



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 5-20
Secondary action(s)	None
Regulation title	Regulations for the Control and Abatement of Air Pollution
Action title	8-hour Ozone Nonattainment Areas (Revision I07)
Date this document prepared	October 15, 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Please provide a brief summary of the regulation, amendments to an existing regulation, or the regulation being repealed.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.

The amendments revise the geographic delineation of the nonattainment and maintenance areas by removing the Hampton Roads and Richmond areas from the list of 8-hour ozone nonattainment areas (9 VAC 5-20-204) and adding them to the list of maintenance areas (9 VAC 5-20-203).

The Hampton Roads 8-hour Ozone Nonattainment Area (counties of Gloucester, Isle of Wight, James City, and York; cities of Chesapeake, Hampton, Newport News, Portsmouth, Poquoson, Norfolk, Suffolk, Virginia Beach, and Williamsburg) and the Richmond 8-hour Ozone Nonattainment Area (counties of Charles City, Chesterfield, Hanover, Henrico, and Prince George; cities of Colonial Heights, Hopewell, Petersburg, and Richmond) have been deleted from the list of nonattainment areas.

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 regulations entitled "Regulations for the Control and Abatement of Air Pollution", specifically 8-hour ozone nonattainment areas (9 VAC 5 Chapter 20). 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 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.

Sections 109(a) and (b) of the Clean Air Act require EPA to prescribe national air quality standards for each air pollutant for which air quality criteria were issued before the enactment of the 1970 Act. These standards are known as the National Ambient Air Quality Standards (NAAQS). Once the NAAQS are promulgated pursuant to § 109, § 107 sets out a process for designating those areas that are in compliance with the standards (attainment or unclassifiable) and those that are not (nonattainment). 40 CFR Part 50 specifies the national primary and secondary ambient air quality standards for the criteria air pollutants, including particulate matter. 40 CFR Part 81 specifies the designations of areas made under § 107(d) and the associated nonattainment classification (if any) under § 181.

On June 1, 2007 (72 FR 30485 and 72 FR 30490), EPA approved a list of areas that had been nonattainment for the 8-hour ozone standard as attainment. The new attainment areas became effective on June 18, 2007. When an area is redesignated from nonattainment to attainment, the attainment area is considered to be a "maintenance" area, and the state is obligated to prepare a SIP that meets the requirements for 8-hour ozone maintenance areas.

The nonattainment area designations play a significant role in the development of broad-based non-regulatory plans for attainment and maintenance of the standards. The state regulations must be consistent with the federal regulations because the nonattainment area designations and classifications also play a pivotal role in the new source review program. Section 51.165, Permit requirements, requires that SIPs meet the requirements of § 172(c)(5) (Permits for new and modified major stationary sources) and § 173 (Permit requirements). Incorporation of the nonattainment area designations and classifications into the state regulations (and thus the SIP) is part of the legally enforceable means by which the state implements the new source review program for nonattainment areas.

Maintenance areas must continue to maintain the plans and programs that were developed to bring the area out of nonattainment. However, maintenance areas are subject to the permit provisions for attainment areas of 40 CFR 51.166 (Prevention of significant deterioration of air quality) instead of the nonattainment provisions of 40 CFR 51.165. Section 51.166(a)(7)(i) specifies that the permitting requirements of that section apply to the construction of any new major stationary source or any project at an existing major stationary source in an area designated as attainment. Incorporation of the attainment/maintenance area designations into the state regulations (and thus the SIP) is part of the legally enforceable means by which the state implements the new source review program for attainment/maintenance areas.

In order for the state permitting program to be properly implemented, the lists of nonattainment and attainment/maintenance areas must be consistent with the federal lists. Therefore, the redesignation of nonattainment areas to attainment/maintenance must be reflected in the state regulations.

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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