 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 21 (02) 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Please provide a brief summary of the regulation, amendments to an existing regulation, or the regulation being repealed.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.

The regulation amendments update state regulations that incorporate by reference certain federal regulations to reflect the Code of Federal Regulations as published on July 1, 2006. Below is a list of the new standards the department is recommending be incorporated into the state regulations by reference:

1. Incorporation an NSPS: Subpart EEEE - Other Solid Waste Incineration Units for Which Construction Is Commenced After December 9, 2004, or for Which Modification or Reconstruction Is Commenced On or After June 16, 2006 (40 CFR 60.2880 through 60.2977). The date of the Code of Federal Regulations book being incorporated by reference is also being updated to the latest version.
2. No new NESHAP are being incorporated; however, the date of the Code of Federal Regulations book being incorporated by reference is being updated to the latest version.
3. No new NESHAP are being incorporated; however, the date of the Code of Federal Regulations book being incorporated by reference is being updated to the latest version. In addition, the reference to Subpart EEE (Hazardous Waste Incinerators) has been revised to include references to several new sections. Finally, Subpart C (list of hazardous air pollutants, petitions process, lesser quantity designations, and source category list) has been revised to include the deletion of methyl ethyl ketone (MEK, 2-Butanone) at 40 CFR 63.61.

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 26, 2007, the State Air Pollution Control Board adopted final amendments to regulations entitled "Regulations for the Control and Abatement of Air Pollution", specifically federal regulations incorporated by reference (9 VAC 5 Chapter 50, Article 5 and 9 VAC 5 Chapter 60, Articles 1 and 2). The regulation amendments are to be effective on June 1, 2007.

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.

Section 111 of the Clean Air Act requires that EPA develop standards of performance for new stationary sources (new source performance standards, or NSPSs). NSPSs are found in 40 CFR Part 60. Section 112 of the Clean Air Act requires that EPA develop and maintain a list of hazardous air pollutants (HAPs), and develop national emission standards (NESHAPs) for these pollutants. NESHAPs are found in 40 CFR 61. In § 112(d)(1), EPA is required to promulgate regulations establishing emission standards for each category or subcategory of major and area sources of HAPs listed according to the requirements of § 112(b) and (c). Once EPA has identified the specific source categories of major and area sources that it intends to regulate, it must promulgate MACT standards for each. MACT standards are found in 40 CFR Part 63.

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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