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Periodic Review and Small Business Impact Findings Where Result is "Retain the Regulation As Is"

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) citation	2 VAC 5-480
Regulation title	Regulations Governing the Oxygenation of Gasoline
Date	April 15, 2016

This information is required pursuant to Executive Order 17 (2014).

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.

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.

Sections 59.1-153 and 59.156 of the Code of Virginia authorize 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 of 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

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.

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. Since then, EPA has made changes to its requirements for SIPs and, as a result, DEQ is currently evaluating the Commonwealth of Virginia’s SIP to determine what changes should occur and if 2 VAC 5-480 should be repealed. VDACS staff will work closely with DEQ in order to stay up-to-date on the necessity of this regulation. Additionally, 2 VAC 5-480-20 A 2, 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. To date, VDACS has not received such written notice. If DEQ determines that this regulation is no longer necessary, VDACS will, at that time, initiate a regulatory action to repeal it.

VDACS 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 for the effective regulation of this industry.

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 received no public comments during the public comment period and did not form an informal advisory group to assist in this periodic review.

Effectiveness

Please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and 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.

Result

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

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

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 nature of complaints or comments received concerning the regulation from the public; 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, include a discussion of the basis for the agency’s determination to retain the regulation as is, consistent with the stated objectives of applicable law, to 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. This regulation does not place unnecessary burdens on industry. The regulation was last evaluated by periodic review in 2011. In the period since this regulation was last evaluated, there have been no significant changes in technology, economic conditions, or other factors. In its review, the agency has determined that 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.