



[townhall.virginia.gov](http://townhall.virginia.gov)

## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	State Air Pollution Control Board
<b>Virginia Administrative Code (VAC) citation(s)</b>	9VAC5-20
<b>Regulation title(s)</b>	Regulations for the Control and Abatement of Air Pollution
<b>Action title</b>	Remove an impermissible affirmative defense from the malfunction provisions of General Provisions in accordance with federal requirements (Revision B16)
<b>Final agency action date</b>	March 18, 2016

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

On June 12, 2015 (80 FR 33840), the U.S. Environmental Protection Agency (EPA) issued a final State Implementation Plan (SIP) call concerning treatment of excess emissions in state rules by sources during periods of startup, shutdown or malfunction (SSM), including Virginia's SSM rules at 9VAC5-20-180 G. The U.S. Court of Appeals for the District of Columbia Circuit has held that such provisions are illegal, and state plans must be amended accordingly. Essentially, EPA finds that 9VAC5-20-180 G as currently drafted creates an impermissible affirmative defense for violations of emission limits, and therefore 9VAC5-20-180 G must now be amended accordingly.

### 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  
 SIP - State Implementation Plan  
 SSM - startup, shutdown or malfunction

**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 March 18, 2016, the State Air Pollution Control Board took final action to adopt amendments to the Regulations for the Control and Abatement of Air Pollution, specifically, General Provisions (9VAC5-20). 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 3 and A 4 c of the Administrative Process Act, we intend to request that the board adopt the regulation amendments as final because they consist only of changes in style or form, and 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) requirement.

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
9VAC5-20-180 C		Explains steps to be taken in the event air pollution	Amended in order for the revised subsection G to operate properly, and to correct several

		control equipment fails or malfunctions.	minor administrative issues. Needed in order for the section to operate correctly as a whole.
9VAC5-20-180 G		Explains additional steps to be taken in the case of a malfunction.	Provisions allowing an affirmative defense removed. Needed in order to meet the federal requirements of a SIP Call per 40 CFR Part 52 (80 FR 33840) as mandated by court order.

### 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.*

An analysis of the proposal was completed for alternative regulatory methods that will minimize the adverse impact on small businesses without compromising health, safety, environmental and economic welfare.

This regulation meets the minimum requirements of the federal Clean Air Act and the minimum requirements of 40 CFR Part 52, and does not differ materially from the pertinent EPA regulations. 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 new requirements in protecting the health and welfare of the public, and could potentially subject the Commonwealth to federal control over the state permitting program.

TEMPLATES\EXEMPT\TH09  
REG\DEV\B16-08TF