



## Proposed Regulation Agency Background Document

<b>Agency name</b>	Board of Agriculture and Consumer Services
<b>Virginia Administrative Code (VAC) citation</b>	2 VAC 5 -420
<b>Regulation title</b>	Regulations for the Enforcement of the Virginia Gasoline and Motor Fuel Law
<b>Action title</b>	Repeal Regulation
<b>Date this document prepared</b>	April 6, 2010

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*.

### Brief summary

*In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.*

This regulatory action seeks to repeal 2 VAC 5 - 420, *Regulations for the Enforcement of the Virginia Gasoline and Motor Fuel Law*. The regulation prescribes certain requirements for the enforcement of the Virginia Motor Fuels and Lubricating Oils Law, Title 59.1, Chapter 12 of the Code of Virginia (Code), including specifications for the inspection and testing of motor fuels. The 2009 session of the Virginia General Assembly amended the Motor Fuels and Lubricating Oils Law (HB 2446) by incorporating by reference certain national inspection and testing specifications for motor fuels. Given that the essential elements of the regulation have now been incorporated by reference into the Virginia Motor Fuels and Lubricating Oils Law, the regulation is no longer needed and can be repealed.

### Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

“NIST” means the National Institute of Standards and Technology.

“VDACS” means the Virginia Department of Agriculture and Consumer Services.

### 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., the agency, board or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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

### Purpose

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.*

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The 2009 session of the Virginia General Assembly amended the Motor Fuels and Lubricating Oils Law by incorporating by reference the inspection and testing specifications adopted by the National Conference on Weights and Measures and published by 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 will help ensure the uninterrupted flow and availability of motor fuels throughout Virginia, will facilitate the introduction to market of new motor fuels such as biodiesel, and will ensure that specifications and methods of testing of motor fuels in Virginia remain current and conform continually to corresponding national standards. Thus, the regulation is no longer needed and can be repealed.

### Substance

*Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the “Detail of changes” section.)*

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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 Virginia Motor Fuels and Lubricating Oils Law and the regulation is no longer needed.

### Issues

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

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The repeal of the regulation will benefit the public because the incorporation by reference of national specifications will help ensure the uninterrupted flow and availability of motor fuels throughout Virginia, will facilitate the introduction to market of new motor fuels such as biodiesel, and will ensure that specifications and methods of testing of motor fuels in Virginia remain current and conform continually to corresponding national standards. This regulatory action poses no disadvantages to the public or the Commonwealth.

**Requirements more restrictive than federal**

Please identify and describe any requirement of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

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The repeal of this regulation does not create any new requirements. There are no applicable federal requirements and no requirements that exceed applicable federal requirements.

**Localities particularly affected**

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

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No locality should be affected by the repeal of this regulation.

**Public participation**

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

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In addition to any other comments, the agency is seeking comments on the costs and benefits of repealing the regulation and the potential impacts of this proposal. Also, the agency is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Anyone wishing to submit written comments may do so via the Regulatory Townhall website, [www.townhall.virginia.gov](http://www.townhall.virginia.gov), or by mail, email or fax to:

Robert E. Bailey  
Program Manager, Office of Product and Industry Standards  
P. O. Box 1163  
Richmond, VA 23218

Telephone: (804) 786-1274  
 Fax: (804) 786-1571  
 E-mail: [Robert.Bailey@vdacs.virginia.gov](mailto:Robert.Bailey@vdacs.virginia.gov)

Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last date of the public comment period.

**Economic impact**

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.*

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</b></p>	<p>The Commonwealth will not incur any costs to repeal this regulation.</p>
<p><b>Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.</b></p>	<p>Localities will not incur any costs related to the repeal of this regulation.</p>
<p><b>Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.</b></p>	<p>No individual, business or other entity will be affected by the repeal of this regulation.</p>
<p><b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>No entity, including small businesses, will be affected by the repeal of this regulation.</p>
<p><b>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and do include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</b></p>	<p>No individual, business, or other entity will incur any costs associated with the repeal of this regulation.</p>
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>The repeal of this regulation will prevent the need for continual amendments to ensure that the regulation reflects the most recent national standard and will eliminate the costs associated with such continual amendments. The repeal of the regulation will also benefit the public because it will help ensure the uninterrupted flow and availability of motor fuels throughout Virginia, will facilitate the introduction to market of new motor fuels such</p>

	as biodiesel, and will ensure that specifications and methods of testing of motor fuels in Virginia remain current and conform continually to corresponding national standards.
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**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

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

**Regulatory flexibility analysis**

*Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

The only alternative to the repeal of the regulation would be to retain it. The repeal of the regulation will have no impact on small business.

**Public comment**

*Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.*

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Jane Patrick	Agrees with this action	Concurs

**Family impact**

*Please assess the 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 repeal of this regulation will have no impact on the institution of the family or on family stability.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if implemented in each section. Please detail the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

The proposed regulatory action would repeal the entire regulation.

For changes to existing regulations, use this chart:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change, rationale, and consequences</b>
N/A	N/A	N/A	N/A

For new chapters, use this chart:

<b>Section number</b>	<b>Proposed requirements</b>	<b>Other regulations and law that apply</b>	<b>Intent and likely impact of proposed requirements</b>
N/A	N/A	N/A	N/A