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Proposed Regulation 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	August 29, 2016

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 (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

The proposed regulation 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. The proposed 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 pounds per square inch (psi) exception to the ASTM standard. However, this exception expired on May 1,

2016, which precipitated the promulgation of the emergency regulation that preceded the pending regulatory action to promulgate a permanent 2 VAC 5-425, Vapor Pressure Requirements for Gasoline Ethanol Blends.

This proposed new regulation will address the vapor pressure requirements for ethanol blended gasoline in Virginia. 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 beyond the expiration of Virginia's emergency regulation.

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.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

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 explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The proposed regulation addresses the vapor pressure of ethanol blended gasoline. Currently, vapor pressure limits are established in ASTM Standard D4814 and adopted by NIST into Handbook 130. Virginia's Motor Fuels and Lubricating Oils Law incorporates NIST Handbook 130 and ASTM standards into the Law. Currently, NIST provides a 1.0 psi exception to ASTM's established vapor pressure for ethanol blended gasoline. The sunset date for the psi exception provided for in NIST Handbook 130 was May 1, 2016; however, at the NCWM meeting in July 2016, the sunset date for the psi exception was extended to May 1, 2017. In March 2016, the Board adopted an emergency regulation in preparation for the May 1, 2016, sunset date. The emergency regulation became effective on April 19, 2016, and will expire on October 18, 2017. Concurrent to its adoption of an emergency regulation, the Board approved a notice of intended regulatory action for the pending regulatory action.

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 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 beyond the expiration of Virginia's emergency regulation. Virginia utilizes the Colonial gasoline pipeline, which originates in Texas and ends in New Jersey. Without the existing emergency regulation and the subsequently proposed and identical permanent regulation, Virginia would be the only state in the Colonial pipeline that will not have a 1.0 psi exception past the sunset date prescribed in NIST Handbook 130, as the other states have either granted a waiver or adopted a regulation with the exception. This regulation will protect the welfare of Virginia's citizens and businesses by ensuring that the gasoline in the Colonial pipeline can continue to flow into and through Virginia after the expiration of Virginia's emergency regulation.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.

This regulation addresses the vapor pressure of ethanol blended gasoline. The vapor pressure of ethanol blended gasoline is a measure of the fuel's volatility or evaporation characteristics. Vapor pressure limits are established in ASTM Standard D4814 and adopted by NIST into Handbook 130. Vapor pressure is regulated and manipulated by refineries to comply with federal and ASTM standards. Virginia's Motor Fuels and Lubricating Oils Law incorporates NIST Handbook 130 and ASTM standards into the Law. 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, 2017. The proposed regulation will allow the Virginia Department of Agriculture and Consumer Services 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.

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 there are no disadvantages to the public or the Commonwealth, please indicate.

This regulatory action is advantageous to the public and businesses. The 1.0 psi exception to the ASTM standard authorized by NIST Handbook 130 will expire on May 1, 2017, and Virginia's related emergency regulation will expire in October 2017. This regulatory action is necessary in order to maintain the current regulatory framework for gasoline that businesses are accustomed to operating under in Virginia. There are no disadvantages to the public or the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is 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.

This regulation conforms to and is no more restrictive than applicable federal requirements. The proposed amendments reflect the specific needs of the regulated industry and motor fuel regulatory program in Virginia and do not add any additional requirements to the existing regulation that would make it more restrictive than 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.

No locality will be particularly affected by the proposed 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.

In addition to any other comments, the agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency is 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 written comments for the public comment file may do so by mail, email or fax to:

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 Virginia Department of Agriculture and Consumer Services
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Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

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

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>Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p>	<p>There is no expected cost of implementation, as there are no new requirements in the proposed regulatory action.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>There are no costs associated with the proposed regulatory action for localities.</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>The proposed regulatory action ensures the continued availability of the current exception to the vapor pressure standards for certain gasoline ethanol blends. Motor fuel distributors or dealers operating in the Commonwealth will be affected if the proposed regulation is not promulgated.</p>
<p>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. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There are approximately 155 motor fuel distributors or dealers in the Commonwealth. We are unable to estimate how many of these businesses would be considered small businesses.</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all</p>	<p>There is no cost associated with the proposed regulatory action to individuals, businesses, or other entities. The proposed regulation does not establish any new</p>

<p>costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) 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.</p>	<p>requirements; rather, it ensures the continued availability of the current exception to the vapor pressure standards for certain gasoline ethanol blends.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The proposed regulation will ensure the continued availability of the current exception to the vapor pressure standards for certain gasoline ethanol blends that motor fuel distributors and dealers are accustomed to using.</p>

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.

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 were discussed at the NCWM meeting in July 2016 and, ultimately, the sunset date for the psi exception was extended from May 1, 2016, to May 1, 2017. In order to maintain the current regulatory framework for gasoline in Virginia beyond the May 1, 2017, sunset of the psi exception and the expiration of Virginia’s emergency regulation, it is necessary for the agency to promulgate a regulation that provides a 1.0 psi exception above the maximum vapor pressure set by ASTM. The motor fuel industry has advised the agency that losing the psi exception would burden the industry.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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 proposed regulation is necessary in order to maintain the current regulatory framework for gasoline in Virginia beyond the expiration of Virginia’s emergency regulation. The proposed action does not include any new requirements and is intended to eliminate the adverse impact

that would be associated with the expiration of the exception provided for in the emergency regulation.

Public comment

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

No public comments were received for 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.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

The proposed regulation is identical to the existing emergency regulation that expires on October 18, 2017. A pre-emergency regulation related to the vapor pressure requirements for gasoline ethanol blends did not exist at the time the agency promulgated the emergency regulation.

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
10	Definitions. This section of the regulation defines key terms utilized within this chapter.	N/A	The intent of this proposed requirement is to ensure that regulants have a clear understanding of the key terms utilized in this chapter. The likely impact is the clear understanding of terms

			presented in the regulation.
20	Vapor pressure requirements; exceptions. This section prescribes the requirements for ethanol that is blended with gasoline and requirements for the resulting blends. This section also provides an exception to the vapor pressure requirements for certain blends.	N/A	<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 regulatory action is a continuation of regulations that currently exist, but are scheduled to expire.</p>