

**COMMONWEALTH OF VIRGINIA
STATE AIR POLLUTION CONTROL BOARD
REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION**

**PRELIMINARY DETERMINATION REVIEW DOCUMENT FOR
PROPOSED REGULATION REVISION D97
CONCERNING**

**SPECIAL PROVISIONS FOR EXISTING SOURCES,
NEW AND MODIFIED SOURCES, AND
HAZARDOUS AIR POLLUTANT SOURCES
(9 VAC 5 CHAPTERS 40, 50 and 60)**

PROVISIONS AFFECTED (TENTATIVE DETERMINATION)

Special Provisions for: Existing Sources, Chapter, 40 Part I; New and Modified Sources, Chapter 50, Part I; and Hazardous Air Pollutant Sources, Chapter 60, Part I.

REASON FOR PROPOSED REGULATION

The regulation amendments are being proposed to update certain requirements in the provisions cited above to be consistent with federal requirements identified pursuant to the review of existing regulations mandated by Executive Order 15(94).

STATEMENT OF LEGAL AUTHORITY

Section 10.1-1308 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare.

STATEMENT OF STATUTORY MANDATES

The contemplated regulation amendments are mandated by federal law or regulation. A succinct statement of the source (including legal citation) and scope of the mandate may be found below. A copy of all cited legal provisions is attached.

Chapter 40, Existing Sources

Section 110(a) of the Clean Air Act (CAA) mandates that each state adopt and submit to EPA a plan which provides for the implementation, maintenance, and enforcement of each primary and secondary air quality standard within each air quality control region in the state. The state implementation plan shall be adopted only after reasonable public notice is given and public hearings are held. The plan shall include provisions to

accomplish, among other tasks, the following:

- (1) establish enforceable emission limitations and other control measures as necessary to comply with the provisions of the CAA, including economic incentives such as fees, marketable permits, and auctions of emissions rights;
- (2) establish schedules for compliance;
- (3) establish a program for the enforcement of the emission limitations and schedules for compliance; and
- (4) require sources of air pollution to install, maintain, and replace monitoring equipment as necessary and to report periodically on emissions-related data.

Section 123 of the Clean Air Act establishes the criteria for determining the stack height for stationary sources of air pollution in existence before the date of enactment of the Clean Air Act Amendments of 1970. Specifically the section requires that "the degree of emission limitation required of any source for control of any air pollutant under an applicable implementation plan...must not be affected in any manner by-

- (1) so much of any source's stack height that exceeds good engineering practice (as determined under regulations promulgated by the Administrator), or
- (2) any other dispersion technique."

For purposes of this section the term "dispersion technique" includes any intermittent or supplemental control of air pollutants varying with atmospheric conditions. Good engineering practice means, with respect to stack height, the height necessary to insure that emissions from the stack do not result in excessive concentrations of any pollutant in the immediate vicinity of the source as a result of atmospheric downwash, eddies and wakes which may be created by the source itself, nearby structures or nearby terrain obstacles.

40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of state implementation plans. These requirements mandate that any such plan shall include several provisions, as summarized below.

Subpart F (Procedural Requirements) specifies definitions of key terms, stipulations and format for plan submission, requirements for public hearings, and conditions for plan revisions and federal approval.

Subpart G (Control Strategy) specifies the description of emissions reductions estimates sufficient to attain and maintain the standards, the description of control measures and schedules for implementation, time periods for demonstrations of the control strategy's adequacy, an emissions inventory, an air quality data summary, data availability, special requirements for lead emissions, and intermittent control systems.

Section 51.118 of Subpart G sets out stack height requirements. Section 51.118 requires that the plan submitted by the state must provide that "the degree of emission limitation required of any source for control of any air pollutant must not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique." Facilities with stacks in existence after December 31, 1970 must follow good engineering practice.

Subpart K (Source Surveillance) specifies procedures for emissions reports and record-keeping, procedures for testing, inspection, enforcement, and complaints, transportation control measures, and procedures for continuous emissions monitoring.

Subpart L (Legal Authority) specifies the requirements for legal authority to implement plans and assignment of legal authority to local agencies.

Section 51.230 of Subpart L specifies that each state implementation plan must show that the state has the legal authority to carry out the plan, including the authority to perform the following actions:

- (1) adopt emission standards and limitations and any other measures necessary for the attainment and maintenance of the national ambient air quality standards;
- (2) enforce applicable laws, regulations, and standards, and seek injunctive relief;
- (3) obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require recordkeeping and to make inspections and conduct tests of air pollution sources;
- (4) require owners or operators of stationary sources to install, maintain, and use emission monitoring devices and to make periodic reports to the state on the nature and amounts of emissions from such stationary sources; and
- (5) make emissions data available to the public as reported and as correlated with any applicable emission standards or limitations.

Section 51.231 of Subpart L requires the identification of legal authority as follows:

- (1) the provisions of law or regulation which the state determines provide the authorities required under ' 51.231 must be specifically identified, and copies of such laws or regulations must be submitted with the plan; and
- (2) the plan must show that the legal authorities specified in Subpart L are available to the state at the time of submission of the plan.

Subpart N (Compliance Schedules) specifies legally enforceable compliance schedules, final compliance schedule dates, and conditions for extensions beyond one year.

Appendix M (Recommended Test Methods for State Implementation Plans) provides recommended test methods for measuring air pollutants which a state may choose to meet the requirements of Subpart K. The state may also choose to meet the requirements of Subpart K through any of the relevant methods in Appendix A to 40 CFR Part 60 or any other method that could be approved and adopted into the state implementation plan.

Appendix P (Minimum Emission Monitoring Requirements) specifies the minimum requirements for continuous emission monitoring and recording.

Chapter 50, New and Modified Sources

Section 110(a) of the Clean Air Act (CAA) mandates that each state adopt and submit to EPA a plan which provides for the implementation, maintenance, and enforcement of each primary and secondary air quality standard within each air quality control region in the state. The state implementation plan shall be adopted only after reasonable public notice is given and public hearings are held. The plan shall include provisions to accomplish, among other tasks, the following:

- (1) establish enforceable emission limitations and other control measures as necessary to comply with the provisions of the CAA, including economic incentives such as fees, marketable permits, and auctions of emissions rights;
- (2) establish schedules for compliance;
- (3) establish a program for the enforcement of the emission limitations and schedules for compliance; and
- (4) require sources of air pollution to install, maintain, and replace monitoring equipment as necessary and to report periodically on emissions-related data.

Section 110(j) specifies that, as a condition for issuance of any permit required under this title, the owner or operator of each new or modified stationary source which is required to obtain such a permit must show to the satisfaction of the permitting authority that the technological system of continuous emission reduction which is proposed will enable the source to comply with the standards of performance which are to apply to the source and that the construction or modification and operation of the source will be in compliance with all other requirements of the CAA.

Section 123 of the Clean Air Act establishes the criteria for determining the stack height for stationary sources of air pollution in existence before the date of enactment of the Clean Air Act Amendments of 1970. Specifically the section requires that "the degree of emission limitation required of any source for control of any air pollutant under an applicable implementation plan...must not be affected in any manner by-

- (1) so much of any source's stack height that exceeds good engineering practice (as determined under regulations promulgated by the Administrator), or
- (2) any other dispersion technique."

For purposes of this section the term "dispersion technique" includes any intermittent or supplemental control of air pollutants varying with atmospheric conditions. Good engineering practice means, with respect to stack height, the height necessary to insure that emissions from the stack do not result in excessive concentrations of any pollutant in the immediate vicinity of the source as a result of atmospheric downwash, eddies and wakes which may be created by the source itself, nearby structures or nearby terrain obstacles.

40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of state implementation plans. These requirements mandate that any such plan shall include several provisions, as summarized below.

Subpart F (Procedural Requirements) specifies definitions of key terms, stipulations and format for plan submission, requirements for public hearings, and conditions for plan revisions and federal approval.

Subpart G (Control Strategy) specifies the description of emissions reductions estimates sufficient to attain and maintain the standards, the description of control measures and schedules for implementation, time periods for demonstrations of the control strategy's adequacy, an emissions inventory, an air quality data summary, data availability, special requirements for lead emissions, and intermittent control systems.

Section 51.118 of Subpart G sets out stack height requirements. Section 51.118 requires that the plan submitted by the state must provide that "the degree of emission limitation required of any source for control of any air pollutant must not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique." Facilities with stacks in existence after December 31, 1970 must follow good engineering practice.

Subpart I (Review of New Sources and Modifications) specifies legally enforceable procedures, public availability of information on sources, identification of responsible agency, administrative procedures, stack height procedures, permit requirements, and requirements for prevention of significant deterioration of air quality.

Subpart K (Source Surveillance) specifies procedures for emissions reports and record-keeping, procedures for testing, inspection, enforcement, and complaints, transportation control measures, and procedures for continuous emissions monitoring.

Subpart L (Legal Authority) specifies the requirements for legal authority to implement plans and assignment of legal authority to local agencies.

Section 51.230 of Subpart L specifies that each state implementation plan must show that the state has the legal authority to carry out the plan, including the authority to perform the following actions:

- (1) adopt emission standards and limitations and any other measures necessary for the attainment and maintenance of the national ambient air quality standards;
- (2) enforce applicable laws, regulations, and standards, and seek injunctive relief;
- (3) obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require recordkeeping and to make inspections and conduct tests of air pollution sources;
- (4) require owners or operators of stationary sources to install, maintain, and use emission monitoring devices and to make periodic reports to the state on the nature and amounts of emissions from such stationary sources; and
- (5) make emissions data available to the public as reported and as correlated with any applicable emission standards or limitations.

Section 51.231 of Subpart L requires the identification of legal authority as follows:

(1) the provisions of law or regulation which the state determines provide the authorities required under ' 51.231 must be specifically identified, and copies of such laws or regulations must be submitted with the plan; and

(2) the plan must show that the legal authorities specified in Subpart L are available to the state at the time of submission of the plan.

Subpart N (Compliance Schedules) specifies legally enforceable compliance schedules, final compliance schedule dates, and conditions for extensions beyond one year.

Appendix M (Recommended Test Methods for State Implementation Plans) provides recommended test methods for measuring air pollutants which a state may choose to meet the requirements of Subpart K. The state may also choose to meet the requirements of Subpart K through any of the relevant methods in Appendix A to 40 CFR Part 60 or any other method that could be approved and adopted into the state implementation plan.

Appendix P (Minimum Emission Monitoring Requirements) specifies the minimum requirements for continuous emission monitoring and recording.

Chapter 60, Hazardous Air Pollutant Sources

Hazardous air pollutants (HAPs) are pollutants for which no ambient air quality standard is applicable, yet pose the risk of serious health problems. EPA's program for dealing with HAPs was first established in Section 112 of the Clean Air Act Amendments of 1977. This section requires that EPA develop and maintain a list of hazardous air pollutants (HAPs), and develop national emission standards (NESHAPs) for these pollutants.

Section 112(b)(1)(A) requires EPA to develop the list of HAPs; under ' 112(b)(1)(B), emission standards for each HAP on the list must be established. States may be delegated the authority to implement and enforce the NESHAPs; ' 112(d)(1) states, "Each State may develop and submit to [EPA] a procedure for implementing and enforcing emission standards for [HAPs] for stationary sources located in such State. If [EPA] finds the State procedure is adequate, [it] shall delegate to such State any authority . . . to implement and enforce such standards."

The National Emission Standards for Hazardous Air Pollutants are found in 40 CFR 61. Thus far, over 20 NESHAPs have been established, as well as related test methods and quality assurance procedures. Additionally, the General Provisions include lists of pollutants and applicability; determination, application, and approval of construction or modification; source reporting; compliance with standards and maintenance requirements; emission tests; monitoring requirements; and state authority.

STATEMENT OF CONCLUSIONS

The contemplated regulation is essential (i) to protect the health, safety or welfare of citizens or (ii) for the efficient and economical performance of an important governmental function. The reasoning for this conclusion is set forth below.

The agency performed an analysis to determine if statutory mandates justify continuation of the regulation. The analysis revealed that statutory justification does exist for the regulation. The regulation was adopted in order to implement the policy set forth in the Virginia Air Pollution Control Law and to fulfill the Commonwealth's responsibilities under the Federal Clean Air Act to provide a legally enforceable State Implementation Plan for the control of criteria pollutants. These statutes still remain in force with the provisions that initiated adoption of the regulation still intact.

Analysis reveals that the regulation is not consistent with applicable state and federal regulations, statutory provisions, and judicial decisions. Factors and circumstances (federal statutes, original intent, state air quality program and air pollution control methodology and technology) which justified the initial issuance of the regulation have changed to a degree that would justify a change to the basic requirements of the regulation, as explained below.

Chapter 40, Existing Sources

Federal guidance on states' approaches to air pollution control has varied considerably over the years, ranging from very general in the early years of the Clean Air Act to very specific in more recent years. 9 VAC 5 Chapter 40, Part I, Special Provisions for Existing Sources, was adopted in 1975, when little detailed guidance existed. Therefore, the legally binding federal mandate for this regulation is general, not specific, consisting of the Clean Air Act's broad-based directive to states to meet the air quality standards.

The current regulatory requirements of 9 VAC 5 Chapter 40, Part I, Special Provisions, for Existing Sources and 9 VAC 5-10-20, Appendices J and N were reviewed against the current requirements of 40 CFR Part 51, and Appendix M and Appendix P to 40 CFR Part 51. Appendix S relates specifically to VOC sources and will be evaluated with pertinent regulations. In some cases, 40 CFR Part 51 suggested or required the use of regulatory provisions of 40 CFR Part 60. In these cases, the requirements of 40 CFR Part 60 were reviewed against 9 VAC 5 Chapter 40, Part I, Special Provisions, and 9 VAC 5-10-20, Appendix J. In addition, the current regulatory requirements of 9 VAC 5-40-20 I concerning stack height were reviewed against the current requirements of 40 CFR ' 51.118.

In this review, three areas in the existing regulatory requirements were found to not meet the specific minimum requirements of a legally binding federal mandate. Each of these three areas is specified below along with an explanation of the differences between the federal mandate and the regulation. In each case, a provision of the regulation that does not meet the specific minimum requirements of a legally binding federal mandate has been identified and is explained in paragraph 1. Paragraph 2 follows with an explanation of the need for the identified provision.

9 VAC 5-10-20, Appendix J - Frequency of Sampling, Analyzing and Data Recording

1. The identified provision is cited below, followed by an explanation of the requirements of the federal mandate and a detailed analysis of why and to what extent the provision exceeds the mandate.
 - a. 9 VAC 5-10-20, Appendix J, subsection II C 1 requires that "[a]ll continuous monitoring systems for measuring opacity of emissions shall complete a minimum of one cycle of sampling and analyzing for each successive 15-second period and one cycle of data recording for each successive six-minute period."

- b. Appendix P of 40 CFR Part 51, ' 3.4.1 requires that "[c]ontinuous monitoring systems for measuring opacity shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 10-second period."
- c. The federal provision requires a minimum cycle of operation, including sampling, analyzing and data recording, for each successive 10-second period. The state provision requires one cycle of sampling and analyzing for each successive 15-second period, which is less stringent than the federal requirement. In addition, the state provision requires one cycle of data recording for each successive six-minute period, which is less stringent than the federal requirement of 10 seconds.

The state provisions are based on the sampling, analyzing and data recording procedures in Appendix A, Method 9 of 40 CFR Part 60 which covers visual determination of opacity of emissions from stationary sources. Method 9 requires that 24 consecutive observations should be recorded at 15 second intervals. Therefore, data sampling and analyzing occurs every 15 seconds and data recording occurs over a period of six minutes.

Since the development of the state provision, a federal performance specification which covers opacity continuous emission monitoring systems has been promulgated (Appendix B, Performance Specification 1 of 40 CFR Part 60). When owners must add these systems to their facilities, Appendix B, Performance Specification 1 tells them the specifications that must be met by the system purchased. The performance specification requires a 10-second data response time. Therefore, data must be sampled, analyzed and any change recorded within 10 seconds. This method more adequately meets the general requirements of the federal mandate.

2. The regulation is essential for the efficient and economical performance of an important governmental function. The reasoning for this conclusion is set forth below.

The current regulation, while it does not meet the federal mandate in 40 CFR Part 51, is adopted into the State Implementation Plan and, therefore, supplants the federal mandate. The current regulation corresponds with the most common method of determining opacity, the visual method in 40 CFR Part 60, Appendix A, Method 9.

9 VAC 5-10-20, Appendix J - Required Data Needed to Calculate Averages

1. The identified provision is cited below, followed by an explanation of the requirements of the federal mandate and a detailed analysis of why and to what extent the provision exceeds the mandate.
 - a. 9 VAC 5-10-20, Appendix J, subsection II F requires the following:

Owners of all continuous monitoring systems for measurement of opacity shall reduce all data to six-minute averages for six-minute periods and for systems other than opacity to one-hour averages for one-hour periods. Six-minute opacity averages shall be calculated from 24 or more data points spaced at approximately equal intervals over each six-minute period. . . .

- b. 40 CFR ' 60.13(h) requires the following:

Owners or operators of all continuous monitoring systems for measurement of opacity shall reduce all data to 6-minute averages and for continuous monitoring systems other than opacity to 1-hour averages for time periods as defined in ' 60.2. Six-minute opacity averages shall be calculated from 36 or more data points equally spaced over each 6-minute period. . . .

- c. The federal provision requires that "six-minute opacity averages shall be calculated from 36 or more data points equally spaced over each 6-minute period." The state provision requires that "six-minute opacity averages shall be calculated from 24 or more data points spaced at approximately equal intervals over each six-minute period" which is less stringent than federally required.

The state provision is based on the data recording procedures in Appendix A, Method 9 of 40 CFR Part 60 which covers visual determination of opacity of emissions from stationary sources. Method 9 requires that a minimum of 24 consecutive observations should be recorded at 15 second intervals.

However, the federal mandate is for opacity continuous emissions monitoring systems and not for visual determination of opacity. As noted earlier, owners who must add opacity continuous emissions monitoring systems to their facilities must buy systems that meet the performance specifications in 40 CFR Part 60, Performance Specification 1 and they must also meet the requirements of 40 CFR ' 60.13.

2. The regulation is essential for the efficient and economical performance of an important governmental function. The reasoning for this conclusion is set forth below.

The current regulation, while it does not meet the federal mandate in 40 CFR Part 51, is adopted into the State Implementation Plan and, therefore, supplants the federal mandate. The current regulation corresponds with the most common method of determining opacity, the visual method in 40 CFR Part 60, Appendix A, Method 9.

Emission Testing Requirements of 9 VAC 5-40-30

1. The identified provision is cited below, followed by an explanation of the requirements of the federal mandate and a detailed analysis of why and to what extent the provision exceeds the mandate.
- a. Subsection A of 9 VAC 5-40-30 specifies that emission tests are to be conducted and reported and data are to be reduced according to the regulation and the appropriate reference methods. Reference methods are defined for 9 VAC 5 Chapters 40, 50 and 60 in 9 VAC 5 Chapter 10. The definition indicates that the appropriate test methods are those in Appendix A to 40 CFR Part 60. In addition, where no appropriate reference method exists, Subsection A indicates that an equivalent or alternative method should be used.
- b. Section 51.212 (c) requires enforceable test methods for each emission limit specified in the

plan. States may use the methods in Appendix M to 40 CFR Part 51 or the methods in Appendix A to 40 CFR Part 60 or EPA-approved alternative methods.

- c. Appendix M test methods are fairly new and, at present, pertain only to PM₁₀. While the federal mandate allows several options, only Appendix M contains methods for PM₁₀. The omission of Appendix M makes the regulation less stringent than federally required. In addition, 9 VAC 5-40-30 A allows an equivalent or alternative method to be used when no appropriate reference method exists. The federal mandate requires that EPA approve an equivalent or alternative method. Therefore, the regulation is less stringent than federally required.

The state provisions do not include the Appendix M test methods because they were promulgated subsequent to the present state regulation becoming effective.

2. The regulation is essential for the efficient and economical performance of an important governmental function. The reasoning for this conclusion is set forth below.

The current regulation only partially meets the federal mandate in 40 CFR Part 51. By including Appendix M test methods as well as those in 40 CFR Part 60, Appendix A, the regulation will meet the federal mandate and will provide a more accurate requirement.

Chapter 50, New and Modified Sources

The current regulatory requirements of 9 VAC 5 Chapter 50, Part I, Special Provisions for New and Modified Sources were reviewed against the current requirements of 40 CFR Part 51, and Appendix M and Appendix P to 40 CFR Part 51. Appendix S relates specifically to VOC sources and will be evaluated with pertinent regulations.

In some cases, 40 CFR Part 51 suggested or required the use of regulatory provisions of 40 CFR Part 60. In these cases, the requirements of 40 CFR Part 60 were reviewed against 9 VAC 5 Chapter 50, Part I, Special Provisions. In addition, the current regulatory requirements of 9 VAC 5-50-20 H concerning stack height were reviewed against the current requirements of 40 CFR ' 51.118 and 40 CFR ' 51.164.

Some provisions of the regulation exceed the specific minimum requirements of a legally binding state or federal mandate; these have been identified and are explained in paragraph 1. Paragraph 2 follows with an explanation of the need for the identified provisions.

Emission Testing Requirements of 9 VAC 5-50-30

1. The identified provision is cited below, followed by an explanation of the requirements of the federal mandate and a detailed analysis of why and to what extent the provision exceeds the mandate.
 - a. Subsection A of 9 VAC 5-50-30 specifies that emission tests are to be conducted and reported and data are to be reduced according to the regulation and the appropriate reference methods. Reference methods are defined for 9 VAC 5 Chapters 40, 50 and 60 in 9 VAC 5 Chapter 10. The definition indicates that the appropriate test methods are those in Appendix A to 40 CFR Part 60. In addition, where no appropriate reference method exists, Subsection A indicates that an equivalent or alternative method should be used.

- b. Section 51.212 (c) requires enforceable test methods for each emission limit specified in the plan. States may use the methods in Appendix M to 40 CFR Part 51 or the methods in Appendix A to 40 CFR Part 60 or EPA-approved alternative methods.
- c. Appendix M test methods are fairly new and, at present, pertain only to PM₁₀. While the federal mandate allows several options, only Appendix M contains methods for PM₁₀. The omission of Appendix M makes the regulation less stringent than federally required. In addition, 9 VAC 5-50-30 A allows an equivalent or alternative method to be used when no appropriate reference method exists. The federal mandate requires that EPA approve an equivalent or alternative method. Therefore, the regulation is less stringent than federally required.

The state provisions do not include the Appendix M test methods because they were promulgated subsequent to the present state regulation becoming effective.

2. The regulation is essential for the efficient and economical performance of an important governmental function. The reasoning for this conclusion is set forth below.

The current regulation only partially meets the federal mandate in 40 CFR Part 51. By including Appendix M test methods as well as those in 40 CFR Part 60, Appendix A, the regulation will meet the federal mandate and will provide a more accurate requirement.

Chapter 60, Hazardous Air Pollutant Sources

The current regulatory requirements of 9 VAC 5 Chapter 60, Part I, Special Provisions, Hazardous Air Pollutants were reviewed against the current requirements of 40 CFR Part 61.

Provisions of the regulation that do not meet the specific minimum requirements of a legally binding state or federal mandate have been identified and are explained in paragraph 1. Paragraph 2 follows with an explanation of the need for the identified provisions.

1. The identified provisions are cited below, followed by an explanation of the requirements of the federal mandate and a detailed analysis of why and to what extent the provision does not meet or exceeds the mandate.
 - a. 9 VAC 5-60-20 A 2 and 9 VAC 5-60-30 D refer to visible emissions standards prescribed under 9 VAC 5 Chapter 60.
 - b. Neither ' 112 of the CAA nor the General Provisions of 40 CFR Part 61 include provisions covering visible emissions.
 - c. Visible emission standards are not included in 9 VAC 5 Chapter 60 and, therefore, the reference to these standards is inappropriate. Visible emissions are covered elsewhere in the CAA and in the state regulations.
2. The regulation is essential for the efficient and economical performance of an important governmental function. The reasoning for this conclusion is set forth below.

The federal program concerning National Emission Standards for Hazardous Air Pollutants is delegated to the state from the federal government. The regulation sets out general requirements concerning these standards. The regulation is therefore essential to maintain delegation of authority for these standards.

STATEMENT OF PROCESS FOR CONSIDERING ALTERNATIVES

Alternatives to the proposed regulation amendments are being considered by the Department. The Department has tentatively determined that the third alternative is appropriate, as it is the least burdensome and least intrusive alternative that fully meets the purpose of the regulation amendments. The alternatives being considered by the Department are discussed below.

1. Take no action to amend the regulation. This option is not being selected because the regulation would remain out of date.
2. Make alternative regulatory changes to those required by the provisions of the legally binding state or federal mandates. This option is not being selected because no alternative to the federal mandate would be appropriate.
3. Amend the regulation to satisfy the provisions of the legally binding state or federal mandates. This option is being selected because the regulation should be updated to reflect the latest requirements.

As provided in the public participation procedures of the State Air Pollution Control Board, the Department will include, in the subsequent Notice of Intended Regulatory Action, a description of the above alternatives and a request for comments on other alternatives and the costs and benefits of the above alternatives or the other alternatives that the commenters may provide.

STATEMENT OF IMPACT ON FAMILY FORMATION, STABILITY AND AUTONOMY

In the formulation of these regulation amendments, the Department will consider the impact of the regulation amendments on family formation, stability and autonomy. It is not anticipated that these regulation amendments will have a direct impact on families. However, there may be positive indirect impacts in that the regulation amendments will contribute to the prevention of air pollution, thus also contributing to reductions in associated fertility disorders, fetal mutation and deformity, disease, and premature death.

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