



Exempt Action Final Regulation Agency Background Document

Approving authority name	State Air Pollution Control Board
Primary action	Article 51, 9 VAC 5-40
Secondary action(s)	Article 4, 9 VAC 5-40
Regulation title	Regulations for the Control and Abatement of Air Pollution
Action title	Case-by-Case RACT Determinations (Revision E04)
Document preparation date	Enter date this form is uploaded on the Town Hall

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), 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), the *Virginia Register Form, Style, and Procedure Manual* (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)

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Please provide a brief summary of the regulation, amendments to an existing regulation, or the regulation being repealed.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 first part of this action is to clarify and recodify the existing provisions covering case-by-case RACT determinations (Article 4) and create a new Article 51 in which to separate the RACT-specific requirements from the general process requirements of Article 4. These amendments as consist only of changes in style or form.

Article 4 currently contains emission standards for general process operations, including determination of case-by-case RACT. As implementation of the Clean Air Act Amendments of 1990 has progressed, numerous revisions to the RACT portions of Article 4 have been made, thus significantly increasing the rule's complexity. This has resulted in regulations that are very difficult to read and understand.

The second part of this action is to add the new 8-hour ozone standard requirements. These amendments 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) regulation.

40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of SIPs. EPA has added a new subpart X to 40 CFR Part 51, which covers the implementation of the 8-hour ozone

standard. It requires that nonattainment areas meet the requirements of § 51.900(f), including RACT and major source applicability cut-offs for purposes of RACT. The rule also specifies dates by when states must submit the RACT SIP, and when RACT must be implemented. The state regulations must be consistent with the federal regulations in order for the state to implement RACT.

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 September 25, 2006, the State Air Pollution Control Board adopted final amendments to regulations entitled "Regulations for the Control and Abatement of Air Pollution," specifically, amendments to Emission Standards for General Process Operations (9 VAC 5 Chapter 40, Article 4) and adoption of Emission Standards for Stationary Sources Subject to Case-by-Case RACT Determinations (9 VAC 5 Chapter 40, Article 51). The regulation amendments are to be effective on December 1, 2006.

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 3 and A 4 c of the Administrative Process Act because they (i) consist only of changes in style or form and (ii) 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 3 and A 4 c of the Administrative Process Act are available upon request.

Section 182 of the federal Clean Air Act requires that the state implementation plans (SIPs) require reasonably available control technology (RACT) for stationary sources of volatile organic compounds (VOCs) and nitrogen oxides (NO_x). RACT is the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. For moderate ozone nonattainment areas, § 182(b)(2)(C) requires RACT controls on major VOC stationary sources not covered by an existing control technology guideline (non-CTG sources). Section 182(f) requires that control measures required for major VOC sources shall also be required of major NO_x sources.

Applicability thresholds for VOCs and NO_x are established as follows. Section 184 establishes an Ozone Transport Region (OTR) that includes the Consolidated Metropolitan Statistical Area in which the District of Columbia is located. Section 184(b) describes SIP requirements for areas in the OTR, including, in § 184(b)(2), the requirement that any stationary source that emits or has the potential to emit at least 50 tons per year of VOCs is considered to be a major source and subject to the requirements that would be applicable to major sources as if the area were classified as a moderate nonattainment area. Finally, a major stationary source is defined for general application in § 302 as "any facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant"; hence the major source threshold for NO_x is 100 tons per year.

40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of SIPs. EPA has added a new subpart X to 40 CFR Part 51, which covers the implementation of the 8-hour ozone standard. It requires that nonattainment areas meet the requirements of § 51.900(f), including RACT and major source applicability cut-offs for purposes of RACT. The rule also specifies dates by when states must submit the RACT SIP, and when RACT must be implemented. The state regulations must be consistent with the federal regulations in order for the state to implement RACT.

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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