



Exempt Action Final Regulation Agency Background Document

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) citation	Primary action: 9VAC5-151
Regulation title	Regulation for Transportation Conformity
Action title	Transportation Conformity (E-10)
Final agency action date	December 17, 2010
Document preparation date	December 30, 2010

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 14 (2010) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This regulation requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. In particular, 9VAC5-151-70 outlines specifically how the various government agencies, federal, state and local, will interact and consult with each other and the public in developing transportation plans and projects.

EPA promulgated amendments to the federal transportation regulation on March 24, 2010 (75 FR 14260). Under 40 CFR 51.390, Virginia is required to submit to the U.S. Environmental Protection Agency (EPA) a revision to the SIP that establishes conformity criteria and procedures consistent with the transportation conformity regulation promulgated by EPA at 40 CFR Part 93. In order to implement the federal transportation conformity requirements, the Virginia regulation must reflect the recent revisions made to the federal regulations. To this end, 9VAC5 Chapter 151 of the regulations needs to be amended to include the most recent federal revisions.

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 December 17, 2010, the State Air Pollution Control Board took final action to adopt amendments to the regulation entitled "Regulation for Transportation Conformity" (9VAC5-151). 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 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.

All changes made in this regulatory action

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

Current Section number	Proposed new section number, if applicable	Current requirement	Proposed change and rational
9VAC5-151-40		Incorporation of 2008 federal provisions.	Date of most current CFR updated (2010). Needed to reference most recent provisions of federal transportation conformity regulation and maintain authority to implement the new provisions.
9VAC5-151-70 D 1 f		References the following federal citation: 40 CFR 93.109 (l)(2)(iii)	Change reference to 40 CFR 93.109 (n)(2)(iii) . Needed to reference most recent provisions of federal transportation conformity regulation and maintain authority to implement the new provisions.

Regulatory flexibility analysis

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: c contained in the proposed regulation.

This regulation applies in all nonattainment and maintenance areas in Virginia and applies to transportation plans, programs, and projects in those areas. Alternative regulatory methods including (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 proposed regulation; or (5) exemption of small businesses from all or any part of the requirements are not applicable as the regulation does not regulate stationary sources of air pollution. The regulation addresses transportation plans, programs, and projects to ensure they conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

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 transportation plans, programs and projects conform with state and federal air pollution control regulations and will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards, thus contributing to reductions in related health and welfare problems.

TEMPLATES\EXEMPT\TH09
REG\DEV\E10-08TF