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Exempt Action Final Regulation Agency Background Document

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) citation(s)	Primary action: 9VAC5-91
Regulation title(s)	Regulation for the Control of Motor Vehicle Emissions in the Northern Virginia Area (9VAC5-91)
Action title	Military Surplus Motor Vehicle Exemption (Revision MQ)
Final agency action date	September 28, 2018

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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

The Regulation for the Control of Motor Vehicle Emissions in Northern Virginia is being amended in response to the passing of House Bill 1323, which authorizes the Department of Motor Vehicles to issue a registration card and license plates for military surplus motor vehicles, as defined in the bill. The bill limits the use and travel distance of military surplus motor vehicles and provides that any law-enforcement officer may require any person operating a military surplus motor vehicle to provide the address at which the vehicle is stored for use and the destination of such operation. The bill exempts military surplus motor vehicles from emissions standards. To meet this statutory requirement, the regulation's definition of "affected motor vehicle" will be amended so that it does not include military surplus motor vehicles.

Additionally, there is a Code of Federal Regulations citation update and numerous technical errors within the regulation being corrected as part of this amendment process.

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.

APA	Administrative Process Act
ASM	Acceleration Simulation Mode
CFR	Code of Federal Regulations
EPA	U.S. Environmental Protection Agency
ETW	Equivalent Test Weight or Emissions Test Weight
OBD	On-Board Diagnostic
ppm	parts per million

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 September 28, 2018, the State Air Pollution Control Board took final action to adopt amendments to the Regulation for the Control of Motor Vehicle Emissions in the Northern Virginia Area (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 for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 3, 4 a, and 4 c of the Administrative Process Act because they consist only of changes in style or form or corrections of technical errors, are necessary to conform to Virginia statutory law or are necessary to conform to federal law.

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
9VAC5-91-20		Definition of "Affected Motor Vehicle"	<p>This regulation amendment is exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the APA by the provisions of § 2.2-4006 A 4 a of the APA because it is necessary to conform to Virginia statutory law.</p> <p>The term "affected motor vehicle" does not mean any:</p> <p><u>10. Military surplus motor vehicle, which means a multipurpose or tactical vehicle manufactured by or under the direction of the United States Armed Forces for off-road use and subsequently authorized for sale to civilians. A military surplus motor vehicle does not include specialized mobile equipment as defined in § 46.2-700, trailers, or semitrailers.</u></p>
9VAC5-91-20		Definitions of "Acceleration Simulation Mode (ASM) 25-25 standards", "Emission Test Weight" and "Normal business hours"	<p>Technical correction. Adding an "s" to the word "emission" in each definition to align with the defined term and so that all references throughout the regulation are consistent.</p> <p>"Acceleration Simulation Mode (ASM) 25-25 standards" means the standards utilized for one of the discreet modes of the ASM test of the enhanced emissions inspection program.</p> <p>"Equivalent test weight, "ETW," or "emissions test weight" means the weight of a motor vehicle as automatically determined by the emissions analyzer system based on vehicle make, model, body, style, model year, engine size, permanently installed equipment, and other manufacturer and aftermarket supplied information, and used for the purpose of assigning dynamometer resistance</p>

			<p>and exhaust emissions standards for the conduct of an exhaust emissions inspection.</p> <p>"Normal business hours" for emissions inspection stations, means a daily eight hour period Monday through Friday, between the hours of 8 a.m. and 6 p.m., with the exception of national holidays, state holidays, temporary closures noticed to the department and closures due to the inability to meet the requirements of this chapter. Nothing in this chapter shall prevent stations from performing inspections at other times in addition to the "normal business hours." Emissions inspection stations may, with the approval of the department, substitute a combined total of eight hours, between 8 a.m. and 6 p.m., over a weekend period for one weekday as their "normal business hours" for conducting emissions inspections. Emissions inspection stations shall post inspection hours.</p>
<p>9VAC5-91-50</p>		<p>B. Any reference in this chapter to any provision of the Code of Federal Regulations (CFR) shall be considered as the adoption by reference of that provision. The specific version of the provision adopted by reference shall be that contained in the latest revision to the CFR in effect on July 1, 2012 unless noted otherwise. In making reference to the Code of Federal Regulations, 40 CFR Part 35 means Part 35 of Title 40 of the Code of Federal Regulations; 40 CFR 35.20 means § 35.20 in Part 35 of Title 40 of the Code of Federal Regulations.</p> <p>E.1.a(2) 40 CFR Part 85, Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines, specifically Subpart W</p>	<p>This regulation amendment is exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the APA by the provisions of § 2.2-4006 A 4 c of the APA because it is necessary to meet the requirements of the federal Clean Air Act and does not differ materially from pertinent U.S. Environmental Protection Agency (EPA) regulations. The date of the CFR incorporated by reference is being updated to the latest version.</p> <p>B. Any reference in this chapter to any provision of the Code of Federal Regulations (CFR) shall be considered as the adoption by reference of that provision. The specific version of the provision adopted by reference shall be that contained in the latest revision to the CFR in effect on July 1, 2012 unless noted otherwise. In making reference to the Code of Federal Regulations, 40 CFR Part 35 means Part 35 of Title 40 of the Code of Federal Regulations; 40 CFR 35.20 means § 35.20 in Part 35 of Title 40 of the Code of Federal Regulations.</p>

		(Emission Control System Performance Warranty Short Tests).	<p>Technical correction. Replace “Motor Vehicles and Motor Vehicle Emissions” with “Mobile Sources”.</p> <p>E. 1. a(2) 40 CFR Part 85, Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines <u>Mobile Sources</u>, specifically Subpart W (Emission Control System Performance Warranty Short Tests).</p>
9VAC5-91-185		C. On an annual basis, at least 2.0% of the vehicles meeting the clean screen criteria in subsection B of this section shall not be notified of the clean screen and may receive an emissions test at an emission inspection station.	<p>Technical correction. Adding an “s” to the word “emission” to align with the defined term and so that all references throughout the regulation are consistent.</p> <p>C. On an annual basis, at least 2.0% of the vehicles meeting the clean screen criteria in subsection B of this section shall not be notified of the clean screen and may receive an <u>emissions</u> test at an emission inspection station.</p>
9VAC5-91-290		F. Emissions inspection stations shall notify the department when they are unable to perform emission inspections for any reason and shall notify the department when they are able to resume inspections.	<p>Technical correction. Adding an “s” to the word “emission” to align with the defined term and so that all references throughout the regulation are consistent.</p> <p>F. Emissions inspection stations shall notify the department when they are unable to perform <u>emissions</u> inspections for any reason and shall notify the department when they are able to resume inspections.</p>
9VAC5-91-340		<p>A. Emission inspection stations and emissions inspectors shall be responsible for ensuring that all motor vehicle inspection reports are legible, and properly completed and printed with correct information appearing in the correct location on the form and shall notify immediately the department and the vehicle operator of any incorrect information appearing on the form.</p> <p>D. Certificates of emission inspections and motor vehicle inspection reports shall be issued</p>	<p>Technical correction. Adding an “s” to the word “emission” to align with the defined term and so that all references throughout the regulation are consistent.</p> <p>A. <u>Emissions</u> inspection stations and emissions inspectors shall be responsible for ensuring that all motor vehicle inspection reports are legible, and properly completed and printed with correct information appearing in the correct location on the form and shall notify immediately the department and the vehicle operator of any incorrect information appearing on the form.</p> <p>D. Certificates of <u>emissions</u> inspections and motor vehicle inspection reports shall be issued only by licensed</p>

		only by licensed emissions inspectors employed by permitted emissions inspection stations.	emissions inspectors employed by permitted emissions inspection stations.
9VAC5-91-360		D. An inspector's name printed on a motor vehicle inspection report shall be an endorsement that the entire test was performed by the inspector whose name appears on the vehicle inspection report. Each inspector must sign his full name on the vehicle inspection report for each emission inspection conducted.	<p>Technical correction. Adding an "s" to the word "emission" to align with the defined term and so that all references throughout the regulation are consistent.</p> <p>D. An inspector's name printed on a motor vehicle inspection report shall be an endorsement that the entire test was performed by the inspector whose name appears on the vehicle inspection report. Each inspector must sign his full name on the vehicle inspection report for each emissions inspection conducted.</p>
9VAC5-91-380		I. Emissions inspectors may perform emissions inspections at more than one permitted emission inspection station after notification to the department and with the authorization of the emissions inspection station owners.	<p>Technical correction. Adding an "s" to the word "emission" to align with the defined term and so that all references throughout the regulation are consistent.</p> <p>I. Emissions inspectors may perform emissions inspections at more than one permitted emissions inspection station after notification to the department and with the authorization of the emissions inspection station owners.</p>
9VAC5-91-410		4. Determination of the type of emissions test required, ASM or two-speed idle test, or OBD system test for OBD vehicles. For certain OBD vehicles, the director may require an exhaust test (ASM or two-speed idle) in addition to the OBD system test if he conducts appropriate studies and determines that (i) the expected failure rate for exhaust testing for these certain vehicles would be greater than 5%, (ii) additional emission reductions would be achieved, and (iii) the EPA acknowledges such emission reduction benefits.	<p>Technical correction. Adding an "s" to the word "emission" so that all references throughout the regulation are consistent.</p> <p>4. Determination of the type of emissions test required, ASM or two-speed idle test, or OBD system test for OBD vehicles. For certain OBD vehicles, the director may require an exhaust test (ASM or two-speed idle) in addition to the OBD system test if he conducts appropriate studies and determines that (i) the expected failure rate for exhaust testing for these certain vehicles would be greater than 5%, (ii) additional emissions reductions would be achieved, and (iii) the EPA acknowledges such emissions reduction benefits.</p>

<p>9VAC5-91-420</p>		<p>M.4.a. Proof that emission related repairs have been accomplished and costs for that specific vehicle have been provided to the emissions inspection station in the form of an itemized bill, invoice, paid work order, or statement in which emissions related parts or repairs, or both, are specifically identified, and to the extent practical, the inspector can confirm the repairs by visual examination;</p>	<p>Technical correction. Adding an “s” to the word “emission” so that all references throughout the regulation are consistent.</p> <p>M.4.a. Proof that emissions<u>g</u> related repairs have been accomplished and costs for that specific vehicle have been provided to the emissions inspection station in the form of an itemized bill, invoice, paid work order, or statement in which emissions related parts or repairs, or both, are specifically identified, and to the extent practical, the inspector can confirm the repairs by visual examination;</p>
<p>9VAC5-91-430</p>		<p>B. The test sequence shall consist of first chance and, if applicable, second chance tests in both ASM modes described in this section. Vehicles that fail the first chance test as described within 150% of the standard shall receive a second chance test. The department may increase this percentage to 200% when interim or final standards take effect according to 9VAC5-91-170 B. The second chance test shall consist of a repetition of the mode or modes that were failed in the first chance test. The department may eliminate the need to do a second chance test if the vehicle has already failed an emission component check.</p>	<p>Technical correction. Adding an “s” to the word “emission” so that all references throughout the regulation are consistent.</p> <p>B. The test sequence shall consist of first chance and, if applicable, second chance tests in both ASM modes described in this section. Vehicles that fail the first chance test as described within 150% of the standard shall receive a second chance test. The department may increase this percentage to 200% when interim or final standards take effect according to 9VAC5-91-170 B. The second chance test shall consist of a repetition of the mode or modes that were failed in the first chance test. The department may eliminate the need to do a second chance test if the vehicle has already failed an emissions<u>g</u> component check.</p>
<p>9VAC5-91-440</p>		<p>4. If the vehicle fails the first chance test, the second chance test and preconditioning shall be omitted if no exhaust hydrocarbon concentration less than 1800 ppm is detected within an elapsed time of 30 seconds. The department may eliminate</p>	<p>Technical correction. Adding an “s” to the word “emission” so that all references throughout the regulation are consistent.</p> <p>4. If the vehicle fails the first chance test, the second chance test and preconditioning shall be omitted if no exhaust hydrocarbon concentration less than 1800 ppm is detected within an elapsed time of 30 seconds. The</p>

		the need to do a second chance test if the vehicle has already failed an emission component check.	department may eliminate the need to do a second chance test if the vehicle has already failed an <u>emissions</u> component check.
9VAC5-91-530		H. Emissions repair facilities shall maintain a file of the name, address, and identification number of all currently employed certified emissions technicians and shall provide such information to the department upon request.	Technical Correction. Insert omitted word "repair". H. Emissions repair facilities shall maintain a file of the name, address, and identification number of all currently employed certified emissions <u>repair</u> technicians and shall provide such information to the department upon request.
9VAC5-91-540		B. Emissions inspection station certificates shall be posted in a frame, in a conspicuous place on the permitted premises, within view of the public and approved by the department. C. Emission repair facilities performing emissions related repairs for the public shall post all signs in a manner consistent with local sign ordinances or codes.	Technical corrections. Replace "inspection" with "repair" and add an "s" to the word "emission" to align with the defined term and so that all references throughout the regulation are consistent. B. Emissions inspection station <u>repair facility</u> certificates shall be posted in a frame, in a conspicuous place on the permitted premises, within view of the public and approved by the department. C. Emissions <u> repair</u> facilities performing emissions related repairs for the public shall post all signs in a manner consistent with local sign ordinances or codes.
9VAC5-91-740		E. The on-road emissions inspector shall issue a clean screen vehicle notification to owners of affected motor vehicles that have met the clean screen emissions standards. The notification shall be issued in a timeframe compatible with the Virginia Division of Motor Vehicles vehicle registration renewal notification.	Technical correction. Replace "Division" with "Department". E. The on-road emissions inspector shall issue a clean screen vehicle notification to owners of affected motor vehicles that have met the clean screen emissions standards. The notification shall be issued in a timeframe compatible with the Virginia Division <u>Department</u> of Motor Vehicles vehicle registration renewal notification.
9VAC5-91-750		F. Notice of violations and civil charges may be issued to any motorist no more than two times in any 365-day period for any one motor vehicle.	Technical correction. Replace "Notice of Violations" with "Notices of Violation" F. Notices <u> of violations</u> and civil charges may be issued to any motorist no more than two times in any 365-day period for any one motor vehicle.

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.

The regulation applies to motor vehicle emissions inspection requirements, is mandated by state law and will impact small businesses only to the extent that they title military surplus motor vehicles registering in Virginia. It does not impact any 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 regulation; or 5) exemption of small businesses-provided they operate vehicles in the affected area- from all or any part of the requirements contained in the regulation.

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