

Virginia Regulatory Town Hall

Proposed Regulation Agency Background Document

Agency Name:	State Air Pollution Control Board
Regulation Title:	Regulation for Mobile Sources
Primary Action:	9 VAC 5-180-10 et seq.
Secondary Action(s):	9 VAC 5-40-5650 et seq. (repeal); 9 VAC 5-91-190 and -210
Action Title:	Mobile Sources (Rev. I00)
Date:	

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary *

Please provide a brief summary of the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation.

Revision I00 encompasses three regulatory actions. The first action is to repeal the existing rule for Emission Standards for Mobile Sources, Article 41 (9 VAC 5-40-5650 et seq.) of 9 VAC 5 Chapter 40, because certain of its provisions have been determined to be no longer required by federal mandate and no longer essential to protect the health or welfare of citizens. The second action is to promulgate a replacement Regulation for Mobile Sources, 9 VAC 5 Chapter 180 (9 VAC 5-180-10 et seq.), which will meet current air quality needs. This replacement regulation will contain provisions covering anti-tampering, visible emission standards, commercial and public service vehicles, and export/import of motor vehicles. The third action is to amend the existing Regulation for the Control of Motor Vehicle Emissions in the Northern Virginia Area, 9 VAC 5 Chapter 91 (9 VAC 5-91-190 and -210), to render it consistent with the new regulatory provisions developed for the replacement Regulation for Mobile Sources.

Basis *

Please identify the section number and provide a brief statement relating the content of the statutory authority to the specific regulation proposed. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

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 (i) the State Air Pollution Control Board possesses the statutory authority to promulgate the proposed regulation amendments and that (ii) the proposed regulation amendments comport with the applicable state and/or federal law is available upon request.

Purpose *

Please provide a statement explaining the rationale or justification of the proposed regulation as it relates to the health, safety or welfare of citizens.

The purpose of the regulation is to require the owners and operators of mobile sources to limit air emissions to a specified level necessary to protect public health, safety, and welfare. The proposal is to (1) adopt a new regulation that meets current air quality needs and (2) repeal the existing regulation because certain of its provisions have been determined to be no longer required by federal mandate and no longer essential to protect the health or welfare of citizens. This determination was made pursuant to the review of existing regulations mandated by Executive Order 15(94).

Substance *

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

1. To repeal the existing rule for Emission Standards for Mobile Sources, Article 41 (9 VAC 5-40-5650 et seq.) of 9 VAC 5 Chapter 40;
2. To promulgate a new Regulation for Mobile Sources, 9 VAC 5 Chapter 180 (9 VAC 5-180-10 et seq.); and
3. To amend the existing Regulation for the Control of Motor Vehicle Emissions in the Northern Virginia Area, 9 VAC 5 Chapter 91 (9 VAC 5-91-190 and -210).

The replacement regulation (9 VAC 5 Chapter 180) addresses only motor vehicles and contains provisions covering anti-tampering, visible emission standards, commercial and public service vehicles, and export/import of motor vehicles.

Issues *

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public of implementing the new or amended provisions; and 2) the primary advantages and disadvantages to the agency or the Commonwealth. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

1. Public: The replacement of the regulation will have an advantage for the public in that affected sources and the general public will no longer expect the enforcement of a regulation which is largely unenforced because of certain ineffectual provisions. The replacement regulation will focus on the control of emissions from motor vehicles, which are the major concern of the general public. The replacement of the regulation will have no disadvantages for the public.

2. Department: The replacement of the regulation will have an advantage for the department in that the State Air Pollution Control Board will no longer have to continue to justify the retention of regulatory provisions which now exceed their original mandate. Another advantage will be that the Department of Environmental Quality will no longer be charged with enforcing ineffectual regulatory provisions. The replacement of the regulation will have no disadvantages for the department.

Localities Particularly Affected *

Please provide the identity of any localities particularly affected by the proposed regulation.

There is no locality which will bear any identified disproportionate material air quality impact due to the proposed regulation which would not be experienced by other localities.

Public Participation *

Please indicate the nature of the comments the Department is soliciting pursuant to this notice.

The department is seeking comment on the proposed regulation, on the costs and benefits of the proposal, and on the additional issue explained below.

Additional Issue for Comment *

The current 9 VAC 5-40-5670 C, which is proposed for repeal, establishes the allowable time limits for parked motor vehicles to idle in commercial or residential urban areas as ten minutes for tour buses running air conditioning during hot weather, ten minutes for diesel-powered vehicles (to minimize restart problems), and three minutes for others. The

proposed replacement section, 9 VAC 5-180-30 C, increases these time limits to sixty minutes for tour buses running air conditioning during hot weather and ten minutes for others. The department is requesting specific comments about these proposed increases in time limits. The department is also requesting specific comments about the impact of these time limits on categories of vehicles that idle in commercial or residential urban areas, such as taxicabs, delivery vehicles, commuter vans, service vehicles, school buses, heavy duty diesel trucks, and so on.

Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and (e) the projected cost of the regulation for affected individuals, businesses, or other entities. Include a description of the beneficial impact the regulation is designed to produce.

1. Entities Affected

Entities affected are the owners and operators of the approximately 5.5 million motor vehicles registered in Virginia.

2. Fiscal Impact

a. Costs to Affected Entities

Affected entities will incur no costs.

b. Costs to Agency

It is not expected that the regulation amendments will result in any cost to the Department of Environmental Quality beyond that currently in the budget.

c. Source of Agency Funds

The sources of department funds to carry out this regulation are the general fund and the grant money provided by the U.S. Environmental Protection Agency under Section 105 of the federal Clean Air Act. The activities are budgeted under the following program (code)/subprogram (code): Air Quality Mobile Source Regulation Enforcement (5121500). The costs are expected to be ongoing.

d. Benefits

The replacement of this regulation will have several benefits. The State Air Pollution Control Board will no longer have to continue to justify the retention of those

regulatory provisions of Rule 4-41 which now exceed their original mandate. The Department of Environmental Quality will no longer be charged with enforcing ineffectual and unnecessary provisions. Affected sources and the general public will no longer expect the enforcement of these ineffectual and unnecessary provisions. The replacement regulation will focus on the control of visible emissions from motor vehicles, which are the major concern of the general public.

e. Small Business Impact

The impact upon facilities that meet the definition of small business provided in § 9-199 of the Code of Virginia is addressed in paragraph 2a above.

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 web site addresses, if available, 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

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; and
- (3) prohibit emissions which would contribute to nonattainment of the standards or interference with maintenance of the standards by any state.

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, including those summarized below.

Subpart G (Control Strategy) specifies the description of control measures and schedules for implementation, the description of emissions reductions estimates sufficient to attain and maintain the standards, 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, stack height provisions, and intermittent control systems.

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.

Section 51.230 under 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) abate pollutant emissions on an emergency basis to prevent substantial endangerment to the health of persons;
- (4) prevent construction, modification, or operation of a facility, building, structure, or installation, or combination thereof, which directly or indirectly results or may result in emissions of any air pollutant at any location which will prevent the attainment or maintenance of a national standard;
- (5) obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require record-keeping and to make inspections and conduct tests of air pollution sources;
- (6) 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
- (7) make emissions data available to the public as reported and as correlated with any applicable emission standards or limitations.

Section 51.231 under 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 this section 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 this subpart are available to the state at the time of submission of the plan.

Comparison with Federal Requirements

Please describe the provisions of the proposed regulation which are more restrictive than applicable federal requirements together with the reason why the more restrictive provisions are needed.

The proposed regulation amendments are not more restrictive than the applicable legal requirements.

Need

Please provide an explanation of the need for the proposed regulation and potential consequences that may result in the absence of the regulation. Also 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.

Rule 4-41 is no longer essential (i) to protect the health or welfare of citizens or (ii) for the efficient and economical performance of an important governmental function. An explanation as to how this conclusion was reached is set forth below.

The regulation is no longer needed for air quality planning purposes. 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, but the provisions that initiated adoption of the regulation have changed.

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.

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. This regulation, Rule 4-41, was adopted in 1972, when no

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 standard for particulate matter, which is emitted by mobile sources.

Since Rule 4-41 was adopted in 1972, important changes have been made to the State Implementation Plan which have resulted in significantly better control of the emissions this regulation was designed to limit. For instance, under the 1990 amendments of the Clean Air Act, most motor vehicles in the northern Virginia metropolitan area are now subject to an inspection and maintenance (I/M) program, which provides for a higher level of stringency for control of visible emissions and other pollutants than the level provided for by Rule 4-41. In addition, the enforcement of anti-tampering prohibitions is accomplished through statewide safety inspections carried out by the State Police. (The anti-tampering provisions of Rule 4-41 merely duplicate those of section 46.2-1048 of the Code of Virginia.) In light of these newer and more effective controls, the regulation should be replaced. The replacement regulation (9 VAC 5 Chapter 180) will focus on the control of visible emissions from motor vehicles, which are the major concern of the general public. It contains provisions addressing anti-tampering, visible emission standards, commercial and public service motor vehicles, and export/import of motor vehicles.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description of changes implemented by the proposed regulatory action. Where applicable, include cross-referenced citations when the proposed regulation is intended to replace an existing regulation.

1. 9 VAC 5-180-10: Specifies applicability of proposed regulation to motor vehicles throughout Virginia
2. 9 VAC 5-180-20: Defines terms used in proposed regulation.
3. 9 VAC 5-180-30 A: Prohibits the removal, disconnection, disabling or intentional alteration of a vehicle emissions control system.
4. 9 VAC 5-180-30 B: Prohibits the emission of visible air pollutants from non-diesel motor vehicles for longer than five consecutive seconds; and from diesel motor vehicles for longer than 10 consecutive seconds at a density equal to or greater than 20% opacity.
5. 9 VAC 5-180-30 C: Prohibits the idling of commercial motor vehicles for more than 10 minutes; or for more than 60 minutes during hot weather in order to maintain power to the air conditioning system.
6. 9 VAC 5-180-40: Specifies the conditions under which the catalyst and restrictive filler inlet from used motor vehicles scheduled for shipment overseas may be removed.

7. 9 VAC 5-180-50: Specifies delegations of authority.
8. 9 VAC 5-91-190: Renders emissions control systems standards consistent with those in proposed 9 VAC 5-180-30 A.
9. 9 VAC 5-91-210: Renders visible emissions standards consistent with those in proposed 9 VAC 5-180-30 B.
10. Article 41 (9 VAC 5-40-5650 et seq.) of 9 VAC 5 Chapter 40: Repealed.

Alternatives

Please describe the process by which the agency has considered 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 to meet the need, and the reasoning by which the agency has rejected any of the alternatives considered.

As provided in the public participation procedures of the State Air Pollution Control Board, the department included, in the Notice of Intended Regulatory Action, a description of the department's alternatives and a request for comments on other alternatives and the costs and benefits of the department's alternatives or any other alternatives that the commenters provided.

Following the above, alternatives to the proposed regulation amendments were considered by the department. The department determined that the fourth alternative is appropriate, as it is the least burdensome and least intrusive alternative that fully meets 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 being considered, are discussed below.

1. Take no action to amend Rule 4-41. This option was not chosen for the reason specified below in 4.
2. Repeal Rule 4-41. This option was not chosen because citizens continue to register complaints about visible emissions from motor vehicles. The provisions addressing this problem should therefore be retained.
3. Repeal or amend Rule 4-41 and develop a model ordinance which local governments may adopt if they wish to implement a control program similar to that provided by Rule 4-41. This was done with Rule 4-40 (open burning); however, there are important differences between the two programs. Before the deregulation of open burning, many local governments already had sufficient and experienced staff capable of overseeing an open burning control program. But virtually no local government has any staff with sufficient experience or expertise to oversee a mobile source control program. To oversee such a program requires considerably more technical skill and resources than

does an open burning control program. For instance, a mobile source program requires annual training in the evaluation of visible emissions and in the ability to determine whether air pollution control equipment has been tampered with. Most local governments do not have the funding or staff necessary to enforce such a control program. For these reasons, this option was not chosen.

4. Replace Rule 4-41 with more limited provisions. This option was chosen because the regulation is no longer needed for air quality planning purposes. Since the adoption of Rule 4-41, changes to the State Implementation Plan have resulted in more effective methods to control some of the emissions the regulation was designed to limit. Nonetheless, certain provisions need to be retained, as explained above in 2.

Public Comment

Please summarize all public comment received during the NOIRA comment period 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 intended regulatory action.

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.

The department, 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.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The department will initiate a review and re-evaluation of the regulation to determine if it should be continued, amended, or terminated within three years after its effective date.

The specific and measurable goals the proposed regulation amendments are intended to achieve 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 ensure that owners maintain air pollution control systems in order to control levels of particulate matter being emitted into the ambient air.
3. To ensure that Virginia does not exceed national ambient air quality standards for particulate matter and therefore be designated as nonattainment.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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.

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 related health and welfare problems.

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