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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) Chapter citation(s)	2 VAC 5-480
VAC Chapter title(s)	Regulations Governing the Oxygenation of Gasoline
Date this document prepared	October 7, 2020

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the **Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code**.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

"CO" means carbon monoxide.

"DEQ" means the Virginia Department of Environmental Quality.

"EPA" means the U.S. Environmental Protection Agency.

"Non-attainment area" means an area considered to have air quality worse than the National Ambient Air Quality Standards as defined in the Clean Air Act Amendments of 1970 (P.L. 91-604, Sec. 109).

"SIP" means the state implementation plan, a plan submitted to the EPA by DEQ that is required by the Clean Air Act.

"VDACS" means Virginia Department of Agriculture and Consumer Services.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency'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 with the authority to adopt regulations. Section 59.156 of the Code authorizes the Board to make all necessary regulations for (i) the inspection and testing of motor fuel and lubricating oil, (ii) assuring that motor fuels dispensed in the Commonwealth comply with any oxygenation requirement specified by the federal Clean Air Act or any other federal environmental requirement pertaining to motor fuels, and (iii) the enforcement of the Virginia Motor Fuels and Lubricating Oils Law (Va. Code § 59.1-149 et seq.). This regulation is mandated in §211 (m) of the federal Clean Air Act. The Clean Air Act was amended in 1990 to require states with carbon monoxide nonattainment areas with carbon monoxide levels of 9.5 parts per million (ppm) or higher to implement an oxygenated gasoline program in all such nonattainment areas. Following the re-designation of the specified nonattainment area (Washington Metropolitan Statistical Area) by the U.S. Environmental Protection Agency (EPA) in March 1996, this regulation was made a conditional requirement, based on the continuation of carbon monoxide levels below 9.5 ppm in the specified nonattainment area. The regulation as currently written meets the minimum requirements of the federal mandate.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

This regulation was originally adopted in order to implement the use of oxygenated fuel in northern Virginia as part of a federally required air quality management plan for the control of carbon monoxide (CO). The plan, known as the state implementation plan (SIP), is managed by the Department of Environmental Quality (DEQ). DEQ submitted the plan to EPA, which then adopted it at the federal level. Consequently, this regulation and related state plans have been enforceable at the federal level. Subdivision A 2 of 2 VAC 5-480 requires the Director of DEQ to notify the Commissioner of VDACS that enforcement of this chapter is no longer required to satisfy DEQ's maintenance plan, and DEQ has advised that this regulation continues to be necessary,

The agency has determined that this regulation, in its current form, is the only viable alternative, as it is currently used by DEQ as a part of a federally required air quality management plan for the control of CO in northern Virginia. The regulation is clearly written and easily understood by the individuals and entities affected. Additionally, this regulation is the least burdensome alternative to meet the federally required air quality management plan for the control of carbon monoxide.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response
Virginia Farm Bureau Federation (VFBF)	<p>This is an important code section for the agriculture industry, given the nearly ubiquitous use of corn and plant based ethanol as an oxygenate in gasoline, and therefore has a great impact on the greater agriculture industry. After review of the section as currently published, we have found 2 VAC 5 – 480 to be sufficient to protect the health and safety of both consumers and the environment, without negative impact on feedstock producers for ethanol production.</p> <p>VFBF has no recommended changes for 2 VAC 5 – 480 and appreciates the opportunity to provide additional comments should regulatory changes be proposed.</p>	The agency appreciates the commenter's feedback and participation in the periodic review of this regulation.

The agency did not use an informal advisory group to assist in the periodic review of this regulation.

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The agency has determined that this regulation, in its current form, remains necessary for the protection of public health, as it is currently used by DEQ as a part of a federally required air quality management plan for the control of CO in northern Virginia. The regulation is clearly written and easily understood by the individuals and entities affected.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The agency recommends that the regulation stay in effect without change because it is currently being used by DEQ as a part of a federally required air quality management plan for the control of CO in northern Virginia.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

The agency has determined that this regulation, in its current form, remains necessary, as it is currently used by DEQ as a part of a federally required air quality management plan for the control of CO in northern Virginia. The agency has not received any complaints from the public regarding this regulation. This regulation does not place unnecessary burdens on industry and is not overly complex. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The regulation was last evaluated by periodic review in 2016. In the period since this regulation was last evaluated, there have been no significant changes in technology, economic conditions, or other factors that would necessitate amending the regulation. In its review, the agency has determined this regulation was developed in accordance with the laws relating to the impact of regulations on small businesses and with the goal of minimizing the economic impact on small businesses. The agency recommends that this regulation stay in effect without change.
