

Virginia Regulatory Town Hall

Notice of Intended Regulatory Action Agency Background Document

Agency Name:	State Air Pollution Control Board
Regulation Title:	Regulations for the Control and Abatement of Air Pollution
Primary Action:	9 VAC 5-20-21 of 9 VAC 5 Chapter 20
Secondary Action(s):	None
Action Title:	Technical Documents Incorporated by Reference (Revision B00)
Date:	February 4, 2000

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) for more information.

Purpose *

Please describe the subject matter and intent of the planned regulation.

The regulation amendments are being proposed to incorporate the latest edition of referenced technical documents into the Regulations for the Control and Abatement of Air Pollution.

Legal Requirements

Please identify the state and/or federal source of the legal requirements that necessitate promulgation of the contemplated 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 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

Section 110, paragraph 2 of Title I of the Clean Air Act Amendments of 1990 (42 USC 7471) requires that the state implementation plan shall "provide for the establishment and

operation of appropriate devices, methods, systems, and procedures necessary to . . . monitor, compile, and analyze data on ambient air quality . . ." This law is implemented by EPA through the Code of Federal Regulations, 40 CFR Part 51, section 51.212, which states that the plan must provide for "enforceable test methods for each emission limit specified in the plan."

To meet this requirement, the Department has, where appropriate, incorporated by reference a series of mostly industry-generated test methods that reflect the most current technical information available and that will enable the state to meet this Act requirement.

Need *

Please set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens or would be 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.

The amendments are needed because the regulations must be current and timely, which means that the technical documents incorporated must be the most recent edition. EPA has indicated that it will not approve state plans if the technical documents referenced are not up to date and accurate. In addition to meeting federal requirements for the provision of enforceable test methods which are acceptable to EPA, incorporation of these documents has many additional advantages to the public and to the state.

The amendments concern documents that are technical in nature and pertain to areas in which the agency has limited expertise or resources to conduct extensive research. For example, the "Flammable and Combustible Liquids Code," which is published by the National Fire Protection Association as an American National Standard contains important information that would not otherwise be readily determined by the state with its own devices.

In addition, the agency must ensure that its references to technical standards--for example, test methods--must be consistent with standards developed and accepted by the scientific and industrial communities. By keeping state requirements consistent with these standards, the state and the regulated community avoid conflict and confusion, and ensure technical accuracy.

Use of these standards is advantageous to industry. Most of the standards have been developed by industrial professional societies. Like the state, many industries do not have the wherewithal to do their own research and develop their own standards. Use of these standards assures convenience and consistency for their users, as well as a strong degree of confidence in their accuracy.

Relying on existing standards also saves the state time and financial resources by eliminating duplication of research. Finally, the regulations must reflect the most up-to-date technical information available to ensure that public health and welfare are protected.

Potential Issues *

Please supply a statement delineating any potential issues that may need to be addressed as the regulation is developed.

1. To amend 9 VAC 5-20-21 of 9 VAC 5 Chapter 20 to update information related to technical documents incorporated by reference.
2. To amend 9 VAC 5-20-21 of 9 VAC 5 Chapter 20 as may be necessary to maintain consistency with Title 40 of the Code of Federal Regulations.

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 to the proposal 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 to the proposed regulation amendments are being considered by the Department. The Department has tentatively determined that the first alternative is appropriate, as it is the least burdensome and least intrusive alternative that fully meets the purpose of the regulatory action. The alternatives being considered by the Department, along with the reasoning by which the Department has rejected any of the alternatives being considered, are discussed below.

1. Amend the regulations to satisfy the provisions of the law and associated regulations and policies. This option is being selected because it meets the stated purpose of the regulatory action: to ensure that technical documents incorporated by reference into the Commonwealth's regulations are complete and accurate.
2. Take no action to amend the regulations and continue using outdated references. This option is not being considered because it would result in the use of outdated and inaccurate information.

Family Impact Statement

Please provide a preliminary analysis of 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: 4) increase or decrease disposable family income.

It is not anticipated that these regulation amendments will have a direct impact on families. However, there will be positive indirect impacts in that the regulation amendments will ensure that the Commonwealth's air pollution control regulations will function as effectively as possible, thus contributing to reductions in fertility disorders, fetal mutation and deformity, chronic and acute illness, premature death, and property damage.

Public Participation *

Please indicate the nature of the comments the Department is soliciting pursuant to this notice and whether a public meeting is to be held to receive comments on this notice. Indicate that 1) the Department is not holding a meeting because the Board has authorized the Department to proceed without holding a meeting or 2) the Department is holding a meeting. If a public meeting is to be held, indicate where information on the public meeting (i.e. date, time, and place) may be found.

The Department is soliciting comments on (i) the intended regulatory action, to include ideas to assist the Department in the development of the proposal, and (ii) the costs and benefits of the alternatives stated in this notice or other alternatives. A public meeting will be held by the Department to receive comments on and to discuss the intended action. Information on the date, time, and place of the meeting is published in the Calendar of Events section of the Virginia Register. Unlike a public hearing, which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development.

Ad Hoc Advisory Group *

Please indicate the extent to which an ad hoc advisory group will be used in the development of the proposed regulation. Indicate that 1) the Department is not using the participatory approach in the development of the proposal because the Board has authorized the Department to proceed without the use of the participatory approach; 2) the Department is using the participatory approach in the development of the proposal; or 3) the Department is inviting comment on whether the Department should use the participatory approach to assist the Department in the development of a proposal.

The Department is soliciting comments on the advisability of forming an ad hoc advisory group, utilizing a standing advisory committee or consulting with groups or individuals registering interest in working with the Department to assist in the drafting and formation of any proposal. The primary function of any group, committee or individuals that may be utilized is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus. Any comments relative to this issue may be submitted using the same procedures as those used for submitting written comments pursuant to this notice.