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## Periodic Review and Small Business Impact Review Report of Findings

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC5-160
VAC Chapter title(s)	Regulation for General Conformity
Date this document prepared	July 1, 2020

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the **Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code**.

## Acronyms and Definitions

*Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

CAA- Clean Air Act

EPA- Environmental Protection Agency

NAAQS- National Ambient Air Quality Standard

SIP- State Implementation Plan

## Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.*

### Promulgating Entity

The promulgating entity for this regulation is the State Air Pollution Control Board.

### Federal Requirements

Section 110(a) of the federal Clean Air Act (CAA) mandates that each state adopt and submit to the Environmental Protection Agency (EPA) a plan that provides for the implementation, maintenance, and

enforcement of each primary and secondary air quality standard within each air quality control region in the state.

Section 176(c) of the CAA states, "No department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve, any activity which does not conform to a [State Implementation Plan]." This requires federal agencies to 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). "Conformity" means that a project conforms to the SIP's purpose of eliminating or reducing the severity and number of violations of the National Ambient Air Quality Standard (NAAQS) 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.

The CAA ties conformity to attainment and maintenance of the NAAQS. Thus, a federal action must not adversely affect implementation of the SIP or the timely attainment and maintenance of the NAAQS. The Act emphasizes reconciling the emissions from federal actions with the SIP rather than simply providing for the implementation of SIP measures. This integration of federal actions and air quality planning is intended to protect the integrity of the SIP by helping to ensure that SIP emission growth projections are not exceeded, emissions reduction targets are met, and maintenance efforts are not undermined.

40 CFR Part 51, Subpart W establishes the criteria and procedures governing the determination of conformity for all federal actions in nonattainment and maintenance areas. This rule requires Virginia to establish conformity criteria and procedures consistent with the general conformity rule promulgated by EPA. Consistent with EPA requirements, Virginia's general conformity rule (i) covers direct and indirect emissions of ozone and its precursors that are caused by a federal action, are reasonably foreseeable, and can be practicably controlled by a federal agency through its continuing program responsibility; (ii) establishes procedural requirements, including requiring federal agencies to make their conformity determinations available to the public and to air quality regulatory agencies; and (iii) provides options to satisfy air quality criteria, and requires the federal action to also meet any applicable SIP requirements and emission milestones. Each federal agency must determine that any actions covered by the rule conform to the SIP before the action is taken.

State Requirements

Code of Virginia § 10.1-1300 defines pollution as "the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people of life or property." Excess emissions resulting from federal actions that do not conform to the NAAQS and the Virginia SIP are harmful to human health and can significantly interfere with the people's enjoyment of life and property.

Code of Virginia § 10.1-1307 A provides that the board may, among other activities, develop a comprehensive program for the study, abatement, and control of all sources of air pollution in the Commonwealth.

Code of Virginia § 10.1-1308 provides that the board shall have the power to promulgate regulations abating, controlling, and prohibiting air pollution throughout or in any part of the Commonwealth in accordance with the provisions of the Administrative Process Act.

**Alternatives to Regulation**

*Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.*

Alternatives to the proposal have been considered by the Department. The Department has determined that the retention of the regulation (the first alternative) is appropriate, as it is the least burdensome and least intrusive alternative that fully meets statutory requirements and the purpose of the regulation. The

alternatives considered by the Department, along with the reasoning by which the Department has rejected any of the alternatives considered, are discussed below.

1. Retain the regulation without amendment. This option is being selected because the current regulation provides the least onerous means of complying with the minimum requirements of the legal mandates.
2. Make alternative regulatory changes to those required by the provisions of the legally binding state and federal mandates, and associated regulations and policies. This option was not selected because it does not meet federal mandates, which could result in the imposition of requirements that place unreasonable hardships on the regulated community without justifiable benefits to public health and welfare.
3. Repeal the regulation or amend it to satisfy the provisions of legally binding state and federal mandates. This option was not selected because the regulation is effective in meeting its goals and already satisfies those mandates.

**Public Comment**

*Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

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No comments were received during the public comment period. An informal advisory group was not formed for purposes of this periodic review.

**Effectiveness**

*Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.*

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This regulation enhances the Department's ability to ensure compliance with all applicable federal requirements under the CAA and specific requirements under the state code by ensuring that non-transportation federal projects conform to the State Implementation Plan and state regulations.

The regulation has been effective in achieving its specific and measurable goals, which are as follows:

1. To protect public health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.
2. To ensure that federal actions conform with Virginia's air quality plans and programs.
3. To prohibit emissions from non-conforming federal projects that would contribute to nonattainment of the national air quality standards or interference with maintenance of the standards.

The regulation has been effective in protecting public health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.

The Department has determined that the regulation is clearly written and easily understandable by the individuals and entities affected. It is written so as to permit only one reasonable interpretation, is written to adequately identify the affected entity, and, insofar as possible, is written in non-technical language.

**Decision**

*Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).*

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This regulation satisfies the provisions of the law and legally binding state and federal requirements, and is effective in meeting its goals; therefore, the regulation is being retained without amendment.

## Small Business Impact

*As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.*

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This regulation continues to be needed. It provides the necessary requirements for conformity to ensure that federal projects have the most cost-effective means of fulfilling ongoing state and federal requirements that protect air quality.

No comments were received that indicate a need to repeal or revise the regulation.

The regulation's level of complexity is appropriate to ensure that the regulated entities are able to meet their legal mandates as efficiently and cost-effectively as possible.

This regulation does not overlap, duplicate, or conflict with any state law or other state regulation.

This chapter was last amended in 2020. This chapter was also amended in 2011, 2016, and 2017.

Over time, it generally becomes less expensive to characterize, measure, and mitigate the regulated pollutants that contribute to poor air quality. This regulation continues to provide the most efficient and cost-effective means to determine the level and impact of excess emissions and to control those excess emissions.

The department, through examination of the regulation, has determined that the regulatory requirements currently minimize the economic impact of emission control regulations on small businesses and thereby minimize the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.

## Family Impact

*Please assess the potential impact of the regulation's impact on the institution of the family and family stability.*

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It is not anticipated that this regulation will have a direct impact on families.