



Virginia  
Regulatory  
Town Hall

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## Exempt Action Final Regulation Agency Background Document

<b>Approving authority name</b>	State Air Pollution Control Board
<b>Primary action</b>	9 VAC 5-20-204
<b>Secondary action(s)</b>	None
<b>Regulation title</b>	Regulations for the Control and Abatement of Air Pollution
<b>Action title</b>	Nonattainment Areas (Revision N04)
<b>Document preparation date</b>	November 4, 2004

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006(A) of the of the Administrative Process Act (APA) ([townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://townhall.state.va.us/dpbpages/dpb_apa.htm)), 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 ([leg1.state.va.us/cgi-bin/legp504.exe?000+cod+2.2-4100](http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+2.2-4100)), the *Virginia Register Form, Style, and Procedure Manual* ([legis.state.va.us/codecomm/register/download/styl8\\_95.rtf](http://legis.state.va.us/codecomm/register/download/styl8_95.rtf)), and Executive Orders 21 (02) and 58 (99) ([governor.state.va.us/Press\\_Policy/Executive\\_Orders/EOHome.html](http://governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html))

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*Please provide a brief summary of the regulation, amendments to an existing regulation, or the regulation being repealed.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

9 VAC 5-20-206 lists areas of the Commonwealth that do not meet the National Ambient Air Quality Standards (that is, nonattainment areas), including areas that are nonattainment for the 8-hour ozone standard. Ozone nonattainment areas are further classified by the relative severity of their ozone nonattainment problem, from low (marginal) to very high (extreme). The Clean Air Act specifies requirements by which nonattainment areas must attain the standard, with marginal areas having the fewest requirements and, cumulatively, extreme areas having the most. These requirements, which are dependent in part of the classification of a nonattainment area, include the need for transportation conformity analysis, and specific requirements for new source review permitting. Based on a decision by the U.S. Environmental Protection Agency (EPA), the Richmond Ozone Nonattainment Area has been reclassified from moderate to marginal.

## 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.*

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On November 3, 2004, the State Air Pollution Control Board adopted final amendments to regulations entitled "Regulations for the Control and Abatement of Air Pollution," specifically, nonattainment areas (9 VAC 5 -20-204). The regulation amendments are to be effective on January 1, 2005.

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.*

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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.

The regulation is based on 40 CFR 81.347, which lists nonattainment areas in Virginia. The Clean Air Act authorizes EPA to reclassify certain ozone nonattainment areas shortly after the initial classification for such areas. In the April 30, 2004 Federal Register establishing the 8-hour ozone designations and classifications, EPA described this reclassification process and listed criteria for evaluating reclassification requests. Requests to reclassify ozone nonattainment areas from moderate to marginal were submitted by seven states, including Virginia. On September 22, 2004 (69 FR 56697), EPA reclassified these areas, including the Richmond, Virginia area. The reclassified ozone nonattainment areas become effective on November 22, 2004.

## 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.*

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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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