



Periodic Review / Retain Regulation Agency Background Document

Agency name	Department of Agriculture and Consumer Services
Virginia Administrative Code (VAC) citation	2 VAC 5-480
Regulation title	Regulation Governing the Oxygenation of Gasoline
Document preparation date	March 30, 2011

This form is used when the agency has done a periodic review of a regulation and plans to retain the regulation without change. This information is required pursuant to Executive Orders 14 (2010) and 58 (1999).

Legal basis

Please identify the state and/or federal legal authority for the regulation, including (1) the most relevant law and/or regulation, and (2) promulgating entity, i.e., agency, board, or person.

Sections 59.1-153 and 59.156 of the Code of Virginia authorizes the Board of Agriculture and Consumer Services to make all necessary rules and regulations for (i) the inspection and testing of motor fuel and lubricating oil; (ii) assuring that motor fuels dispensed in this 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 this chapter. 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 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 Statistic Area) by the Environmental Protection Agency (EPA), 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 absolute minimum requirements of the federal mandate.

Alternatives

Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.

The agency evaluated the practicality and feasibility of repealing this regulation but recommends retaining it. 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. The plan, known as the state implementation plan (SIP), is managed by the Department of Environmental Quality (DEQ). DEQ submitted the plan to the EPA, which then adopted it at the federal level. Consequently, this regulation and related state plans are enforceable at the federal level. If the regulation is repealed, DEQ would have to remove references to it from Virginia's SIP, a process that would require significant work, including the collection of public comments at the state and federal level. Additionally, the carbon monoxide plan that references this regulation would also have to be revised. That plan is developed by the Metropolitan Washington Air Quality Committee (MWAQC), and any changes to the plan would have to be approved by MWAQC prior to undergoing additional state and federal public comment for the SIP. Finally, it is not clear that such change would ultimately be accepted and approved by EPA and, until the revised plan were approved by EPA, Virginia would be out of compliance with the SIP. The requirements of the plan will be complete by 2016 at which point DEQ will review the plan and associated regulations to determine which regulations could be repealed.

Public comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

The agency did not receive comments during the public comment period.

Effectiveness

Please indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

This regulation is necessary to maintain carbon monoxide emissions in the Northern Virginia portion of the Washington Metropolitan Statistical Area at levels that do not exceed the 1990 base year level. By maintaining carbon monoxide emissions at or below this level, the area will continue to meet the national air quality standard for carbon monoxide. The regulation is clearly written and easily understood by the individuals and entities affected.

Result

Please state that the agency is recommending that the regulation should stay in effect without change.

The agency recommends that this regulation remain in effect without change.

Small business impact

In order to minimize the economic impact of regulations on small business, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) 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, include a discussion of the agency's determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

This regulation effectively addresses the continued federal mandate in the state implementation plan to reduce carbon monoxide levels in the Northern Virginia nonattainment area of the Washington Metropolitan Statistic Area. This regulation does not place unnecessary burdens on industry. The previous periodic review of this regulation was completed on February 15, 2000. No significant changes to technology, economic conditions, or other factors have occurred that would necessitate modifications to this regulation. The agency recommends that this regulation stay in effect without change.

Family impact

Please provide an analysis of the regulation's impact on the institution of the family and family stability.

This regulation has no impact on the institution of family and family stability.