



Fast Track Proposed Regulation Agency Background Document

Agency name	Department of Forestry
Virginia Administrative Code (VAC) citation	4 VAC 10-40
Regulation title	Reforestation of Timberlands Regulations
Action title	Update the Reforestation of Timberlands Regulations reflecting current terms used in the regulations and updated forest practices since the original writing in 1971 and last amended in 1980.
Date this document prepared	February 15, 2013

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

The Department of Forestry proposes to amend sections 4VAC10-440-10, -50, -70, and -170. Specifically, amendments to these changes will cause the following impacts on the regulations.

- 4VAC10-40-10 – Delete the definition for non-industrial private forest landowner and add definition of non-industrial private forestland.
- 4VAC10-40-50 – Delete pond pine, Virginia pine, and tulip poplar tree species from nonqualifying type of land cover, which will allow land cover with these species to be eligible for reforestation incentive payments under the Reforestation of Timberlands Act.
- 4VAC10-40-70 – item 1. Following “prepare land for reforestation, delete “including release, by means of chemical, mechanical or hand methods, of seedlings from overtopping shade of trees, brush, or shrubs. Add item #3 – “post-reforestation cultural treatments shall also be eligible for RT incentives along with site preparation and reforestation.
- 4VAC10-40-170 – Delete current language in item B where incentive payments to landowners for approved projects are set at 60% of actual cost or \$80 per acre, whichever is lesser. Add “the incentive payments to landowners from approved projects are hereby set at 75% of the total cost

of the project or an annually determined maximum per acre agreed upon by the Board of Forestry (BOF) and the State Forester, whichever is lesser.”

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.

The Department of Forestry concluded its Periodic Review of 4VAC10-40, Reforestation of Timberlands Regulations as required by Executive Order 14. The Periodic Review comment period commenced October 10, 2011 and ended on November 10, 2011. No comments were received during the periodic review. Following the periodic review, the Board of Forestry and Reforestation of Timberlands Board reviewed 4VAC10-40 and determined the changes suggested listed under “Brief Summary”.

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.

§ 10.1-1101. General powers of Department of the Forestry, provides in item 4, the authority to promulgate regulations necessary or incidental to the performance of duties or execution of powers conferred under this chapter. In addition, § 10.1-1103, Powers of the Board, provides for the following authority. Item C, the Board shall formulate recommendations to the State Forester concerning regulations and other matters applicable to Article 10 (§ [10.1-1170](#) et seq.), including types of equipment to be purchased, rental rates for equipment, and reforestation practices.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail 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.

The Reforestation of Timberlands Regulation was subject to periodic review, which included a 30 day public comment period ending November 10, 2011. During this periodic review, the agency received no comments. However, the Department of Forestry requested review and received comments from its Board of Forestry and Reforestation of Timberlands Board. Comments from the members of these boards were incorporated into the regulations as proposed amendments. The proposed amendments will update the definitions and current forestry practices in Virginia from language that was originally designed in 1971 and updated in 1980.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

During the periodic review and other review of the Reforestation of Timberlands Regulations, the agency did not receive a single concern or proposal to amend the regulation except to bring the regulations current with definitions and current forestry practices. The reviewers included members of the industry and agency staff who are very familiar with all aspects of forestry and especially forestry incentives available through the Reforestation of Timberlands Regulations, and Reforestation of Timberlands Act, Code of Virginia. During these reviews, there was no indication of controversy about the proposed amendments and the board members reached an unanimous agreement on them.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the “Detail of changes” section.) Please be sure to define any acronyms.

The Department of Forestry proposes to amend sections 4VAC10-440-10, -50, -70, and -170. Specifically, amendments to these changes will cause the following impacts on the regulations.

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of the project or an annually determined maximum per acre agreed upon by the Board of Forestry (BOF) and the State Forester, whichever is lesser.”

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.*

The primary advantages associated with the proposed regulatory action include current definitions used by forestry practitioners, and forestry practices used by those persons engaged in forestry management. All amendments will reflect the types of forestry practices that are used in modern – day forest management and desired to receive financial incentives. These regulations underpin the foundation for sustainable forest resources in Virginia well into the future.

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.

There are no applicable federal requirements applicable to the Reforestation of Timberlands (RT) regulations. RT regulations were developed in Virginia by Virginia forest products’ businesses and state government concerned about securing forest products’ raw materials (forests and commercial trees) in the future. Taxes imposed on the forest products industry to fund private forest landowner’s with financial incentives to maintain forests originated from a self-imposed taxation idea. The Code of Virginia §§10.1-1170 etal authorizes the Reforestation Fund and landowner incentive programs for establishment and care of forests. The Code of Virginia §§58.1-1600 etal authorizes a tax on forest products’ businesses to fund the Reforestation Fund.

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.

Localities would not be impacted directly by the RT regulations. Localities could find that more of its forest landowners may maintain their forests as a result of the RT regulations.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The RT regulations provide guidance and transparency to anyone who wishes to receive financial incentives for forestry practices. The RT regulations provide definitions of qualifying lands and forestry practices which are eligible for incentives. Landowners are served well by the regulations through the clear process outlined to achieve success with their forestry projects. Landowners, businesses and the general public who are not engaged in forest management on their property are not impacted the RT regulations.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	
Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.	NONE
Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.	All private forest landowners who seek financial incentives through the Reforestation of Timberlands program.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	Based on past five year data of annual applications, the number of entities could range from 900 to 1500 persons making a request for Reforestation Incentive Assistance.
All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the	NONE

proposed regulatory changes or new regulations.	
Beneficial impact the regulation is designed to produce.	Clarity and updated language.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The RT regulation is not intrusive into the lives of regulated entities or the general public. The RT regulation provides guidance and transparency for forest landowners interested in applying for cost share financial incentives available to them for forestry practices conducted on their private land.

Periodic review/small business impact review result

If this fast-track regulation is not the result of a periodic review/small business of the regulation, please delete this entire section.

If this fast-track regulation is the result of a periodic review/small business impact review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) 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. In addition, 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.

Commenter	Comment	Agency response
NONE		

A periodic review of the RT regulation has been completed as required by the Code of Virginia and Executive Order 14. However, no comments were received during the periodic review and this fast-track regulation is not a result of the periodic review. This fast-track regulation is a result of comments and suggestions made by members of previous Board of Forestry, the Reforestation of Timberlands board and DOF agency personnel. The suggestions made by these advisers sought to update definitions and forest practices current in today’s forestry communities.

Family impact

Please assess the impact of the proposed 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.

The proposed regulatory action will not impact the stability of the family. The effect of clearer definitions and updating current practices will assist private forest landowners interested in seeking financial incentives through the Reforestation of Timberlands program.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the **pre-emergency** regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulation(s), use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
4VAC10-40-10			<p><u>“Non-Industrial Private Forestland (NIPF)” means forest lands owned by a diverse group including individuals, partnerships, groups, estates, trusts, clubs, tribes, associations, corporations not involved in wood processing, or other legal entities.”</u></p>

<p>4VAC10-40-50</p>		<p>In addition to those acres to which the Reforestation Act does not apply pursuant to the provisions of § 10.1-1171 of the Act, reforestation assistance shall not be available with respect to the following:</p> <ol style="list-style-type: none"> 1. Any acre on which there are present 400 or more well distributed and free-to-grow loblolly pine (<i>Pinus taeda</i>), short leaf pine (<i>Pinus echinata</i>), pond pine (<i>Pinus serotina</i>), white pine (<i>Pinus strobus</i>), Virginia pine (<i>Pinus virginiana</i>), of pitch pine (<i>Pinus rigida</i>), stems or tulip poplar (<i>Liriodendron tulipifera</i>) stems, singly or together, four feet or more in height, measured from ground level to tip of stem. 2. Any acre on which loblolly pine (<i>Pinus Taeda</i>), short leaf pine (<i>Pinus echinata</i>), pond pine (<i>Pinus serotina</i>), or white pine (<i>Pinus strobus</i>), singly or together, occur and exceed in number 50 live, thrifty trees of the above species six inches or more in diameter of the point of average 	<p>In addition to those acres to which the Reforestation Act does not apply pursuant to the provisions of § 10.1-1171 of the Act, reforestation assistance shall not be available with respect to the following:</p> <ol style="list-style-type: none"> 1. Any acre on which there are present 400 or more well distributed and free-to-grow loblolly pine (<i>Pinus taeda</i>), short leaf pine (<i>Pinus echinata</i>), pond pine (<i>Pinus serotina</i>), white pine (<i>Pinus strobus</i>), Virginia pine (<i>Pinus virginiana</i>), or of pitch pine (<i>Pinus rigida</i>), stems or tulip poplar (<i>Liriodendron tulipifera</i>) stems, singly or together, four feet or more in height, measured from ground level to tip of stem. 2. Any acre on which loblolly pine (<i>Pinus Taeda</i>), short leaf pine (<i>Pinus echinata</i>), pond pine (<i>Pinus serotina</i>), or white pine (<i>Pinus strobus</i>), singly or together, occur and exceed in number 50 live, thrifty trees of the above species six inches or more in diameter of the point of average thickness measured from outside of bark to outside of bark at a point on the trunk 10 inches above the general ground level.
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<p>4VAC10-40-70</p>		<p>thickness measured from outside of bark to outside of bark at a point on the trunk 10 inches above the general ground level.</p> <p>The type of forest practices qualifying for reforestation assistance shall include any method approved by the board and State Forester designed to:</p> <ol style="list-style-type: none"> 1. Prepare land for reforestation, including release, by means of chemical, mechanical or hand methods, of seedlings from overtopping shade of trees, brush, or shrubs; 2. Reforest land, either naturally or artificially, by sowing of seed and/or planting of seedlings. 	<p>The type of forest practices qualifying for reforestation assistance shall include any method approved by the board and State Forester designed to:</p> <ol style="list-style-type: none"> 1. Prepare land for reforestation. including release, by means of chemical, mechanical or hand methods, of seedlings from overtopping shade of trees, brush, or shrubs; 2. Reforest land, either naturally or artificially, by sowing of seed and/or planting of seedlings. 3. <u>“Post-reforestation cultural treatments” shall also be eligible for RT incentives along with site preparation and reforestation.</u>
<p>4VAC10-40-80</p>		<p>After expiration of the number of years that the eight pine trees and/or two poplar seed are required, pursuant to the Seed Tree Act, to be left standing following the date of cutting of the timber, and after release of the tract to the owner, reforestation assistance may be made available with respect to any acre on which seed trees were left standing and uncut as required by the Seed Tree Act, provided</p>	

<p>4VAC10-40-170</p>		<p>such reforestation assistance is not prohibited by the provisions of 4VAC10-40-50.</p> <p>A. The department may from time to time and upon consultation with the board adjust the levels and manner of incentive payments to be offered to landowners for reforestation projects in accordance with the Reforestation Act. Those changes will be for one fiscal year and may not change within a fiscal year. Any such adjustments shall be announced and publicized as far in advance of their affective dates as practical.</p> <p>B. Effective July 1, 1982, the incentive payments to landowners for approved projects are hereby set at 60% of actual cost or \$80 per acre, whichever is the lesser.</p>	<p>A. The department may from time to time and upon consultation with the board adjust the levels and manner of incentive payments to be offered to landowners for reforestation projects in accordance with the Reforestation Act. Those changes will be for one fiscal year and may not change within a fiscal year. Any such adjustments shall be announced and publicized as far in advance of their affective dates as practical.</p> <p>B. Effective July 1, 1982, the incentive payments to landowners for approved projects are hereby set at 60% of actual cost or \$80 per acre, whichever is the lesser.</p> <p><u>The incentive payments to landowners from approved projects are hereby set at seventy-five percent of the total cost of the project or an annually determined maximum amount per acre agreed upon by the Board of Forestry and the State Forester, whichever is lesser.</u></p>
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If a new regulation is being promulgated, use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements

Enter any other statement here