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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 5-425
VAC Chapter title(s)	Vapor Pressure Requirements for Gasoline Ethanol Blends
Date this document prepared	October 3, 2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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.

"Board" means the Board of Agriculture and Consumer Services.

"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

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 as a policy board.

Section 59.1-153 of the Virginia Motor Fuels and Lubricating Oils Law 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.

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.

The regulation is required to maintain the industry standard vapor pressure waiver of 1.0 psi for ethanol blended gasoline. While Handbook 130 addresses the vapor pressure waiver for the summer months, it is silent on the winter months, which this regulation addresses. This regulation also provides a mechanism for Virginia to waive vapor pressure requirements in cases of fuel shortage in order to maintain the safe and effective flow of gasoline into the Commonwealth.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency's 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.

The agency received no public comment in response to the Notice of Periodic Review published on August 15, 2022, and did not form an informal advisory group for the purpose of assisting in this periodic review.

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, 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 regulation is necessary to continue the effective and efficient supply of fuel flowing into the Commonwealth. Virginia utilizes the Colonial gasoline pipeline, which originates in Texas and ends in New Jersey. Without this regulation, Virginia would be the only state in the Colonial pipeline that did not

have the 1.0 psi vapor pressure waiver established in the regulation, which would necessitate the creations of a boutique fuel for Virginia. This would result in increased prices and seriously impact fuel refiners and suppliers as well as consumers. As such, this regulation is necessary for the protection of public safety and economic welfare. The regulation is clearly written and easily understandable.

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).

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

The agency has determined that this regulation should be retained as is. The regulation provides an industry standard waiver for the vapor pressure of ethanol blended gasoline that assists industry in compliance and provides for the continued efficient flow of fuel into the Commonwealth.

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 regulation is needed to continue to provide industry with a means to comply with vapor pressure requirements. The agency has not received any complaints regarding the regulation, and industry supported the promulgation of the regulation in 2017. The regulation is not overly complex. Subdivision 1 of 2VAC5-425-20 mirrors the language in the Handbook 130 and federal regulations; however, the regulation is necessary in order to prevent Virginia from not being able to allow the vapor pressure waiver, should NCWM or the federal government change their regulations. The regulation was first promulgated in 2017, and no changes have occurred that would necessitate any amendments to this regulation. Industry supported this regulation when first established and the regulation continues to support the motor fuel industry in the Commonwealth.
