

Virginia Regulatory Town Hall

Periodic Review of Existing Regulations Agency Background Document

Agency Name:	State Air Pollution Control Board
Regulation Title:	Regulation for Transportation Conformity
Subtitle:	
VAC Number:	9 VAC 5 Chapter 150 (9 VAC 5-150-10 et seq.)
Date:	October 27, 2000

This information is required pursuant to the Administrative Process Act § 9-6.14:25 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.

The purpose of the regulation is to assure that federally-funded transportation plans, programs and projects are in conformance with state plans for attaining and maintaining national ambient air quality standards.

The regulation establishes criteria and procedures for the transportation planning organizations to determine whether federally-funded transportation plans, programs, and projects are in conformance with state air quality plans for the Northern Virginia, Richmond, and Hampton Roads areas.

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

Section 176 of the Clean Air Act requires that transportation plans, programs and projects which are funded or approved under Title 23 U.S.C. or the Federal Transit Act conform with state or federal air quality implementation plans.

Section 176(c)(1) of the Act states, "No department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve, any activity which does not conform to a [State Implementation Plan]." This requires metropolitan planning organizations (MPOs) and the United States Department of Transportation (DOT) to make determinations that federally-funded transportation plans, programs, and projects conform with Virginia's SIP. "Conformity" means that the activity conforms to the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards, and will not (i) cause or contribute to any new violation of any standard in any area, (ii) increase the frequency or severity of any existing violation of any standard in any area, or (iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The Act ties conformity to attainment and maintenance of the NAAQS. Section 176(c)(2) requires that a transportation activity must not adversely affect implementation of the SIP or the timely attainment and maintenance of the NAAQS. The Act emphasizes reconciling the emissions from transportation activities with the SIP rather than simply providing for the implementation of SIP measures. This integration of transportation activities and air quality planning is intended to protect the integrity of the SIP by helping to ensure that SIP emissions growth projections are not exceeded, emissions reduction targets are met, and maintenance efforts are not undermined.

Section 176(c)(4)(A) and (B) requires EPA to promulgate criteria and procedures for demonstrating and assuring conformity of federal actions to a SIP. Section 176(c)(4)(C) then requires states to submit a SIP revision containing the criteria and procedures.

40 CFR Part 51 subpart T establishes the criteria and procedures governing the determination of conformity for all federally-funded transportation plans, programs, and projects in nonattainment and maintenance areas. Virginia is required to submit to EPA a revision to the SIP that establishes conformity criteria and procedures consistent with the transportation conformity regulation promulgated by EPA. DOT and MPOs are required to make conformity determinations on metropolitan transportation plans and transportation improvement programs (TIPs) before they are adopted, approved, or accepted. In addition, highway or transit

projects which are funded or approved by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) must be found to conform before they are approved or funded by DOT or an MPO.

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.

Comparison with Statutory Requirements

No provision of the regulation exceeds the minimum requirements of any 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/or welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.
2. To ensure that federally-funded transportation plans, programs and projects are in conformance with state plans for attaining and maintaining national ambient air quality standards.
3. To prohibit emissions which would contribute to nonattainment of the national air quality standards or interference with maintenance of the standards.

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.

One of the primary goals of the federal Clean Air Act (Act) is the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). These standards, designed to protect public health and welfare, apply to six pollutants, including ozone. Ozone is formed when volatile organic compounds and nitrogen oxides in the air react together in the presence of sunlight. The National Ambient Air Quality Standard for ozone was established by the U.S. Environmental Protection Agency (EPA) to protect the health of the general public with an adequate margin of safety. When concentrations of ozone in the ambient air exceed the federal standard, the area is considered to be out of compliance and is classified as "nonattainment." Numerous counties and cities within the Northern Virginia, Richmond, and Hampton Roads areas were initially identified as ozone nonattainment areas but since then localities in the Richmond and Hampton Roads areas have been redesigned as maintenance areas.

Virginia is required by the Act to develop a State Implementation Plan (SIP) to ensure that nonattainment areas will come into compliance with the federal ozone standard. Failure to develop adequate programs to meet the ozone standard (i) will result in continued violations of the standard; (ii) may result in assumption of the program by EPA, at which time the Commonwealth would lose authority over matters affecting its citizens; and (iii) may result in the imposition of sanctions by EPA, such as more restrictive requirements on

new major industrial facilities and loss of federal funds for highway construction. Furthermore, if a particular area fails to attain the federal standard by the legislatively mandated attainment date, EPA is required to reassign it to the next higher classification level (denoting a worse air quality problem), thus subjecting the area to more stringent air pollution control requirements.

The regulation enables Virginia to maintain a SIP that fully complies with federal conformity requirements, as well as meet the overall goal of meeting national health-based air quality standards. It also ensures that federal projects will be consistent with Virginia's plans and programs.

The transportation conformity regulation requires MPOs and DOT to make conformity determinations on metropolitan transportation plans and transportation improvement programs (TIPs) before they are adopted, approved, or accepted. In addition, highway or transit projects which are funded or approved by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) must be found to conform before they are approved or funded by DOT or an MPO.

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.

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.

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 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.

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.