



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) citation	2 VAC 5 - 420
Regulation title	Regulations for the Enforcement of the Virginia Gasoline and Motor Fuel Law
Action title	Repeal Regulation
Date this document prepared	August 10, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

This regulatory action seeks comments regarding the possible repeal of 2 VAC 5 - 420, *Regulations for the Enforcement of the Virginia Gasoline and Motor Fuel Law*. The current regulation prescribes basic requirements for enforcement of the Virginia Motor Fuels and Lubricating Oils Law, Title 59.1, Chapter 12 of the Code of Virginia (Code).

The 2009 session of the Virginia General Assembly amended the Motor Fuels and Lubricating Oils Law by incorporating by reference certain national specifications for the inspection and testing of motor fuels. Those specifications are adopted by the National Conference on Weights and Measures and published by the National Institute of Standards and Technology (NIST) in Handbook 130, "*Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality*."

The incorporation by reference of national specifications helps ensure the uninterrupted flow and availability of motor fuels throughout Virginia, facilitates the introduction to market of new motor fuels such as biodiesel, and ensures that specifications and methods of testing of motor fuels in Virginia remain current and conform continually to corresponding national standards. Given that the essential elements of the regulation have been incorporated into the statute, the regulation may no longer be needed and may be repealed.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

§ 59.1-156 of the Code authorizes the Board of Agriculture to adopt regulations for the efficient enforcement of the Virginia Motor Fuels and Lubricating Oils Law. This authority is discretionary.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The Virginia Motor Fuels and Lubricating Oils Law prescribes that all motor fuels used, intended to be used, sold or offered for sale or distribution in Virginia are subject to inspection and testing to prevent adulteration, misbranding, deception or fraud. The Law authorizes the Commissioner of the Virginia Department of Agriculture and Consumer Services (VDACS) to inspect and sample motor fuels to ensure compliance with prescribed testing standards for the protection of the citizens of Virginia and the environment. Given that the essential elements of the regulation prescribing the basic requirements for enforcement of the Virginia Motor Fuels and Lubricating Oils Law have been incorporated into the statute, the regulation is no longer needed and may be repealed.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

This action seeks to repeal 2 VAC 5 - 420, *Regulations for the Enforcement of the Virginia Gasoline and Motor Fuel Law* because the essential elements of the regulation have been incorporated into the statute and the regulation is no longer needed.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

The only alternative to repealing the regulation would be to retain it. However, if the current regulation is retained, the agency would be continually required to amend it in order to ensure that the testing standards referenced in the regulation correspond to the most recently adopted national standards. Those national standards are amended or repealed with relative frequency, which would lead to regulatory ambiguity in Virginia if the regulation is not updated accordingly every time a new or revised national standard is adopted. Such regulatory ambiguity could lead to a disruption in the availability of

motor fuels in the Commonwealth and could impede the agency's compliance actions. The repeal of the regulation is the most cost-effective alternative to achieving the stated need.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation. Anyone wishing to submit comments may do so via the Regulatory Townhall website, www.townhall.virginia.gov, or by mail, email or fax to:

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Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period. A public hearing will not be held.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

Advisors (e.g., ad hoc advisory committees, technical advisory committees) will not be involved in the repeal of the regulations. The agency is not using the participatory approach in repealing the regulations because the agency has authorized proceeding without using the participatory approach.

Family impact

Assess 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; and 4) increase or decrease disposable family income.

The proposed regulation will have no known impact on the institution of the family or on family stability.