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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) citation(s)	2 VAC 5-425
Regulation title(s)	Vapor Pressure Requirements for Gasoline Ethanol Blends
Action title	Issuance of regulations regarding vapor pressure requirements for gasoline ethanol blends
Date this document prepared	March 25, 2016

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to eighteen months), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation. This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This emergency regulatory action is a result of the sunset of a clause in National Institute of Standards and Technology (NIST) Handbook 130, Section 2.1.2., pertaining to vapor pressure tolerances for gasoline ethanol blends. This emergency regulation pertains to gasoline ethanol blends and allowable exceptions to vapor pressure standards described in the current standards adopted by ASTM International. Currently, § 59.1-153 of the Motor Fuels and Lubricating Oils Law (Law) incorporates NIST Handbook 130, which utilizes ASTM standards, into the Law. The

vapor pressure limit for ethanol blended gasoline is established for specified periods of the year in ASTM Standard D4814. The NIST Handbook 130, Section 2.1.2 authorizes a 1.0 psi exception to the ASTM standard; however, this exception expires May 1, 2016. 2 VAC 5-420, Regulations for the Enforcement of the Virginia Gasoline and Motor Fuel Law, contained similar language to Section 2.1.2 but was repealed in 2012. The NIST Handbook 130 and ASTM standards were incorporated into the Law in advance of the repeal of 2 VAC 5-420.

This proposed new regulation will address the vapor pressure requirements for ethanol blended gasoline in Virginia. Specifically, it will extend the 1.0 psi exception to the maximum allowed by ASTM as currently outlined in NIST Handbook 130, Section 2.1.2.

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.

"Motor Fuels and Lubricating Oils Law" or "Law" means Chapter 12 of Title 59.1 of the Code of Virginia (Va Code § 59.1-149 *et seq.*).

"NIST" means National Institute of Standards and Technology.

"NCWM" means National Conference of Weights and Measures.

"psi" means pounds per square inch.

Emergency Authority

The APA (Code of Virginia § 2.2-4011) states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006. Please explain why this is an emergency situation as described above, and provide specific citations to the Code of Virginia or the Appropriation Act, if applicable.

The 1.0 psi exception to the vapor pressure limit for ethanol blended gasoline will expire on May 1, 2016. Virginia utilizes the Colonial gasoline pipeline, which originates in Texas and ends in New Jersey. Virginia is the only state in the Colonial pipeline that will not have a 1.0 psi exception past May 1, 2016, as the other states have either granted a waiver or adopted a regulation with the exception. In order to ensure that the gasoline in the pipeline can continue to flow into and through Virginia after May 1, 2016, a regulation granting a 1.0 psi exception must be in place before that date, which can only be accomplished through the emergency regulatory process.

Legal basis

Other than the emergency authority described above, 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) the promulgating entity, i.e., agency, board, or person.

Section 3.2-109 of the Code of Virginia (Code) establishes the Board of Agriculture and Consumer Services (Board) as a policy board.

Section 59.1-153 of the Code adopts ASTM International specifications, which are adopted by the NCWM and published by NIST in Handbook 130, "Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality", as the specifications for the inspection and testing of motor fuel and for lubricating oil. This section also allows the Board to amend these specifications following an informational proceeding. Additionally, Va. Code § 59.1-156(A) authorizes the Board to adopt regulations necessary for the inspection and testing of motor fuel and lubricating oil.

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 emergency regulation addresses the vapor pressure of ethanol blended gasoline. Currently, Virginia's Motor Fuels and Lubricating Oils Law incorporates NIST Handbook 130 and ASTM standards into the Law. Vapor pressure limits are established in ASTM Standard D4814 and adopted by NIST into Handbook 130. Currently, NIST provides a 1.0 psi exception to ASTM's established vapor pressure for ethanol blended gasoline. The 1.0 psi exception will expire on May 1, 2016. The vapor pressure of ethanol blended gasoline is a measure of the fuel's volatility or evaporation characteristics. This pressure is regulated and manipulated by refineries to comply with federal and ASTM standards. The 1.0 psi exception was previously allowed under 2 VAC 5-420, but the Board repealed this regulation in 2012 following the incorporation of the NIST handbook and ASTM standards into the Law. Virginia is currently the only state in the Colonial Pipeline that has not extended the psi exemption past the May 1, 2016, sunset date.

The goal of this regulation is to continue to provide a 1.0 psi exception above the maximum vapor pressure set by ASTM in order to maintain the current regulatory framework for gasoline in Virginia.

Need

Please describe 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 proposed regulation is a continuation of the NIST vapor pressure exception that has been in place for many years. The motor fuel industry has raised concerns related to the expiration of this 1.0 psi exception. Except Virginia, all states utilizing the Colonial pipeline have a 1.0 psi exception already in place, either by waiver or regulation. This regulation does not establish a new vapor pressure requirement but continues one that is currently in place and set to expire on

May 1, 2016. The goal of this regulation is to continue to provide a 1.0 psi exception above the maximum vapor pressure set by ASTM in order to maintain the current regulatory framework for gasoline in Virginia.

Substance

Please describe any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons the agency has determined that the proposed regulatory action is essential to protect the healthy, safety, or welfare of Virginians.

If a new regulation is being promulgated, use this chart:

Section number	Proposed requirements	Other regulations and laws that apply	Intent and likely impact of proposed requirements
10	Definitions. This section of the regulation defines key terms utilized within this chapter.		<p>The intent of this proposed requirement is to ensure that regulants have a clear understanding of the key terms utilized in this chapter.</p> <p>The likely impact is the clear understanding of terms presented in the regulation.</p>
20	Vapor pressure requirements; exceptions. This section of the regulation discusses the exception for certain gasoline ethanol blends to the maximum vapor pressure outlined by ASTM Standard D4814 for ethanol blended gasoline during specified periods of the year		<p>The intent is to maintain current vapor pressure maximum exceptions established in NIST Handbook 130, Section 2.1.2.</p> <p>There will be no impact upon adoption as this emergency regulation is a continuation of regulations already in place but set to expire on May 1, 2016.</p>

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 describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

There is no viable alternative to the proposed regulatory action. It is possible that ASTM could change the vapor pressure maximum in ASTM Standard D4814; however, that has not yet

taken place and is outside the agency's control. Amendments to NIST Handbook 130 will not be discussed until the NCWM meeting in July 2016, which is after the May 1, 2016, sunset date for the psi exception. Additionally, even if amendments are made that are applicable to the psi exception, those amendments would not take effect until January 1, 2017. In order to maintain the current regulatory framework for gasoline in Virginia beyond the May 1, 2016, sunset of the psi exception, it is necessary for the agency to pursue emergency regulatory action to provide a 1.0 psi exception above the maximum vapor pressure set by ASTM.

Public participation

Please indicate whether 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 meeting is to be held to receive comments. Please also indicate whether a Regulatory Advisory Panel or a Negotiated Rulemaking Panel has been used in the development of the emergency regulation and whether it will also be used in the development of the permanent regulation.

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the 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: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to:

Laura Hare
Policy Analyst, Division of Consumer Protection
Virginia Department of Agriculture and Consumer Services
P.O. Box 1163, Richmond, VA 23218
Phone: (804) 786-1908
Fax: (804) 255-2666
Email: laura.hare@vdacs.virginia.gov

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

A public hearing will not be held following the publication of the proposed stage of this regulatory action.

Family impact

Please assess the impact of this 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.

It is not anticipated that the proposed regulatory action will have any direct impact on the institution of the family and family stability.
