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## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	Department of Agriculture and Consumer Services
<b>Virginia Administrative Code (VAC) citation</b>	2 VAC 5-340
<b>Regulation title</b>	Rules and Regulations for the Enforcement of the Virginia Weights and Measures Law
<b>Action title</b>	Repeal of Regulations
<b>Date this document prepared</b>	September 6, 2011

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

VDACS proposes to repeal 2VAC5-340, *Rules and Regulations for the Enforcement of the Virginia Weights and Measures Law*, which establishes specifications for the method of sale of commodities, standards of net weight, measure or count, standards of fill for commodities in package form, and exemptions.

### 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.*

On May 26, 2011, the Board of Agriculture and Consumer Services authorized staff to take any and all steps necessary to repeal 2VAC5-340, *Rules and Regulations for the Enforcement of the Virginia Weights and Measures Law*.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.*

Section 3.2-5607 authorizes the Board of Agriculture and Consumer Services to adopt regulations for the enforcement of the Virginia Weights and Measures Law. This authority is discretionary.

### 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 1993 Session of the General Assembly amended the Virginia Weights and Measures Law (Va Code § 3.2-5600 et seq.) to adopt, by reference, sections of the National Institute of Standards and Technology (NIST) Handbook 130. The adoption of national standards eliminates the need for 2VAC5-340, *Rules and Regulations for the Enforcement of the Virginia Weights and Measures Law*. As such, VDACS proposes to repeal these regulations.

### 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.*

VDACS expects the repeal of these regulations to be noncontroversial because the agency, as well as industry, has been using the specifications set forth in NIST Handbook 130 since its incorporation by reference into the Virginia Weights and Measures Law in 1993. Additionally, the agency recently conducted a periodic review of these regulations and received no comment during the public comment period of January 17, 2011 through February 7, 2011.

### 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.)*

VDACS proposes to repeal 2VAC5-340, *Rules and Regulations for the Enforcement of the Virginia Weights and Measures Law*.

### 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 proposed repeal of 2VAC5-340, *Rules and Regulations for the Enforcement of the Virginia Weights and Measures Law*, poses no disadvantages to the public or the Commonwealth.

### 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.*

The repeal of these regulations has no applicable federal requirements and no requirements that exceed applicable federal requirements.

### 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.*

The repeal of these regulations does not affect any locality.

**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 repeal of these regulations will not adversely impact small business. These regulations are no longer needed with the incorporation by reference of sections of the NIST Handbook 130 into the Virginia Weights and Measures Law.

**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.*

<b>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</b>	The Commonwealth will not incur any costs to repeal these regulations.
<b>Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.</b>	Localities will not incur any costs related to the repeal of these regulations.
<b>Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.</b>	No individual, business, or other entity will be affected by the repeal of these regulations.
<b>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.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than	No entity, including small businesses, will be affected by the repeal of these regulations.

<p>500 full-time employees or has gross annual sales of less than \$6 million.</p>	
<p><b>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 proposed regulatory changes or new regulations.</b></p>	<p>No individual, business, or other entity will incur any costs associated with the repeal of these regulations.</p>
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>The repeal of these regulations will eliminate any potential confusion that may arise from conflicts between specifications set forth in the regulations and those set forth in NIST Handbook 130. An additional benefit of repealing these regulations is the elimination of an unused chapter from the Virginia Administrative Code.</p>

**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 repeal of these regulations is the least burdensome alternative, as it will eliminate any potential confusion that may arise from conflicts between specifications set forth in the regulations and those in NIST Handbook 130.

**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 repeal of these regulations does not impact the institution of the family or family stability.

### 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 in each section. Please describe the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.*

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

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VDACS proposes the repeal of 2VAC5-340, *Rules and Regulations for the Enforcement of the Virginia Weights and Measures Law.*