



## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	State Air Pollution Control Board
<b>Virginia Administrative Code (VAC) citation</b>	9VAC5-160
<b>Regulation title</b>	Regulation for General Conformity
<b>Action title</b>	General Conformity (Rev. F10)
<b>Final agency action date</b>	December 17, 2010
<b>Document preparation date</b>	December 29, 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.*

The federal Clean Air Act requires that federal plans, programs and projects conform with state and federal air quality implementation plans. That is, federal agencies must make determinations that general federal actions, such as prescribed burning, military base closings, and real estate developments, conform with Virginia's state implementation plan (SIP). On July 17, 2006 (71 FR 40420), EPA revised its general conformity regulations to add PM<sub>2.5</sub> de minimis emission levels for general conformity applicability. On April 5, 2010 (75 FR 17254), EPA further revised its general conformity requirements in order to address a number of implementation issues, and to improve the program's ability to facilitate federal agency compliance with conforming their activities to the SIPs, thereby preventing violations of the national ambient air quality standards (NAAQS). EPA deleted 40 CFR 51.850 and 40 CFR 51.51.852 through 51.860, since those sections merely repeated the language in 40 CFR 93.150 and 40 CFR 93.152 through 93.160. EPA then included a requirement in 40 CFR 51.851 that the general conformity SIP must meet the requirements in 40 CFR Part 93, subpart B, which were in turn revised to effect the needed program changes. The Virginia general conformity regulation must now be revised in order to meet these new federal requirements.

**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 regulations entitled "Regulations for the Control and Abatement of Air Pollution," specifically, Regulation for General Conformity (9VAC5-160). 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 detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.*

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
9VAC5-160-20		Definitions needed to implement the regulation.	Various revisions and additions needed in order to incorporate federal changes and to thus ensure proper implementation.
9VAC5-160-30 A		General criteria for applicability of the regulation based on nonattainment status.	Revised to specify that new nonattainment/maintenance areas have 1 year to comply after designation; needed in order to incorporate federal changes and to thus ensure proper implementation.
9VAC5-160-30 B		General criteria for applicability of the regulation based on emission of criteria pollutants.	PM <sub>2.5</sub> added to list; needed in order to be consistent with the provisions of the regulation relevant to the new federal PM <sub>2.5</sub> requirements.
9VAC5-160-30 C 2 and 3		Specific criteria for applicability of the regulation based on emission of criteria pollutants.	New PM requirements; needed in order to incorporate federal changes and to thus ensure proper implementation.
9VAC5-160-30 D		Specifies that transportation conformity determinations are governed by transportation conformity rules.	Formatting change needed to meet Registrar of Regulations formatting requirements.

9VAC5-160-30 E		Emissions rates of criteria pollutants for determination of applicability.	Various revisions, including addition of PM <sub>2.5</sub> levels; needed in order to incorporate federal changes and to thus ensure proper implementation.
9VAC5-160-30 F		List of excluded actions which would result in no emissions increase or an increase in emissions that is clearly de minimis.	Air traffic control activities added; needed in order to incorporate federal changes and to thus ensure proper implementation.
9VAC5-160-30 G 1 and 2		Additional excluded actions.	Various revisions; needed in order to incorporate federal changes and to thus ensure proper implementation.
9VAC5-160-30 H 2 and 3		Exempted federal actions.	Additional notification and determination procedures added; needed in order to incorporate federal changes and to thus ensure proper implementation.
9VAC5-160-30 I		Describes general activities that are presumed to conform.	Revised in order to operate properly with the presumption of conformity provisions of subsection J; needed in order to incorporate federal changes and to thus ensure proper implementation.
9VAC5-160-30 J		Describes specific activities that are presumed to conform.	Revised in order to require specific demonstration of conformity and state concurrence; needed in order to incorporate federal changes and to thus ensure proper implementation.
9VAC5-160-30 K		Describes further activities that are presumed to conform.	Various revisions relevant to project identification and notification; needed in order to incorporate federal changes and to thus ensure proper implementation.
9VAC5-160-30 L		Describes a regionally significant action.	Replaced with further activities that are presumed to conform; needed in order to incorporate federal changes and to thus ensure proper implementation.
9VAC5-160-30 M		Further describes a regionally significant action.	Replaced with further activities that are presumed to conform; needed in order to incorporate federal changes and to thus ensure proper implementation.
9VAC5-160-110 C		Exempts actions where a NEPA or other environmental assessment was conducted.	Deleted; needed in order to incorporate federal changes and to thus ensure proper implementation.
	9VAC5-160-110 E		Added to specify that conformity must be evaluated for each area when emissions originate in more than one nonattainment or maintenance area; needed in order to incorporate federal changes and to thus ensure proper implementation.
9VAC5-160-120		Describes federal agency conformity responsibility.	Various revisions; needed in order to incorporate federal changes and to thus ensure proper implementation.
9VAC5-160-130		Reporting requirements.	Various revisions; needed in order to incorporate federal changes and to thus ensure proper implementation.
9VAC5-		Public participation.	Various revisions; needed in order to

160-140			incorporate federal changes and to thus ensure proper implementation.
9VAC5-160-150		Frequency of conformity determinations.	Various provisions concerning how and when to conduct re-evaluation; needed in order to incorporate federal changes and to thus ensure proper implementation.
9VAC5-160-160		Criteria for determining conformity.	Various revisions; needed in order to incorporate federal changes and to thus ensure proper implementation.
9VAC5-160-160		Procedures for conformity determinations.	Various revisions; needed in order to incorporate federal changes and to thus ensure proper implementation.
9VAC5-160-170		Procedures for conformity determinations.	Various revisions; needed in order to incorporate federal changes and to thus ensure proper implementation.
9VAC5-160-180 E, F and G		Mitigation of air quality impacts.	Various revisions; needed in order to incorporate federal changes and to thus ensure proper implementation.
	9VAC5-160-181	Conformity evaluation for federal installations with facility-wide emission budgets.	Adds new requirements for development and adoption of facility-wide emission budgets; needed in order to incorporate federal changes and to thus ensure proper implementation.
	9VAC5-160-182	Emissions beyond the time period covered by the applicable implementation plan.	Adds new requirements for development and consideration of emissions beyond the time period covered by the plan; needed in order to incorporate federal changes and to thus ensure proper implementation.
	9VAC5-160-183	Timing of offsets and mitigation measures.	Adds new requirements for development and approval of offsets and mitigation measures; needed in order to incorporate federal changes and to thus ensure proper implementation.
	9VAC5-160-184	Inter-precursor mitigation measures and offsets.	Allows for the development of inter-precursor mitigation measures and offsets; needed in order to incorporate federal changes and to thus ensure proper implementation.
	9VAC5-160-185	Early emission reduction credit programs at federal facilities and installation subject to federal oversight.	Allows the development of early emission reduction credit programs; needed in order to incorporate federal changes and to thus ensure proper implementation.
9VAC5-160-190		Savings provision.	Various revisions; needed in order to incorporate federal changes and to thus ensure proper implementation.
9VAC5-160-200		Review and confirmation of the chapter by the board.	Removed; review has been conducted and is no longer needed.

**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: (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.*

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The regulation applies only to agencies of the federal government and has no direct effect on small businesses.

### Family impact

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

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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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