

FINAL PROPOSAL: COVER SHEET

SOS # _____
(Do not complete)

Note: File this form with the appropriate attachments with the secretary of state and the Legislative Committee on Administrative Rules. You must file an adopting page, an economic impact statement, a public input statement, text of the rule, annotated text showing the changes to existing rules and an explanation of the changes along with this cover sheet. You must also file a scientific information statement and/or incorporation by reference statement if applicable. A copy of the ICAR approval letter must also accompany this filing.

Please complete the following:

1. Title of final proposal:
Air Pollution Control Regulations § 5-204 Outdoor Wood-Fired Boilers
2. Proposed Rule # previously assigned by the Secretary of State 09P-026
3. Agency:
Agency of Natural Resources
4. Contact Person (Name, Address & Phone)
Richard A. Valentinetti
Air Pollution Control Division
Department of Environmental Conservation
Agency of Natural Resources
103 South Main Street, Bldg 3 South
Waterbury, VT 05671-0402
Tel: 802-241-3840
5. Statutory authority for this rule:
10 V.S.A. §558
6. This filing has has not changed since the filing of the proposed rule. If it has changed, please attach a letter to this filing explaining in detail what changes were made, citing chapter and section of those changes where applicable.
7. Substantial arguments and considerations were were not raised for or against the original proposal. Please attach copies of all written submissions and synopses of oral comments received for or against the original proposal. If substantial arguments and considerations were raised for or against the original proposal or if suggestions with respect to separate requirements for small businesses were made, please attach a letter to this filing explaining in detail the reasons for the agency's decision to reject or adopt them.
8. Give a concise summary explaining the effect of the rule (150 words or less):
The final proposed rule revises and reformats the existing rules for outdoor wood-fired boilers (OWBs) currently set forth at sections 5-204 and 5-205 of the Air Pollution Control Regulations. The rule establishes a Phase II particulate matter emission limit for OWBs of

0.32 pounds per million BTUs of heat output to go into effect on March 31, 2010. This emission limit will ensure that cleaner and more efficient OWBs are available for sale and installation in Vermont. The rule also sets forth the requirements for OWB owners and operators (e.g., siting and stack height requirements), OWB sellers (e.g., notice to buyers requirements), and OWB manufacturers (e.g., certification requirements).

9. Explanation of why this rule is necessary:

In 2007, Vermont adopted a rule that established a Phase I particulate matter emission limit of 0.44 pounds per million BTUs of heat input for OWBs that went into effect on March 31, 2008. The 2007 rule also provided: "As soon as practicable, but no later than March 31, 2008, the Secretary shall file a proposed rule . . . to establish a particulate matter emission limit for outdoor wood-fired boilers of 0.32 pounds per million BTUs of heat output" This final proposed rule meets this regulatory obligation. In addition, this rule will continue to minimize the impact of OWBs on air quality and require more efficient OWBs in Vermont. This rule will also provide for regional consistency and a common market area with Maine, Massachusetts, and New Hampshire, which have already adopted the Phase II standard proposed by this rule.

10. List of people, enterprises and government entities affected by this rule:

Persons impacted by smoke and odors from OWBs; manufacturers, retailers, distributors, installers, purchasers, and owners of OWBs; the Vermont Department of Health, local health officers; municipalities; the Vermont League of Cities and Towns; and the Enforcement and Air Pollution Control Divisions of the Agency of Natural Resources.

11. Brief summary of economic impact of this rule (150 words or less):

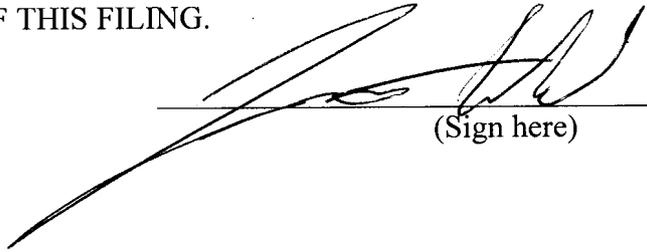
Manufacturers will likely pass the costs of redesigning their OWBs to meet the Phase II emission limit on to consumers. Some OWB models may no longer be available for sale and installation in Vermont. On the other hand, Phase II OWBs will burn less wood than Phase I and older OWBs. The rule will have neutral to positive impacts on the general public, ANR, municipalities, and local health officials by resulting in fewer public nuisances and complaints. Overall, the economic impacts of this rule will be similar to the rule that adopted the Phase I limit. However, unlike when Vermont adopted the Phase I limit, OWB manufacturers are already required to pay for certification testing to demonstrate that their models meet the existing Phase I limit; there are several OWB models that already meet the Phase II limit; and the Phase II limit has already been adopted by Maine, Massachusetts, and New Hampshire thereby creating a regional marketplace for Phase II units.

12. Date, time and place of hearing(s), if any were held:

A public hearing was held at 7:00 pm on June 16, 2009, at the Pavilion Auditorium, in Montpelier.

13. The deadline for public comments was: 06/23/09

CERTIFICATION: AS THE ADOPTING AUTHORITY (see 3 V.S.A. § 801(b)(11) for a definition) OF THIS RULE, I APPROVE THE CONTENTS OF THIS FILING.



(Sign here)

Date: 8/19/09

Jonathan L. Wood, Secretary
Agency of Natural Resources

(Type name here please)

Please Check off the following components that are enclosed with this rule (**Please check only those that apply to this proposed rule**).

- Final Proposed Rule Cover sheet
- Adopting Page
- Economic Impact Statement
- Scientific Information
- Public Input Statement
- Incorporation by Reference
- Text of the Rule
- Annotated Text
- ICAR Approval Memo

<i>This box for Secretary of State use only</i>	
<input type="checkbox"/> Final Proposed Rule Cover Sheet	<input type="checkbox"/> Final Proposed Rule Cover Sheet
<input type="checkbox"/> Adopting Page	<input type="checkbox"/> Adopting Page
<input type="checkbox"/> Economic Impact Statement	<input type="checkbox"/> Economic Impact Statement
<input type="checkbox"/> Scientific Information	<input type="checkbox"/> Scientific Information
<input type="checkbox"/> Public Input Statement	<input type="checkbox"/> Public Input Statement
<input type="checkbox"/> Incorporation by Reference	<input type="checkbox"/> Incorporation by Reference
<input type="checkbox"/> Text of the Rule	<input type="checkbox"/> Text of the Rule
<input type="checkbox"/> Annotated Text	<input type="checkbox"/> Annotated Text
<input type="checkbox"/> ICAR Approval Memo	<input type="checkbox"/> ICAR Approval Memo
<i>These components were filed with this APA Clerk's Initials _____</i>	

ATTACHMENT TO FINAL PROPOSAL COVER SHEET

Air Pollution Control Regulations § 5-204 Outdoor Wood-Fired Boilers (OWBs)

The following changes have been made since the filing of the Proposed Rule in response to public comments and to clarify the regulation:

1. The Agency added a definition of “biomass fuel” in § 5-204(b) and made changes to §§ 5-204(a)(2)(i), (c)(3)(ii)(D), and (e)(2)(ii) to clarify when OWBs burning biomass fuels are permitted under the regulation.
2. The Agency made changes to § 5-204(a)(2)(ii), including defining the term “personal use,” to clarify the personal use exemption.
3. In § 5-204(b), the Agency changed the term “model line” to “model” and revised the definition to state that all OWBs within a model must “have the same heat output capacity.” This revision makes explicit the Agency’s interpretation of the proposed rule definition – that is, to be “similar in all material respects,” the OWBs must at a minimum “have the same heat output capacity”, as well as share other important characteristics. Similarly, the Agency replaced the term “model line” with the term “model” and made corresponding changes in §§ 5-204(e)(1), (e)(3)(ii), (e)(4), and (e)(5).
4. The Agency modified the definition of the term “manufacturer” in § 5-204(b) to include any person who markets an OWB as their own.
5. The Agency deleted the definition of “existing unit” from § 5-204(b) and the exceptions for existing units that appeared in §§ 5-204(c)(1)-(2), (d)(1) and (e)(1). As initially proposed, “existing units” that were purchased and received by a dealer in Vermont before October 1, 2007 could be sold and distributed any time before March 31, 2010 without being certified as a Phase I OWB. However, given that almost two years have now passed since October 1, 2007, the Agency believes that there are few, if any, “existing units” still available for sale in Vermont. In any event, the new rule will allow such units to be sold and distributed for use outside of Vermont. Therefore, the exception for “existing units” no longer seems necessary and removing it makes the regulation easier to understand and follow.
6. The Agency deleted the phrase “purchase, install, or allow the installation of” from § 5-204(e)(1)(i) and (ii) because the purchase and installation of OWBs are addressed by § 5-204(c).
7. The Agency replaced the word “generating” with the words “with a rated heat output capacity of” in the last sentence of § 5-204(e)(2)(ii) to clarify that applicability of the grams per hour limits is based on the rated heat output capacity of an OWB as determined by test method 28 OWHH, rather than varying based on the heat output rate generated by an OWB during each individual test run under that method.

8. The Agency added “based on any of the grounds in paragraphs (e)(4)(i)-(iv) of this section” to § 5-204(e)(4)(v) to clarify that a certification may be revoked based on the denial or revocation of a certification by another state or U.S. EPA only on the grounds specified in § 5-204(e)(4)(i)-(iv) of the regulation.
9. The Agency amended § 5-204(e)(4)(vi) of the regulation to change “Any other evidence” to “A finding based on any other evidence” to clarify that the Agency will take the weight of such evidence into account.
10. In § 5-204(e)(5)(i), the Agency changed the phrase “in Vermont or for installation in Vermont” to “for use in Vermont” in order to make this provision consistent with the applicability provision in § 5-204(a)(1).