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Exempt Action - Final Regulation Agency Background Document

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) citation(s)	9VAC5-20, 9VAC5-30, 9VAC5-151, 9VAC5-160
Regulation title(s)	Regulations for the Control and Abatement of Air Pollution; Regulation for Transportation Conformity, Regulation for General Conformity
Action title	Ozone Implementation (Revision C19)
Final agency action date	December 6, 2019
Date this document prepared	November 15, 2019

While a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

On March 6, 2015 ([80 FR 12264](#)), the U.S. Environmental Protection Agency (EPA) established a final rule to implement the 2008 ozone National Ambient Air Quality Standard (NAAQS). This rule addressed a range of nonattainment area state implementation plan (SIP) requirements for the 2008 NAAQS, including how to address the revoked 1997 NAAQS. Under [Revision G16](#), the Virginia rules (9VAC5-20-204) were amended to call attention to the fact that the 1997 standard no longer had any effect for the purposes of ozone implementation. Revocation of the 1997 standard also meant that transportation and general conformity reviews were no longer needed in 1997 ozone maintenance areas, and the Virginia conformity regulations were amended accordingly. On February 10, 2017, the department officially requested approval of a revision to the Virginia State Implementation Plan (SIP) for the amended regulations. Since the SIP was originally submitted, the U.S. Court of Appeals for the District of Columbia Circuit vacated portions of EPA's final implementation rule on [February 16, 2018](#). Because those provisions were vacated, EPA requested that Virginia officially withdraw the Revision G16 SIP submittal, and the department did so on February 27, 2019. Virginia must now amend its regulations in order to conform to the court decision.

In addition to addressing general implementation issues, 9VAC5-20-204 A 4 has been added. This is needed in order to implement the 2015 ozone NAAQS in the Northern Virginia Ozone Nonattainment Area ([40 CFR 81.309](#)).

Acronyms and definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

NAAQS - National Ambient Air Quality Standards

SIP - State Implementation Plan

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

The State Air Pollution Control Board took final action to adopt amendments to regulations entitled "Regulations for the Control and Abatement of Air Pollution" on December 6, 2019. The regulatory action is to be effective as provided in the Administrative Process Act.

Amendments to 9VAC5-20-204 C (Nonattainment Areas), 9VAC5-30-55 D (Ozone), 9VAC5-151-20 (Applicability, Transportation Conformity), and 9VAC5-160-30 (Applicability, General Conformity) 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 b of the Administrative Process Act because they are necessary to conform to an order of a federal court of competent jurisdiction where no agency discretion is involved.

Amendments to 9VAC5-20-204 A 1 4 (Nonattainment Areas) 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. 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.

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, board decision, etc.). "Mandate" is defined as "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

Section 110(a) of the Clean Air Act mandates that each state adopt and submit to EPA a plan which provides for the implementation, maintenance, and enforcement of each primary and secondary air quality standard within each air quality control region in the state. Part D of the Clean Air Act, "Plan Requirements for Nonattainment Areas," describes how nonattainment areas are established, classified, and required to meet attainment. Subpart 1, Nonattainment Areas in General, consists of §§ 171 through 179, and provides the overall framework of what nonattainment plans are to contain, permit requirements, planning procedures, motor vehicle emission standards, and sanctions and consequences of failure to attain. Subpart 2, Additional Provisions for Ozone Nonattainment Areas, consists of §§ 181 through 185, and provides more detail on what is required of areas designated as nonattainment for ozone. . 40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of state implementation plans.

In addition to the general requirements for nonattainment areas, § 176 of the Clean Air Act requires that general and transportation plans, programs and projects which are funded or approved under Title 23 USC or the Federal Transit Act conform with state or federal air quality implementation plans. 40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of state implementation plans.

Subpart T of 40 CFR Part 51 establishes the criteria and procedures governing the determination of conformity for all federally-funded transportation plans, programs, and projects in nonattainment areas. Subpart W of 40 CFR Part 51 establishes the criteria and procedures governing the determination of conformity for all federal actions in nonattainment areas.

On March 6, 2015 (80 FR 12264), the U.S. Environmental Protection Agency (EPA) established a final rule for implementing the 2008 ozone NAAQS. This rule addresses a range of nonattainment area state implementation plan (SIP) requirements for the 2008 ozone NAAQS, including how to address the revoked 1997 ozone NAAQS. The board's ambient air quality regulation was amended accordingly, as well as the list of nonattainment areas to reflect this change. Clarifying text was also been added to the Regulation for Transportation Conformity and the Regulation for General Conformity.

Subsequently, the U.S. Court of Appeals for the District of Columbia Circuit vacated portions of EPA's final implementation rule on February 16, 2018. Because those provisions were vacated, EPA requested that Virginia amend its regulations in order to conform to the court decision.

In addition to addressing general implementation issues, 9VAC5-20-204 A 4 has been added. This is needed in order to implement the 2015 ozone NAAQS in the Northern Virginia Ozone Nonattainment Area (40 CFR 81.309).

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

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. Written assurance from the Office of the Attorney General that the State Air Pollution Control Board possesses the statutory authority to promulgate the proposed regulation amendments is available upon request.

Purpose

Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

The regulatory changes are needed in order to meet the mandates of the federal Clean Air Act and its implementing regulations in order to protect public health and welfare from ozone air pollution, which has been proven to be detrimental to both health and welfare. They are also needed in order to meet the mandate of a federal court.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

Provisions relevant to the vacated implementation rule for the 2008 ozone standard have been removed. The Northern Virginia Ozone Nonattainment Area for the 2015 ozone NAAQS has been added.

Issues

Please identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the

Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

Public: Advantages to the regulated community include more certainty, as consistency with EPA requirements enables assurance regarding specific federal and state requirements. Properly implementing federal requirements will ensure the control of ozone, which is proven to harm human health and welfare.

Department: The department will benefit by meeting its federal mandates in a consistent and clear manner.

There are no disadvantages associated with this regulatory action to either the public or the Commonwealth.

Agencies, Localities, and Other Entities Particularly Affected

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact, which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected:

No other state agencies will be particularly affected by this regulatory action.

Localities Particularly Affected:

The regulation amendments affect sources located in areas designated as nonattainment for ozone. The Northern Virginia Ozone Nonattainment Area consists of Arlington County, Alexandria City, Fairfax County, Fairfax City, Loudoun County, Falls Church City, Prince William County, Manassas City, and Manassas Park City.

Other Entities Particularly Affected:

There are no other entities particularly affected.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

This regulation meets the requirements of federal law and regulation. Any less stringent compliance requirements, any delays in adopting the standards, any different compliance or reporting requirements, any substitution of performance standards, and any exemption of small businesses from these requirements will not meet the minimum federal requirements. Any such changes would compromise the effectiveness of the regulations in protecting the health and welfare of the public, and could potentially subject the Commonwealth to federal control over the state permitting program.

Detail of All Changes Made in this Regulatory Action

*Please list all changes proposed in this exempt action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. *Please put an asterisk next to any substantive changes.*

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC5-20-204 C	n/a	General requirements for nonattainment areas; provisions related to a vacated ozone standard.	Provisions relevant to the vacated implementation rule for the 2008 ozone standard have been removed. Needed to comply with a federal court order. No significant impacts anticipated.
9VAC5-30-55 D	n/a	General requirements for nonattainment areas; provisions related to a vacated ozone standard.	Provisions relevant to the vacated implementation rule for the 2008 ozone standard have been removed. Needed to comply with a federal court order. No significant impacts anticipated.
9VAC5-151-20	n/a	General requirements for nonattainment areas; provisions related to a vacated ozone standard.	Provisions relevant to the vacated implementation rule for the 2008 ozone standard have been removed. Needed to comply with a federal court order. No significant impacts anticipated.
9VAC5-160-30	n/a	General requirements for nonattainment areas; provisions related to a vacated ozone standard.	Provisions relevant to the vacated implementation rule for the 2008 ozone standard have been removed. Needed to comply with a federal court order. No significant impacts anticipated.
9VAC5-20-204 A 4	n/a	List of ozone nonattainment areas.	The Northern Virginia Ozone Nonattainment Area for the 2015 ozone NAAQS has been added. Needed in order to implement federal nonattainment requirements. No significant impacts anticipated.

Family Impact

In accordance with § 2.2-606 of the Code of Virginia, please assess the potential impact of the proposed 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.

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