REGULATION FOR THE CONTROL OF MOTOR VEHICLE EMISSIONS IN THE NORTHERN VIRGINIA AREA - 9 VAC 5 CHAPTER 91

[State Effective Date: January 24, 1997; SIP Effective Date: October 18, 1999]

PART II. General Provisions

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9 VAC 5-91-40 Establishment of regulations.

A. This regulation is established to implement the provisions of the Virginia Motor Vehicle Emissions Control Law and the federal Clean Air Act.

B. This regulation shall be adopted, amended or repealed in accordance with the provisions of the Air Pollution Control Law, Virginia Motor Vehicle Emissions Control Law, Articles 1 and 2 of the Administrative Process Act, and the Public Participation Procedures in Appendix E of 9 VAC 5-10-10.

C. Regulations, amendments and repeals shall become effective as provided in § 9-6.14:9.3 of the Administrative Process Act, except in no case shall the effective date be less than 60 days after adoption by the board.

D. If necessary in an emergency situation, the board may adopt, amend or stay a regulation under § 9-6.14:4.1 of the Administrative Process Act, but such regulation or stay of regulation shall remain effective no longer than one year unless readopted following the requirements of subsection B of this section.

E. Within three years after the effective date of this chapter, the department shall perform an analysis on this chapter and provide the Board with a report on the results. The analysis shall include (i) the purpose and need for the chapter, (ii) alternatives which would achieve the stated purpose of this chapter in a less burdensome and less intrusive manner, (iii) an assessment of the effectiveness of this chapter, (iv) the results of a review of current state and

federal statutory and regulatory requirements, including the identification and justification of requirements of this chapter which are more stringent than federal requirements, and (v) the results of a review as to whether this chapter is clearly written and easily understandable by affected entities.

F. Upon review of the department's analysis, the board shall confirm the need to (i) continue this chapter without amendment, (ii) repeal this chapter, or (iii) amend this chapter. If the Board's decision is to repeal or amend this chapter, the Board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the Board.

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9 VAC 5-91-60 Hearings and proceedings.

A. The primary hearings and proceedings associated with the promulgation and enforcement of statutory and regulatory provisions are as follows:

1. For public hearings and informational proceedings required before considering regulations, authorized under § 46.2-1180 of the Virginia Motor Vehicle Emissions Control Law, the procedure for public hearings or informational proceedings shall conform to (I) § 9-6.14:7.1 of the Administrative Process Act and (ii) the Public Participation Procedures in Appendix E of 9 VAC 10-10.

2. For the public hearing required before considering variances and amendments to and revocation of variances, the procedure for a public hearing shall conform to the provisions of 9 VAC 5-91-80.

3. For the informal fact finding used to make case decisions, the procedure for an informal fact finding shall conform to § 9-6.14:11 of the Administrative Process Act.

4. For the formal hearing for the enforcement or review of orders, licenses, permits and certifications and for the enforcement of regulations, the procedure for a formal hearing shall conform to § 9-6.14:12 of the Administrative Process Act and § 10.1-1307 D and F of the Air Pollution Control Law.

B. The director may adopt policies and procedures to supplement the statutory procedural requirements for the various proceedings cited in subsection A of this section.

C. Records of hearings and proceedings may be kept in one of the following forms:

1. Oral statements or testimony at any public hearing or informational proceeding will be stenographically or electronically recorded, and may be transcribed to written form.

2. Oral statements or testimony at any informal fact finding will be stenographically or electronically recorded, and may be transcribed to written form.

3. Formal hearings will be recorded by a court reporter, or electronically recorded for transcription to written form.

D. Availability of records of hearings and proceedings shall be as follows:

1. A copy of the transcript of a public hearing or informational proceeding, if transcribed, will be provided within a reasonable time to any person upon receipt of a written request and payment of the cost; if not transcribed, the additional cost of preparation will be paid by the person making the request.

2. A copy of the transcript of an informal fact finding, if transcribed, will be provided within a reasonable time to any person upon receipt of a written request and payment of cost; if not transcribed, the additional cost of preparation will be paid by the person making the request.

3. Any person desiring a copy of the transcript of a formal hearing recorded by a court reporter may purchase the copy directly from the court reporter; if not transcribed, the additional cost of preparation will be paid by the person making the request.

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9 VAC 5-91-80 Variances.

A. The board may in its discretion grant variances to any provision of this regulation after an investigation and public hearing. If a variance is appropriate, the board shall issue an order to this effect. Such order shall be subject to amendment or revocation at any time for reasons specified in the order.

B. The board shall adopt variances and amend or revoke variances if warranted only after conducting a public hearing pursuant to public advertisement in at least one major newspaper of general circulation in the Northern Virginia program area of the subject, date, time and place of the public hearing at least 30 days prior to the scheduled hearing. The public hearing shall be conducted to give the public an opportunity to comment on the variance and the public hearing record shall remain open for a minimum of 15 days after the hearing for the purpose of receiving additional public comment.

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9 VAC 5-91-110 Procedural information and guidance.

A. The department may adopt detailed policies and procedures which:

1. Request data and information in addition to and in amplification of the provisions of this regulation;

2. Specify the methods and means to determine compliance with applicable provisions of this regulation;

3. Set forth the format by which all data and information should be submitted; and

4. Set forth how the regulatory programs should be implemented.

B. In cases where this regulation specifies that procedures or methods shall be approved by, acceptable to or determined by the director or the department; the owner, emissions inspector, emissions repair technician, or any other affected person may request information and guidance concerning the proper procedures and methods and the board or the department shall furnish in writing such information on a case-by-case basis.