



## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	State Air Pollution Control Board
<b>Virginia Administrative Code (VAC) citation</b>	Primary action: 9VAC5-91
<b>Regulation title</b>	Regulation for the Control of Motor Vehicle Emissions in Northern Virginia
<b>Action title</b>	Program Coordinator (Rev. MO)
<b>Document preparation date</b>	July 24, 2013

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 current program requires that affected vehicles be presented to emissions inspection stations biennially to receive an emissions inspection. The geographic coverage of the program consists of the counties of Arlington, Fairfax, Loudoun, Prince William, and Stafford; and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park. Cars and trucks weighing up to 10,000 pounds and are 25 years old and newer are subject to an exhaust emissions inspection using ASM equipment which tests cars under "loaded" conditions using a dynamometer. On-Board Diagnostics Systems (OBD) on vehicles so equipped will also be inspected. In addition, random testing of vehicles is accomplished using either roadside pullovers or a remote sensing device next to the roadway. Failing vehicles are required to report to an inspection for an out-of-cycle test.

The proposed amendments are being made to conform to state law. Chapters 216 and 824 of the 2012 Acts of Assembly authorized the Director of DEQ to enter into an agreement to designate a program coordinator to implement all inspection programs, except those utilizing remote sensing. It also stipulated that the Director shall determine the services to be provided by the program coordinator and the amount to be paid to the program coordinator for such services. In addition, Chapter 348 of the 2013 Acts of Assembly provides for the electronic transmittal of certain documents and Chapter 634 of the 2013 Acts of the Assembly provides for the exemption from testing for certain hybrid vehicles.

**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 June 21, 2013, the State Air Pollution Control Board took final action to adopt amendments to regulations entitled "Regulation for the Control of Motor Vehicle Emissions in Northern Virginia," specifically, (9VAC5-91). The regulatory action is to be effective as provided in the Administrative Process Act

The regulation amendments are exempt from the state administrative procedures. Amendments necessary to implement Chapters 216 and 820 of the 2012 Acts of Assembly are exempt pursuant to enactment clause 4 and amendments necessary to implement Chapters 348 and 634 of the 2013 Acts of Assembly are exempt pursuant to § 2.2-4006 A 4 a of the Administrative Process Act.

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.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.*

Commenter	Comment	Agency response

No comment was received.

**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
9 VAC-5-91-20		Definition of "Affected motor vehicle"	Modify definition of "Affected motor vehicle" to clarify that 2008 or 2009 hybrid vehicles with a 48 miles per

			gallon EPA rating shall be exempt from testing.
91-20		Definition of "Air system"	Modify definition of "Air system" to add the additional term "air injection system" to the same definition.
91-20		Definition of "Authorized personnel"	Modify definition of "Authorized personnel" to mean the entire analyzer system and to include the program coordinator.
91-20		Definition of "Basic test and repair program"	Delete the definition "Basic test and repair program" as the term is no longer used in the regulation.
91-20		Definition of "Bi-fuel"	Delete the definition "Bi fuel" as the term is no longer used in the regulation.
91-20		Definition of "Canister"	Delete the definition "Canister", as the term is no longer used in the regulation.
91-20		Definition of "Certified enhanced analyzer system" or "analyzer system"	Modify definition of "Certified enhanced analyzer system" to include the function of evaluating the operation of the OBD system as well as sampling the various gases emitted by the vehicle. The analyzer system no longer includes the evaporative system pressure test equipment nor the dynamometer and associated cooling and exhaust fans which shall be provided by the service station. However, new components to the system include the control devices of the dynamometer, printer and calibration gases.
91-20		Definition of "Data medium" or "data media"	Formatting correction.
91-20		Definition of "Dedicated alternative fuel vehicle"	Delete the definition "Dedicated alternative fuel vehicle" as the term is no longer used in the regulation.
		Definition of "Dedicated-fuel vehicle"	Delete the definition "Dedicated fuel vehicle" as the term is no longer used in the regulation.
91-20		Definition of "Dual fuel"	Delete the definition "Dual fuel" as the term is no longer used in the regulation.
91-20		Definition of "Evaporative system pressure test" or "pressure test"	Delete the definition "Evaporative system pressure test" as the term is no longer used in the regulation.
91-20		Definition of "Exhaust gas analyzer"	Modify definition of "Exhaust gas analyzer" to include the term "gas analyzer". The new definition pertains to the entire system that

			measures emissions, not just the instrument.
91-20		Definition of "Flexible-fuel vehicle"	Delete the definition "Flexible-fuel vehicle" as the term is no longer used in the regulation.
91-20		Definition of "Fuel filler cap pressure test"	Delete the definition "Fuel filler cap pressure test" as the term is no longer used in the regulation.
91-20			Add definition of "Monitors" which means the computer programs associated with the on-board vehicle computer that evaluates the emissions components and systems to determine their status.
91-20		Definition of "On-board diagnostic system test (OBD system test)"	Modify definition of "On-board diagnostic system test" to reflect the appropriate CFR citation.
91-20		Definition of "Original condition"	Delete the definition "Original condition" as the term is no longer used in the regulation.
91-20			Add definition of "Program coordinator" to define the person or corporation that provides services as provided for in the regulation.
91-20		Definition of "Referee station"	Modify definition of "Referee station" to include the term "referee facility".
91-20		Definition of "Standard conditions"	Delete the definition "Standard conditions" as the term is no longer used in the regulation.
91-20		Definition of "Standardized instruments"	Modify definition of "Standardized instruments" to include the term "standardizing instruments".
91-20		Definition of "True concentration"	Delete the definition "True concentration" as the term is no longer used in the regulation.
91-20		Definition of "Zero gas"	Delete the definition "Zero gas" as the term is no longer used in the regulation.
91-30 A		Applicability provisions	Add program coordinator personnel to those subject to the applicability provisions.
91-50 B		Documents incorporated by reference	Add reference for current CFR.
91-50 E 2 b		Documents incorporated by reference	Add reference for current EPA technical document.
91-70 A		Appeal of case decisions	Add provision to utilize electronic delivery of information.
91-200		Evaporative emissions systems standards	Delete section as the provisions are obsolete.
91-330		Analyzer system operation	Modify the section pertaining to the analyzer system operation to clarify that the service stations are

			responsible for obtaining the dynamometer and the analyzer system. The program coordinator shall also be authorized to repair the analyzer system.
91-360 A		Inspector identification number and access code usage	Add provision to allow for the use of biometric identification of emissions inspectors if applicable.
91-390 F 11		Qualification requirements for emissions inspector licenses	Delete provision to conduct a test of the evaporative emissions control system as the test is obsolete; renumber section.
91-410 A 7		PART VI. Inspection Procedures General	Delete provision to conduct a test of the evaporative emissions control system as the test is obsolete; reformat section.
91-420 C 5		Inspection procedure; rejection, pass, fail, waiver	Delete unnecessary language.
91-420 C 8 b through f		Inspection procedure; rejection, pass, fail, waiver	Delete unnecessary language and add provisions to clarify the on-board diagnostic (OBD) conditions that result in a rejection from testing.
91-420 D 2		Inspection procedure; rejection, pass, fail, waiver	Add requirement for ODB testing.
91-420 D 4		Inspection procedure; rejection, pass, fail, waiver	Delete provision to conduct a test of the evaporative emissions control system as the test is obsolete.
91-420 D 4 through 7		Inspection procedure; rejection, pass, fail, waiver	Reformat section.
91-420 G 2 e		Inspection procedure; rejection, pass, fail, waiver	Correct citation.
91-420 G 2 f		Inspection procedure; rejection, pass, fail, waiver	Correct citation.
91-420 G 3 a through d		Inspection procedure; rejection, pass, fail, waiver	Delete unnecessary language as the conditions are no longer applicable; reformat section.
91-420 I		Inspection procedure; rejection, pass, fail, waiver	Delete unnecessary language.
91-420 K through N		Inspection procedure; rejection, pass, fail, waiver	Delete provisions to conduct a test of the evaporative emissions control system as the test is obsolete; reformat section.
91-420 O through S		Inspection procedure; rejection, pass, fail, waiver	Delete unnecessary language; reformat section.
91-430 A 2 a and b		Acceleration Simulation Mode (ASM) test procedure	Delete provisions to conduct a test of the evaporative emissions control system as the test is obsolete.
91-440 A 7 a and b		Two-speed idle test procedure	Delete provisions to conduct a test of the evaporative emissions control system as the test is obsolete.
91-450		Evaporative system pressure test	Repeal section to conduct a test of

		and gas cap pressure test procedure	the evaporative emissions control system as the tests are obsolete.
91-570 A		Expiration, reinstatement, renewal and requalification	Correct citation.
91-570 G 2		Expiration, reinstatement, renewal and requalification	Add provision to utilize electronic delivery of information.
91-640			Add clarifying language
91-650 A		Design goals	Delete provisions to conduct a test of the evaporative emissions control system as the test is obsolete.
91-650 C		Design goals	Add clarifying language to conduct an OBD test and delete provisions to conduct a test of the evaporative emissions control system as the test is obsolete.
91-660		Warranty; service contract	Add clarifying language to indicate that the provision apply when there is no program coordinator.
	91-665	Warranty; service contract with program coordinator	Add provisions to address requirements for a program coordinator.
91-670		Owner provided services	Delete section title. Add clarifying language to indicate that the provisions apply when there is no program coordinator.
	91-675	Inspection station owner requirements (effective during periods with a designated program coordinator)	Add provisions to address requirements for owners when there is a program coordinator.
91-680		Certification of analyzer systems	Delete incorrect citations and add correct technical citations.
91-690		Span gases; gases for calibration purposes	Add reference for current EPA technical document.
91-700		Calibration of exhaust gas analyzers	Add language to provide for director discretion to reduce the frequency of gas analyzer calibrations if appropriate.
91-710 A		Upgrade of analyzer system	Add provisions to address the need for software upgrades for the analyzer system.
91-710 B		Upgrade of analyzer system	Delete provisions to conduct a test of the evaporative emissions control system as the test is obsolete.
91-720		Vehicle manufacturer recall	Add provision to utilize electronic delivery of information.

### Localities particularly affected

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

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The geographic coverage of the program consists of the counties of Arlington, Fairfax, Loudoun, Prince William, and Stafford; and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park. The amendments to the regulation allow for a program coordinator to provide certain services; provide an exemption from testing for certain hybrid vehicles and provide for electronic transmittal of certain documents. Therefore, no locality in the program area will bear any disproportionate material air quality impact from any other locality within the program area.

### 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 to affected vehicles registered or operated primarily in the Northern Virginia area. Vehicles must be presented to emissions inspection stations biennially to receive and pass an emissions inspection (or receive a waiver) prior to vehicle registration. The current I/M program is enforced through vehicle registration via the Department of Motor Vehicles (DMV). Any information pertaining to less stringent compliance, schedules or deadlines for compliance or the consolidation or simplification of compliance or reporting requirements must be coordinated with the DMV. No performance standards or exemptions exist for small business; all vehicles, except those expressly identified via regulation are subject to the I/M program.

The regulatory changes address the statutory requirement to provide for a program coordinator. The changes in the regulation provide the framework and responsibilities of a program coordinator; however they do not change the structure or parameters of the current testing program, nor will the use of a program coordinator impact the vehicle owner or the current testing program.

### 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.

## 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.*

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CFR- Code of Federal Regulations  
EPA- federal Environmental Protection Agency  
I/M- Inspection and maintenance  
NO<sub>x</sub>-Nitrogen oxides  
OBD- On-Board Diagnostics Systems

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