



**Virginia
Regulatory
Town Hall**

Proposed Regulation Agency Background Document

Agency Name:	Department of Environmental Quality
VAC Chapter Number:	9 VAC 20-140-10 et seq.
Regulation Title:	Regulations for the Certification of Recycling Machinery and Equipment for Tax Exemption Purposes, Amendment 1
Action Title:	Amendment
Date:	July 11, 2000

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary*

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This regulation provides for a state income tax credit for machinery and equipment that is used to process recyclable waste material into a usable product, and if the governing body of any county, city or town passes the applicable ordinance, an exemption or partial exemption from local property taxes. Substantive changes proposed in this amendment include:

- Removing the requirement that the applicant provide proof of the purchase price. Only proof of purchase would be required.
- Removing the requirement that the machinery and equipment be in a fixed location to qualify for a state income tax credit. However, the machinery and equipment must remain in the Commonwealth.

- To qualify for a local tax exemption, the machinery and equipment must be operated at a fixed location.
- Clarification of what is not covered by the regulations. These are:
 1. Machinery and equipment that incorporates a finished product that is made from a recyclable waste. This is one step removed from recycling;
 2. Non-processing or non-manufacturing machinery and equipment;
 3. Machinery and equipment used exclusively to handle finished products;
 4. Buildings or other structures;
 5. Repair and maintenance items.
- Minor revisions to the application form.

Basis*

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Sections 58.1-338, 58.1-439.7, and 58.1-439.8 of the Code of Virginia specify that individuals and corporations, within the Commonwealth, that operate machinery and equipment that is used to process recyclable waste material may apply for a state income tax credit based on the cost of such equipment. The Department of Environmental Quality is charged with certifying that the equipment meets the criteria for recycling. These statutes also specify the amount of the tax credit and how it can be carried over.

Section 58.1-3661 of the Code of Virginia specifies that recycling equipment certified by the Department of Environmental Quality may be eligible for a local property tax exemption. This section allows the governing body of any county, city or town to exempt or partially exempt this equipment from local taxation.

The Office of the Attorney General has certified that the Department of Environmental Quality has the statutory authority to promulgate the regulation and it comports with applicable state and/or federal law.

Purpose*

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The Department of Environmental Quality has undertaken to amend the Regulations for the Certification of Recycling and Machinery for Tax Exemption Purposes (9 VAC 20-140-10 et seq.) because nine years have passed since the adoption of the regulations, and it is necessary to consider what changes are appropriate.

Substance*

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

The new substantive provisions of this amendment to the regulations are:

- The requirement that the applicant supply proof of the purchase price has been removed. All that is required is a proof of purchase.
- The requirement that the machinery and equipment be in a fixed location in order to qualify for a state income tax credit has been eliminated. The requirement now is that the machinery and equipment remain in the Commonwealth.
- A requirement was added that in order to qualify for a local tax exemption, the machinery and equipment must be operated at a fixed location.
- Clarification of what is not covered by the regulations. Not covered are:
 1. Machinery and equipment that incorporates a finished product that is made from a recyclable waste. This is one step removed from recycling;
 2. Non-processing or non-manufacturing machinery and equipment;
 3. Machinery and equipment used exclusively to handle finished products;
 4. Buildings or other structures;
 5. Repair and maintenance items.
- Modifications to the application form.

Issues*

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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 include a sentence to that effect.

The primary advantage to the public is clarification of what does and does not qualify as machinery and equipment that is used to process recyclable waste material into a usable product. There are no known disadvantages to the public.

The primary advantage to the agency is that the amendment should reduce the errors in the applications for equipment certification and therefore make it easier and faster to process them. There are no known disadvantages to the agency or the Commonwealth.

A matter of interest to the regulated community is that it will no longer be necessary to document the purchase price when applying for equipment certification. Only proof of purchase will be required. However, in order to document the amount of tax credit proof of equipment cost will be required by the taxing authority.

Locality 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.

These regulations apply equally to all localities.

Public Participation*

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal.

In addition to any other comments, the Virginia Waste Management Board and the Department of Environmental Quality are seeking comments on the costs and benefits of the proposal.

Anyone wishing to submit written comments for the public comment file may do at the public hearing or by mail. Written comments must include the name, address and phone number of the commenter. In order to be considered the comments must be received by the close of the comment period. Oral comments may be submitted at the public hearing.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; (e) the projected cost of the regulation for affected individuals, businesses, or other entities; and (f) an estimate of the impact of the proposed regulation upon small businesses as defined in § 9-199 of the Code of Virginia or organizations in Virginia.

The fiscal impact to the Department of Environmental Quality is \$35,000 per year, which is the manpower cost to administer the program, and this is an on-going expenditure. The source is state funds as there are no grants or projects involved.

Section 58.1-3661 of the Code of Virginia provides for local property tax exemption on the certified equipment, if the locality has an ordinance to that effect. There is no data available on the effect this has had on local property tax, but it is known that very few localities have passed an ordinance giving a property tax exemption.

These regulations affect individuals and corporations, which are engaged in the business of processing recyclable materials into a product for sale. The fiscal impact on these individuals and corporations that apply for certification is positive since they receive a credit on their state income tax. In 1999 the Department of Environmental Quality approved 72 applications for certification and there has been no real change in the application rate since the program began.

There would be a positive impact on any small business engaged in processing recyclable materials; any other small businesses would not be affected.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

Changes to the regulations include the following:

Section 9 VAC 20-140-20. Definitions:

- A definition for "Finished product" was added.
- The definition of "Purchase price" was deleted.

Section 9 VAC 20-140-70. Machinery and Equipment:

- In item A, the phrase "at a fixed location" was deleted and replaced by "in the Commonwealth".
- Item C.2 was added to exclude from certification machinery and equipment used to incorporate a finished product with recycled content, which is no longer considered a solid waste.
- Item C.3 was added to exclude machinery and equipment used exclusively to handle finished product.
- Item 6 was added to exclude repairs and maintenance items.

Section 9 VAC 20-140-100. Equipment Documentation:

- Item 5, the purchase price, was deleted.
- References to the form for certification were deleted. Items concerning the form were moved to the end of the regulations.

Section 9 VAC 20-140-150. Severability

- The entire section was deleted since it is no longer needed.

Section 9 VAC 20-140-170. Administrative Procedures.

- Parts of this section, which are no longer applicable were deleted and reference was made to Article 3 of the Virginia Administrative Process Act (Section 9-6.14:1 et seq. of the Code of Virginia).

Form DEQ 50-11, RECYCLING MACHINERY EQUIPMENT CERTIFICATION

- A reference was made to the form at the end of the regulations. By doing that, it is possible to change the form without changing the regulations.
- Changes were made to the form to include the applicant's telephone number and a request for process information as well as past applications was added.

Alternatives

Please describe the specific 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.

The only alternative considered was to have the Department of Environmental Quality certify the purchase price for the machinery and equipment. The current interpretation of the statutes is that the Department should only certify that the equipment qualifies as recycling machinery and equipment under these regulations and that the applicant does own the equipment.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

There were no comments received during the NOIRA comment period.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The Department of Environmental Quality has determined, through examination and Technical Advisory Committee (TAC) reviews that the regulations are clearly written and easily understandable by the individuals and entities affected.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable

regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The periodic review of these regulations is required under Executive Order No. 25 (98) and will be performed as required under the executive order. According to Executive Order No. 25 (98), the next review of these regulations should be initiated in 2003.

Specific goals are:

- To protect public health and/or welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth.
- To encourage the abatement or prevention of pollution through the establishment of procedures for certification of recycling machinery and equipment as integral to the recycling process, etc. in order to apply for a state income tax credit or personal property tax exemption.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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 amendments to these regulations will have an indirect positive impact on family life in the Commonwealth by encouraging individuals and corporations to purchase and operate recycling equipment which in turn will divert some of the waste that might otherwise go to a landfill.