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Exempt Action: Final Regulation Agency Background Document

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC5-95
VAC Chapter title(s)	Regulation For Low Emissions And Zero Emissions Vehicle Standards (9VAC5-95)
Action title	Create new Chapter 95, Regulation For Low Emissions And Zero Emissions Vehicle Standards (Revision MR)
Final agency action date	
Date this document prepared	

Although a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, 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*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

A new Regulation for Low Emissions and Zero Emissions Vehicles (9VAC5-95) is being added as required by Chapter 263 of the 2021 Special Session I Virginia Acts of Assembly. Chapter 263 adds a new section 10.1-1307.04, which requires the board to adopt any model year standards relating to the control of emissions from new motor vehicles or new motor vehicle engines, including low emissions vehicle (LEV) and zero emissions vehicle (ZEV) standards pursuant to § 177 of the federal Clean Air Act. It requires that the board promulgate regulations for an Advanced Clean Cars Program (basically identical to California's car standards) that includes (i) an LEV program for criteria pollutants and greenhouse gas (GHG) emissions and (ii) a ZEV program only for motor vehicles with a gross vehicle weight of 14,000 pounds or less. Such programs must be applicable to motor vehicles beginning with the 2025 model year, or to the first model year for which adoption of such standards is practicable.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). "Mandate" is defined as "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

The mandate for this regulation is Chapter 263 of the 2021 Special Session I Acts of Assembly.

Acronyms and Definitions

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

CARB - California Air Resources Board
GHG - greenhouse gases
LEV - low emissions vehicle
ZEV - zero emissions vehicle

Statement of Final Agency Action

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 2, 2021, the State Air Pollution Control Board took final action to adopt the Regulation for Low Emissions and Zero Emissions Vehicles (9VAC5-95). In accordance with Chapter 263 of the 2021 Special Session I Acts of Assembly, the regulatory action is to become effective upon filing with the Virginia Register and is to become effective no sooner than January 1, 2024.

The regulation is exempt from the state administrative procedures for adoption of regulations contained in the Administrative Process Act pursuant to Chapter 263 of the 2021 Special Session I Acts of Assembly.

Legal Basis

Identify (1) the agency or other promulgating entity, 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 entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory 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. Written assurance from the Office of the Attorney General that the State Air Pollution Control Board possesses the statutory authority to promulgate the proposed regulation amendments is available upon request.

Promulgating Entity

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

Federal Requirements

Although participation in the program is voluntary, § 177 of the federal Clean Air Act imposes certain requirements on participating states. Section 177 requires that a state adopt a model year standard two years in advance of the model year's effective date. The model year effective date is one year before the actual model year. Thus, model year 2025 will become effective in 2024, and states must adopt it by 2022. Since the authorizing statute is predicated on beginning in model year 2025, this rule must be adopted no later than January 1, 2022 in order to meet this federal requirement.

State Requirements

Section 10.1-1307.04 of the State Air Pollution Control Law. Subsection B requires that the implementing regulation begin with model year 2025, which makes it subject to the § 177 process and timing described above. Subdivision B 3 requires that the regulation not become effective prior to January 1, 2024, and subdivision B 2 requires that regulation become effective upon filing with the Virginia Registrar of Regulations. These timing requirements coupled with the federal requirements necessitate that the board adopt the regulation by the end of 2021 and the department submit it to the Registrar as soon as practicable after January 1, 2024, to become effective upon filing.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The purpose of the regulation is to control air pollution from motor vehicles in order to protect public health and welfare.

Gases that trap heat in the atmosphere are called greenhouse gases (GHGs). Motor vehicles contribute a significant portion of air pollution in Virginia and nationwide, in the form of both criteria pollutants and GHG pollutants. The primary cause of ozone (smog) pollution in the state's lone nonattainment area of northern Virginia is motor vehicle emissions.

California has the unique authority under § 209 of the federal Clean Air Act to maintain motor vehicle emission standards that are stricter than the federal standards. California's Low-Emission Vehicle (LEV) standards control tailpipe emissions of criteria and GHG pollutants. As part of its larger Advanced Clean Cars Program, California's Zero Emission Vehicles (ZEV) program requires major manufacturers of passenger cars and light trucks (up to 8,500 pounds) to produce and deliver for sale a certain number of ZEV vehicles.

Other states may adopt California's standards under § 177 of the Clean Air Act. As of this writing, 12 states (California, Colorado, Connecticut, Maine, Maryland, Massachusetts, New Jersey, New York, Oregon, Rhode Island, Vermont, and Washington) plus the District of Columbia have adopted California's LEV and ZEV standards. Virginia enacted legislation in March 2021 to adopt LEV and ZEV standards; this rulemaking is needed in order to implement the legislative mandate. Washington, Minnesota, New Mexico, and Nevada have also undertaken the regulatory process and will be adopting these standards as well.

LEV will reduce emissions from combustion engine vehicles. ZEV is a technology forcing program that requires vehicle manufacturers to produce an increasing number of ZEVs, including battery, fuel cell, and plug-in hybrid electric vehicles.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.

1. General applicability of the program is identified (9VAC5-95-10).
2. Terms are defined (9VAC5-95-20).
3. Requirements for LEVs are provided, including specific applicability provisions, determination of fleet average emissions, labelling requirements, warranty and recall requirements, and recordkeeping and reporting requirements (9VAC5-95-30).
4. Requirements for ZEVs are provided, including specific applicability provisions; credit bank, reporting and recordkeeping requirements; and ZEV credit obligations (9VAC5-95-40).
5. California Air Resources Board (CARB) documents are incorporated by reference.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

1. Public: The primary advantage to the public is the control of harmful GHG and criteria (ozone and particulate matter) pollution, which has a direct health and welfare impact on all citizens. There may be a disadvantage to the public depending on the manufacturers' ability to provide LEVs and ZEVs, their cost, and the cost of any needed infrastructure to support the program. LEV and ZEV cars may be more cost-effective to operate over the life of the vehicle, primarily through reduced fuel use.
2. Department: The primary advantage to the department is the control of harmful GHG and criteria (ozone and particulate matter) pollution. Because it will reduce criteria pollutants, it will also contribute to the reduction of ozone and could enable the Northern Virginia Ozone Nonattainment area to attain the ozone standard. There may be a disadvantage to the department if additional staff expenses to manage the program are needed.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change that is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

The requirements in the regulation are more restrictive than current federal requirement.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. “Particularly affected” are those that are likely to bear any identified disproportionate material impact, which would not be experienced by other agencies, localities, or entities. “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or

regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected:

Every state agency in the Commonwealth that is responsible for the purchase of motor vehicles will be affected by this regulation. There may be additional indirect impacts on the Department of Transportation, and the Department of Energy. These agencies will have a role to play in providing sufficient infrastructure for this program to operate (such as EV charging infrastructure).

Localities Particularly Affected:

There are no localities that bear an identified disproportionate material air quality impact not experienced by other localities under the board's statutes.

Other Entities Particularly Affected:

Entities particularly affected by this regulation will be the manufacturers and dealers of motor vehicles. There may be indirect impacts on fuel distribution, fuel retailers, and vehicle maintenance providers.

Detail of All Changes Proposed in this Regulatory Action

*List all changes proposed in this exempt action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. *Please put an asterisk next to any substantive changes.*

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements
*9VAC5-95-10	Applicability	Clean Air Act § 177; CARB as listed in documents incorporated by reference	Identifies the parties to which the regulation applies. Will enable affected entities to comply with legislative mandate.
*9VAC5-95-20	Definitions	Clean Air Act § 177; CARB as listed in documents incorporated by reference	Defines terms used in the regulation in order for affected entities to understand and correctly implement the regulation's requirements. Will enable affected entities to comply with legislative mandate.
*9VAC5-95-30	Low Emission Vehicle (LEV) Standards	Clean Air Act § 177; CARB as listed in documents incorporated by reference	Describes certification, fleet averaging, labeling, and other requirements for vehicles that are produced by a motor vehicle manufacturer and delivered for sale or lease in Virginia. Will enable affected entities to comply with legislative mandate.
*9VAC5-95-40	Zero Emission Vehicle (ZEV) standards	Clean Air Act § 177; CARB as listed in documents incorporated by reference	Describes required ZEV percentages and enables motor vehicle manufacturers to establish a Virginia-specific ZEV credit account. Will enable affected entities to comply with legislative mandate.

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements
9VAC5-95-50	Documents incorporated by reference.	Clean Air Act § 177; CARB as listed in documents incorporated by reference	Lists the documents incorporated by reference needed for the regulation to operate. Will enable affected entities to comply with legislative mandate.

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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

This regulation meets the requirements of state law. The compliance requirements are the minimum possible consistent with the requirements of the Chapter 263 of the 2021 Virginia Acts of Assembly. Any changes to any reporting, schedules, or standards, or any exemption of small businesses from all or any part of the requirements contained in the regulation will not meet the minimum requirements of Chapter 263 of the 2021 Virginia Acts of Assembly.

Family Impact

In accordance with § 2.2-606 of the Code of Virginia, please assess the potential impact of the proposed 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.

The average upfront cost of an electric automobile is approximately \$10,000 greater than the cost of a comparable internal combustion automobile. It is possible over time that ZEV/LEVs may realize lower operating costs.

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