



Exempt Action Final Regulation Agency Background Document

Approving authority name	State Air Pollution Control Board
Primary action	9 VAC 5-151
Secondary action(s)	None
Regulation title	Regulation for Transportation Conformity
Action title	Transportation Conformity (Rev. B07)
Document preparation date	November 4, 2008

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 36 (06) and 58 (99)

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Please provide a brief summary of the regulation, amendments to an existing regulation, or the regulation being repealed.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

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, 9 VAC 5-151-70 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.

The amendments to the existing regulation include: updating several definitions (9VAC5-151-10); updating applicability provisions to ensure conformity determinations are consistent with federal requirements (9VAC5-151-20); updating provisions incorporated by reference to reflect 2007 CFR (9VAC5-151-40); repealing certain exemption provisions (9VAC5-151-61); and amending the consultation provisions to remove reference to the unified work plans (9VAC5-151-70).

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 October 23, 2008, the State Air Pollution Control Board took final action to adopt amendments to the regulation entitled "Regulation for Transportation Conformity" (9 VAC 5 Chapter 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.

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 4 c of the Administrative Process Act are available upon request.

Section 176(c) of the federal Clean Air Act requires that federally-funded transportation plans, programs and projects conform to state or federal air quality implementation plans. Metropolitan planning organizations and the United States Department of Transportation must make determinations that federally-funded transportation plans, programs, and projects conform to Virginia's State Implementation Plan (SIP). "Conformity" means that the activity conforms to the SIP's purpose of eliminating or reducing the severity and number of violations of the National Ambient Air Quality Standards and achieving expeditious attainment of such standards, and will not (i) cause or contribute to any new violation of any standard in any area, (ii) increase the frequency or severity of any existing violation of any standard in any area, or (iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

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 subpart A of 40 CFR Part 93.

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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