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Exempt Action Final Regulation Agency Background Document

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) citation(s)	Article 51, 9VAC5-40
Regulation title(s)	Regulations for the Control and Abatement of Air Pollution
Action title	Amend the regulation for case-by-case RACT determination to meet the requirements of EPA's new ozone implementation rule (Revision B15)
Final agency action date	September 11, 2015

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA) or an agency's basic statute, the agency is not required, however, 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, Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This action adds new requirements for the case-by-case determination of reasonably available control technology (RACT) needed in order to meet the U.S. Environmental Protection Agency (EPA) 0.075 parts per million (ppm) National Ambient Air Quality Standard (NAAQS) for ozone. On March 6, 2015 (80 FR 12264), EPA amended subpart X to 40 CFR Part 51, which covers the implementation of the 2008 8-hour ozone standard. The Northern Virginia Ozone Nonattainment Area, which corresponds to the Northern Virginia Volatile Organic Compound (VOC) and Nitrogen Oxides (NO_x) Emissions Control Areas, and which is part of the Ozone Transport Region (OTR), must meet the RACT requirements of 40 CFR 51.1116. This section of the EPA rule specifies dates by when RACT must be implemented in the OTR. The state regulations must be consistent with the federal regulations in order for the state to implement RACT.

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.

EPA - U.S. Environmental Protection Agency
NAAQS - National Ambient Air Quality Standard
NO_x - nitrogen oxides
OTR - Ozone Transport Region
ppm - parts per million
RACT - reasonably available control technology
VOC - volatile organic compounds

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.

On September 11, 2015, the State Air Pollution Control Board took final action to adopt amendments to the Regulations for the Control and Abatement of Air Pollution, specifically, Emission Standards for Stationary Sources Subject to Case-by-Case RACT Determinations (9VAC5-40, Article 51). The regulatory action is 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 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.

Family impact

Please 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.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
9VAC5-40-7400, Table 4-51B		List the notification and compliance dates for facilities located in VOC Emissions Control Areas.	Add new requirements for areas subject to the 2008 0.075 ppm ozone standard as required by the final Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements Rule (80 FR 12263); needed in order to implement a mandatory federal requirement. Column added to distinguish among the different ozone standards; needed for clarity.
9VAC5-40-7420, Table 4-51E		List the notification and compliance dates for facilities located in NO _x Emissions Control Areas for which there is no presumptive RACT.	Add new requirements for areas subject to the 2008 0.075 ppm ozone standard as required by the final Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements Rule (80 FR 12263); needed in order to implement a mandatory federal requirement. Column added to distinguish among the different ozone standards; needed for clarity.
9VAC5-40-7420, Table 4-51F		List the notification, demonstration, and compliance dates for facilities located in NO _x Emissions Control Areas for which presumptive RACT is defined.	Add new requirements for areas subject to the 2008 0.075 ppm ozone standard as required by the final Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements Rule (80 FR 12263); needed in order to implement a mandatory federal requirement. Column added to distinguish among the different ozone standards; needed for clarity.

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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.

The regulation applies to all facilities, including small businesses. Any 1) establishment of less stringent compliance or reporting standards; 2) establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishment of performance standards for small businesses to replace design or operational standards required in the regulation; or 5) exemption of small businesses from all or any part

of the requirements contained in the regulation for all small businesses would adversely affect the benefits that would be achieved through the implementation of the regulations.

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