



# **COMMONWEALTH of VIRGINIA**

*Office of the Attorney General*

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## **MEMORANDUM**

**To:** **Kyle Flanders**  
Senior Policy Analyst  
Virginia Department of Housing and Community Development

**Erik Johnston**  
Director  
Virginia Department of Housing and Community Development

**From:** **Justin I. Bell**  
Assistant Attorney General

**Date:** March 25, 2019

**Subject:** **Emergency Cooling Regulations, 13 VAC 5 – 63.**

I have reviewed the emergency regulations concerning minimum cooling requirements of the Virginia Maintenance Code.

Based on that review, it is my view that the Board of Housing and Community Development (the “Board”), pursuant to Va. Code § 36-98, has the authority to promulgate these regulations, subject to compliance with applicable provisions of Article 2 of the Administrative Process Act (“APA”), and has not exceeded that authority.

The authority for this emergency action is found in Virginia Code § 2.2-4011, which provides that emergency regulations are “[r]egulations that an agency finds are necessitated by an emergency situation.” The amendments to the regulations will address the existing public health concern facing residents of certain multifamily housing buildings when such buildings are maintained at a maximum temperature of 80 degrees Fahrenheit. Reducing the maximum temperature from 80 degrees Fahrenheit to 77 degrees Fahrenheit will help avoid the negative impacts of excessively hot living conditions.

Accordingly, with the prior approval of the Governor, these regulations qualify for the “emergency” exemption from Article 2 requirements. Please be advised, however, that under Va. Code § 2.2-4011(A), the Board must state in writing the nature of and necessity for such emergency action. This requirement appears to have been accomplished in the “Agency Background Document” posted on the Virginia Regulatory Town Hall.

In addition, the regulations shall be effective for no more than 18 months from the emergency regulatory action on this subject matter. As the Board intends to continue regulating the subject matter governed by this emergency regulation beyond 18 months, it will be necessary to replace these emergency regulations with regulations duly promulgated under Article 2 of the APA. A Notice of Intended Regulatory Action relating to the proposed replacement regulations must be filed with the Registrar within 60 days of the effective date of the emergency regulations. The proposed replacement regulations must be filed with the Registrar within 180 days after the effective date of the emergency regulations.

If you have any questions, please contact me at 804-225-3373.

cc: Heather Hays Lockerman, Senior Assistant Attorney General & Section Chief