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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Housing and Community Development
Virginia Administrative Code (VAC) citation(s)	13 VAC 5 - 63
Regulation title(s)	Uniform Statewide Building Code
Action title	Emergency Cooling Regulations
Date this document prepared	April 1, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Currently, section 13VAC5-63-540 B 5 of the Uniform Statewide Building Code (USBC) requires that landlords who provide cooling either expressly or implied must maintain a minimum cooling temperature of 80 degrees Fahrenheit. This provision is part of the Virginia Maintenance Code (VMC), a portion of the USBC that is adopted at the discretion of local governments.

This emergency action is to lower from 80 to 77 degrees Fahrenheit, the required cooling temperature as provided in section 13VAC5-63-540 B 5 of the USBC.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

Uniform Statewide Building Code – USBC
Virginia Maintenance Code – VMC

Mandate and Impetus (Necessity for Emergency)

Please explain why this rulemaking is an emergency situation in accordance with Virginia Code § 2.2-4011 A and B. In doing so, please either:

- a) Indicate whether the Governor’s Office has already approved the use of emergency regulatory authority for this regulatory change.*
- b) Provide specific citations to Virginia statutory law, the appropriation act, federal law, or federal regulation that require that a regulation be effective in 280 days or less from its enactment.*

As required by § 2.2-4011, please also describe the nature of the emergency and of the necessity for this regulatory change. In addition, delineate any potential issues that may need to be addressed as part of this regulatory change.

This rulemaking action is an emergency situation as it is essential to protect the health, safety, and welfare of Virginians. Staff within the offices of the Secretary of Commerce and Trade and the Governor are aware of this action and have approved the use of the emergency regulatory process.

Currently, the VMC, a part of the USBC, requires that when cooling is provided to tenants of certain multi-family buildings it must be provided to a temperature of at least 80 degrees Fahrenheit. The current threshold has been identified as a public health concern in multiple localities that adopt the VMC. Residents living in buildings kept at higher temperatures are more likely to experience certain health conditions as a result of the higher temperatures. A change to 77 degrees will assist tenants living in affected buildings to avoid the negative health impacts of the higher indoor temperatures. Negative health impacts as presented during the General Assembly and to the Board include asthma and other respiratory issues, an impact to children and the elderly, as well as potential impact to populations already experiencing illness. This emergency action is largely a result of [HB 2000](#), which was considered during the 2019 session of the General Assembly. While the bill did not move forward, the provisions of the bill largely carry over to this regulatory action because stakeholders agreed this was an emergency situation that should move forward through the emergency regulatory process.

Legal Basis

Please identify (1) the agency or other promulgating entity, 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 entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

The Board of Housing and Community Development is promulgating this emergency regulation pursuant to §2.2-4011 of the Code of Virginia (emergency authority) and §§36-98 and 36-102 of the Code of Virginia (standard regulatory authority).

Purpose

Please describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.

A baseline temperature of 80 degrees, where cooling is provided, in certain multifamily housing has potential negative health impacts to residents. A maximum allowed temperature of 77 degrees will ameliorate negative consequences.

Substance

Please describe any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of Virginians.

For changes to existing regulations, use this chart:

Current section number	Current requirement	Change, intent, rationale, and likely impact of new requirements
13VAC5-63-540 B 5	5. Section 602.4 Cooling supply. Every owner and operator of a Group R-2 apartment building who rents, leases, or lets one or more dwelling units, rooming units, or guestrooms on terms, either expressed or implied, to furnish cooling to the occupants thereof shall supply cooling during the period from May 15 to October 1 to maintain a temperature of not more than 80°F (27°C) in all habitable rooms. The code official may also consider modifications as provided in Section 104.5.2 when requested for unusual circumstances or may issue notice approving building owners to convert shared heating and cooling piping HVAC systems 14 calendar days before or after the established dates when extended periods of unusual temperatures merit modifying these dates. Exception: When the outdoor temperature is	5. Section 602.4 Cooling supply. Every owner and operator of a Group R-2 apartment building who rents, leases, or lets one or more dwelling units, rooming units, or guestrooms on terms, either expressed or implied, to furnish cooling to the occupants thereof shall supply cooling during the period from May 15 to October 1 to maintain a temperature of not more than 80°F (27°C) 77°F (25°C) in all habitable rooms. The code official may also consider modifications as provided in Section 104.5.2 when requested for unusual circumstances or may issue notice approving building owners to convert shared heating and cooling piping HVAC systems 14 calendar days before or after the established dates when extended periods of unusual temperatures merit modifying these dates. Exception: When the outdoor temperature is

	<p>higher than the summer design temperature for the locality, maintenance of the room temperature shall not be required provided that the cooling system is operating at its full design capacity. The summer outdoor design temperature for the locality shall be as indicated in the IECC.</p>	<p>higher than the summer design temperature for the locality, maintenance of the room temperature shall not be required provided that the cooling system is operating at its full design capacity. The summer outdoor design temperature for the locality shall be as indicated in the IECC.</p> <p>This regulatory change was suggested as legislation during the 2019 session of the General Assembly. While the legislation did not move forward the legislative intent can be met through the regulatory process. Providing more suitable living conditions for inhabitants of multifamily housing is essential to protect the health, safety, and welfare of Virginians.</p>
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Issues

Please identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

This change will improve the lives of tenants in multifamily residences providing for a healthier living environment during the summer months. For many landlords this will simply require adjusting existing equipment. This change is important to protect the health of vulnerable tenants such as the elderly and those with certain health issues.

Alternatives

Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

The alternative to this emergency action would be to adopt this change via the normal regulatory process. Such a change would likely not be effective for at least two more cooling seasons, proving detrimental to affected residents.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this Emergency/NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency.

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Please indicate how the public should contact the agency to submit comments on this regulation, including ideas to assist the agency in the development of the regulation and the costs and benefits of the alternatives stated in this notice or other alternatives.

Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulation.

The Board of Housing and Community Development is seeking comments on this regulation, including but not limited to: ideas to be considered in the development of this regulation, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation. Also, the agency/board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: 1) projected reporting, recordkeeping, and other administrative costs; 2) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at <https://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. Comments may also be submitted by mail, email or fax to Kyle Flanders; address: 600 East Main Street, Suite 300, Richmond, VA 23219; telephone number: (804) 786-6761; fax number: (804) 371-7090; email address: kyle.flanders@dhcd.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period

A public hearing will be held following the publication of the proposed stage of this regulatory action, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.