

Virginia Regulatory Town Hall

Periodic Review of Existing Regulations Agency Background Document

Agency Name:	State Air Pollution Control Board
Regulation Title:	Regulation for the National Low Emission Vehicle Program
Subtitle:	None.
VAC Number:	9 VAC 5-200-10 et seq.
Date:	May 28, 2002

This information is required pursuant to the Administrative Process Act § 2.2-4017 and Executive Order Twenty-Five (98) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

Summary

Please provide a brief summary of the regulation and its purpose. There is no need to state each provision, instead give a general description of the regulation.

EPA's National Low Emission Vehicle (NLEV) program requirements are incorporated into a Virginia regulation which enables the state to participate in the program. The NLEV program is designed to control ozone and other pollution from new motor vehicles. NLEV allows manufacturers to commit to meet tailpipe standards for cars and light-duty trucks that are more stringent than EPA can mandate. The program is enforceable in the same manner as any other federal new motor vehicle program.

Legal Requirements

Please identify the state and/or federal source of the legal requirements that necessitate promulgation of the regulation. The discussion of these requirements should include a description of their scope and the extent to which the requirements are mandatory or discretionary. Full citations for the legal requirements and, if available, web site addresses for locating the text of the cited legal provisions should be provided.

Federal Requirements

Federal Clean Air Act (CAA):

<http://www.epa.gov/ttn/oarpg/gener.html>

Code of Federal Regulations (CFR):

<http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html>

Federal Register (FR):

http://www.gpo.gov/su_docs/aces/aces140.html

The regulation is not mandated by federal law or regulation; however, the Commonwealth opted to participate in a program which is delineated by federal law.

Section 177 of the federal Clean Air Act states that model year standards for new motor vehicles may be established on a state-by-state basis. The Ozone Transport Commission (OTC), which was established by § 176A of the Clean Air Act, is responsible for developing a consensus among member states, automobile manufacturers, and the U.S. Environmental Protection Agency as to what the standards should be and how to achieve them. Once the standards are established, member states may choose to "opt in" to a framework developed by EPA to achieve the standards. This program is called the National Low Emission Vehicle (NLEV) Program. Program specifics were promulgated by EPA on January 7, 1998 (63 FR 926), under 40 CFR 85, 86, and 87.

Under the NLEV Program, automobile manufacturers have the option of agreeing to comply with tailpipe standards that are more stringent than EPA can mandate prior to model year 2004. Once the manufacturers commit to the program, the standards are enforceable in the same manner as other federal motor vehicle emissions control requirements. These manufacturers have agreed to volunteer these tighter emission standards because EPA and OTC states agreed to certain conditions, including providing manufacturers with regulatory stability and reducing regulatory burdens by harmonizing federal and California motor vehicle emission standards.

In order to participate in the NLEV Program, Virginia committed, through the Office of the Governor and the Secretary of Natural Resources, to meet the requirements of the program as provided in 40 CFR 85, 86 and 87. The Department then developed a regulation—9 VAC 5 Chapter 200--enacting the requirements of the federal regulation.

State Requirements

Code of Virginia:

<http://leg1.state.va.us/000/cod/codec.htm>

Virginia Administrative Code (VAC):

<http://leg1.state.va.us/000/reg/toc.htm>

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. It further provides that no such regulation, shall prohibit the burning of leaves from trees by persons on property where they reside if the local governing body of the county, city or

town has enacted an otherwise valid ordinance regulating such burning. It further provides that the regulations shall not promote or encourage any substantial degradation of present air quality in any air basin or region which has an air quality superior to that stipulated in the regulations.

Comparison with Statutory Requirements

No provision of the regulation exceeds the specific minimum requirements of any legally binding state or federal mandate. An explanation as to how this conclusion was reached 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 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 not changed to a degree that would justify a change to the basic requirements of the regulation.

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. If no public comment was received, please include a statement indicating that fact

No public input was received during the public comment period for this periodic review.

Effectiveness

Please provide a description of the specific and measurable regulatory goals of the regulation. Detail the effectiveness of the regulation in achieving such goals.

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

1. To protect public health and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.

2. To prohibit emissions which would contribute to nonattainment of the national air quality standards or interference with maintenance of the standards.
3. To ensure that car manufacture and sale in the Commonwealth will not be adversely affected by varying regulations
4. To contribute to the efficient and economical administration of mobile source emissions controls.

Need

Please provide the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens or is essential for the efficient and economical performance of an important governmental function. Include a discussion of the problems the regulation's provisions are intended to solve.

Control of ozone pollution in the Commonwealth, while improving, has remained problematic in the Northern Virginia Ozone Nonattainment Area. Ozone levels in the area continue to be above the national standard to the degree that the area is characterized as a "serious" nonattainment area. One of the reasons for this is the lack of traditional large sources to be controlled; most of the area's air pollution comes from mobile sources. Ozone is a pollutant with serious health and welfare effects; control of ozone through its most common source will contribute to an improvement in public health and welfare in the area as well as in the rest of the ozone transport region.

By voluntarily participating in a national program, the Commonwealth also is ensuring that car manufacture and sale in the Commonwealth will not be adversely affected by varying regulations. Participation in NLEV will also result in more efficient and economical administration of mobile source emissions controls.

Alternatives

Please describe the process by which the agency has considered, or will consider, less burdensome and less intrusive alternatives for achieving the need. Also describe, to the extent known, the specific alternatives that have been considered and will be considered to meet the need, and the reasoning by which the agency has rejected any of the alternatives considered.

Alternatives have been considered by the Department to meet the need. The Department has determined that retention of the regulation (the first alternative) is appropriate, as it is the least burdensome and least intrusive alternative that fully meets the statutory requirements and need for 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 was chosen because the current regulation provides the least onerous method for 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 or federal mandates. This option was not chosen because it could result in the imposition of requirements that place unreasonable hardships on the regulated community without justifiable benefits.
3. Repeal the regulation or amend it to satisfy the provisions of the legally binding state or federal mandates. This option was not chosen because the regulation is effective in meeting its goals and already satisfies those mandates.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

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Family Impact Statement

Please provide a preliminary analysis of the potential impact of the regulation on the institution of the family and family stability including to what extent the regulation 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; 4) increase or decrease disposable family income.

It is not anticipated that the regulation will have a direct impact on families. However, there will be positive indirect impacts in that the regulation 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.

Recommendation

Please state whether the agency is recommending the regulation be retained and the reasons such a recommendation is being made.

The regulation satisfies the provisions of the legally binding state or federal requirements and is effective in meeting its goals; therefore, it is recommended that the regulation be retained without amendment.