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## Final Regulation Agency Background Document

<b>Agency name</b>	Board of Agriculture and Consumer Services
<b>Virginia Administrative Code (VAC) citation(s)</b>	2 VAC 5-425
<b>Regulation title(s)</b>	Vapor Pressure Requirements for Gasoline Ethanol Blends
<b>Action title</b>	Issuance of regulations regarding vapor pressure requirements for gasoline ethanol blends
<b>Date this document prepared</b>	June 12, 2017

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

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 authorized a 1.0 pounds per square inch (psi) exception to the ASTM standard. However, this exception was set to expire 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.

## Statement of final agency action

*Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

On May 25, 2017, the Board of Agriculture and Consumer Services (Board) adopted 2 VAC 5-425, Vapor Pressure Requirements for Gasoline Ethanol Blends, and authorized staff to take any and all steps necessary to have this regulation become final.

## 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 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.*

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The new 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. NIST provided 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. At the NCWM meeting in July 2016, the sunset date for the psi exception was extended; however, it expired on 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 the 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.*

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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. NIST provided a 1.0 psi exception to ASTM's established vapor pressure for ethanol blended gasoline. The 1.0 psi exception expired on May 1, 2017. The new 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 expired 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 emergency 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.

### 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 or family stability.

**Changes made since the proposed stage**

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. \*Please put an asterisk next to any substantive changes.*

No changes were made to the text of the proposed regulation.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.*

No public comments were received following the publication of the proposed regulation.

**All changes made in this regulatory action**

*Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation*

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
N/A	10	N/A	Definitions. This section of the regulation defines key terms utilized within this chapter.  The intent of this section is to ensure that regulants have a clear understanding of the key terms utilized in this chapter.
N/A	20	N/A	Vapor pressure requirements; exceptions. This section prescribes the requirements for ethanol that is

		<p>blended with gasoline and requirements for the resulting blends. This section also provides an exception to the vapor pressure requirements for certain blends.</p> <p>The intent is to maintain vapor pressure maximum exceptions established in NIST Handbook 130, Section 2.1.2., which expired on May 1, 2017.</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>
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