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## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	Board of Accountancy
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC 5 -10
<b>Regulation title</b>	Public Participation Guidelines Regulations
<b>Action title</b>	Revise Public Participation Guidelines Regulations
<b>Date this document prepared</b>	October 24, 2006

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

In accordance with Section 2.2-4012.1 of the Administrative Process Act (APA), and Executive Order 21 (2002), the Board of Accountancy is proposing a fast-track regulation to revise the public participation guidelines (PPG) regulations solely for the purpose of updating the statutory citations contained therein referencing the Administrative Process Act (APA), and bringing the language in line with the current APA requirements. Such changes are noncontroversial and are intended to increase the public's input into the regulation promulgation process in the most efficient and effective manner possible.

## 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.*

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During its meeting on October 24, 2006, the Board of Accountancy unanimously approved revising the public participation guidelines (PPG) regulation to bring it in line with the current language in the Administrative Process Act (APA), and promulgating this action to amend the Board of Accountancy Regulations.

## 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.*

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As required by Executive Order 21 (2002), the Board has been given the legal authority to promulgate the contemplated amendments to its regulations through Chapter 44 of Title 54.1 of the Code of Virginia, 1950, as amended. The Board has that legal authority in Sections 54.1-4403 (3) and (12). The Board received a memorandum dated November 9, 2006, from the Office of the Attorney General stating that the Board has the authority to promulgate these proposed regulations. Further, according to Executive Order 21, the Board is mandated to ensure that "all legal requirements related to public participation and all public guidelines shall be strictly followed to ensure that citizens have reasonable access and opportunity to present their comments and concerns;" so, revisions to enhance the ability of the public to participate is the paramount reason to promulgate the contemplated amendments to the Board's regulations.

## 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.*

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According to the Administrative Process Act (APA), regulations that consist only of changes in style or form or corrections of technical errors are exempt actions with regard to regulatory changes promulgated by state agencies. According to Section 2.2-4012.1 of the APA, rules expected to be noncontroversial may be promulgated in accordance with the fast-track rulemaking process. The public participation guidelines (PPG) regulation was last submitted and retained for periodic review in 2000.

Therefore, the justification of this proposed action is solely to update the statutory citations contained in the Board's public participation guidelines (PPG) regulation referencing the APA and to bring the language in line with the current APA requirements. Such changes are noncontroversial and are intended to increase the public's input into the regulation promulgation process in the most efficient and effective manner possible.

According to the APA, the PPGs are necessary for “soliciting the input of interested parties in the formation and development of [the Board’s] regulations.” So, it is essential to the health, safety and welfare of the public for the Board to “set out any methods for the identification and notification of interested parties, and any specific means of seeking input from interested persons or groups” as the Board promulgates its regulations. By updating the Board’s PPG regulation in this proposal, all “groups and individuals registering interest in working with the agency” shall have a more efficient and effective means to “submit data, views, and arguments, either orally or in writing,” to the Board.

The practice of public accountancy is a profession that, according to Section 54.1-100, “requires specialized skill or training and the public needs, and will benefit by, assurances of initial and continuing professional ... ability.” The “potential for harm is recognizable and not remote,” so, it is necessary for the Board to promulgate this proposed regulation through the fast-track process to “effectively administer the regulatory system.”

### 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 60-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 objection 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.*

In accordance with Section 2.2-4012.1 of the Administrative Process Act (APA), and Executive Order 21 (2002), the Board of Accountancy is proposing a fast-track regulation to revise the public participation guidelines (PPG) regulations solely for the purpose of updating the statutory citations contained therein referencing the Administrative Process Act (APA), and bringing the language in line with the current APA requirements. Such changes are noncontroversial and are intended to increase the public’s input into the regulation promulgation process in the most efficient and effective manner possible.

### 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.)*

In accordance with Section 2.2-4012.1 of the Administrative Process Act (APA), and Executive Order 21 (2002), the Board of Accountancy is proposing a fast-track regulation to revise the public participation guidelines (PPG) regulations solely for the purpose of updating the statutory citations contained therein referencing the Administrative Process Act (APA), and bringing the language in line with the current APA requirements. Such changes are noncontroversial and are intended to increase the public’s input into the regulation promulgation process in the most efficient and effective manner possible.

## 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 advantage to the public is to decrease any confusion about the public participation guidelines (PPG) regulation because the relevant statutory citations will be revised, and the language in the regulation will be brought in line with that of the Administrative Process Act (APA). The primary advantage to the Board is that these changes will increase the public's input into the regulation promulgation process in the most efficient and effective manner possible.

There are 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.*

There is no requirement in this proposal that is more restrictive than 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.*

This proposal will not affect any locality disproportionately. The changes in this proposed regulation will increase the public's input into the regulation promulgation process in the most efficient and effective manner possible.

## 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 establishment of less stringent design or operational standards.*

*the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

The only alternative would be to not have the revised language of (and revised citations in) the Administrative Process Act (APA) included in the Board's public participation guidelines (PPG) regulation. This would adversely impact the Board's ability to ensure that citizens have reasonable access and opportunity to present their comments and concerns about any regulations of the Board. Further, this alternative would decrease the Board's ability to provide a timely written response to all comments and to include any suggested changes that would improve the quality of its regulations. To lessen the ability of citizens to participate in this process would be a violation of the APA. This analysis led the Board to conclude that not implementing this proposal could decrease its ability to get the full public input needed in promulgating regulations, which could result in increased costs on licensees to stay in business, and increased costs of services provided to the public—possibly making services less accessible.

Since this alternative would in fact be more burdensome and costly for individuals and small businesses, the Board determined that there was no viable alternative to this proposal.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

<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>	No projected cost to the state to implement and enforce the proposed regulation.
<b>Projected cost of the regulation on localities</b>	No projected cost of regulation on localities.
<b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b>	Members of the public, licensees of the Board, and businesses (or other entities) would be affected by this regulation in a positive way because they would have a more efficient and effective manner to provide input into the Board's regulation promulgation process. None would be affected in an adverse manner.
<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 500 full-time employees or has gross annual sales of less than \$6 million.	The best estimate would be around 19,000 individual CPA licensees, and 1,600 CPA firms would be affected in a positive way.
<b>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</b>	No projected cost of regulation on affected individuals, businesses, or other entities.

## 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 only alternative would be to not have the revised language of (and revised citations in) the Administrative Process Act (APA) included in the Board's public participation guidelines (PPG) regulation. This would adversely impact the Board's ability to ensure that citizens have reasonable access and opportunity to present their comments and concerns about any regulations of the Board. Further, this alternative would decrease the Board's ability to provide a timely written response to all comments and to include any suggested changes that would improve the quality of its regulations. To lessen the ability of citizens to participate in this process would be a violation of the APA. This analysis led the Board to conclude that not implementing this proposal could decrease its ability to get the full public input needed in promulgating regulations, which could result in increased costs on licensees to stay in business, and increased costs of services provided to the public—possibly making services less accessible.

Since this alternative would in fact be more burdensome and costly for individuals and small businesses, the Board determined that there was no viable alternative to this proposal.

## 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 amendments proposed by the Board of Accountancy will not have an impact on the institution of the family and family stability. The proposed amendments will not strengthen nor erode the authority and rights of parents in the education, nurturing, and supervision of their children. They will not 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. These amendments will not strengthen or erode the marital commitment. The effect of amendments on disposable family income will be minimal.

## Detail of changes

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

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

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
18 VAC 5-10-10		The current section lists all definitions of terms addressed in this regulation.	<p><b>Amendment:</b> In this section, “Administrative Process Act” will be defined. The term “Agency” will be substituted by the term “Board.” The term “Notification List” will be added to broaden the lists used by the Board to include “electronic mailing lists or regular mailing lists maintained by the Board.”</p> <p><b>Consequences:</b> Unless enacted, the terms relevant to public participation in the regulation process will be more restrictive and confusing; for example, the use of electronic mailing lists would not be clarified.</p> <p><b>Essential Nature:</b> Current regulations do not clarify the linkage of the public participation guidelines to the Administrative Process Act, and the use of different types of lists or other means for the Board to communicate to the public about regulatory changes. Further, the current inclusion of the term “Agency” instead of the proposed “Board,” would be confusing to the public.</p> <p><b>Issues:</b> None.</p>
18 VAC 5-10-20		The current section identifies the types of documents that will be mailed to persons and organizations on the Board’s list.	<p><b>Amendment:</b> In this section, “Mailing List” is revised to “Notification List.” Other clarifications include changing “agency” to “Board” and removing outdated section citations from the Administrative Process Act. The last changes are grammatical corrections for reading clarity.</p> <p><b>Consequences:</b> Unless enacted, the terms of public participation in the regulation process will be more restrictive and confusing; for example, the use of electronic mailing lists would not be clarified and the section citation for the APA would be incorrect.</p> <p><b>Essential Nature:</b> Current regulations do not clarify the role of linkage of the public participation guidelines to the Administrative Process Act, and the use of different types of lists or other means for the Board to communicate to the public about regulatory changes. Further, the current inclusion of the term “Agency” instead of the proposed “Board,” would be confusing to the public.</p> <p><b>Issues:</b> None.</p>
18 VAC 5-10-30		The current section lists all definitions of terms addressed in this regulation.	<p><b>Amendment:</b> In this section, “mailing list” becomes “notification list”. The rest of the section includes language identifying that “organization,” along with “persons,” can</p>

			<p>request to be added to the list. Further, the use of electronic means of communication between the “Board” and these persons and organizations included is clarified.</p> <p><b>Consequences:</b> Unless enacted, the terms relevant to public participation in the regulation process will be more restrictive and confusing; for example, the use of electronic mailing lists would not be clarified.</p> <p><b>Essential Nature:</b> Current regulations do not clarify the linkage of the public participation guidelines to the Administrative Process Act, and the use of different types of lists and means for the Board to communicate to the public about regulatory changes. These changes are to bring the Board’s PPG regulations in line with the current language of the APA, and remove language that would be confusing to the public.</p> <p><b>Issues:</b> None.</p>
18 VAC 5-10-40		The current section lists all definitions of terms addressed in this regulation.	<p><b>Amendment:</b> In this section, language is added to include “organizations,” along with “persons,” and to bring it in line with the current language and relevant citations of the Administrative Process Act.</p> <p><b>Consequences:</b> Unless enacted, the terms relevant to public participation in the regulation process will be more restrictive and confusing.</p> <p><b>Essential Nature:</b> Current regulations do not clarify the linkage of the public participation guidelines to the Administrative Process Act, and the use of different types of lists and other means for the Board to communicate to the public about regulatory changes. These changes are to bring the Board’s PPG regulations in line with the current language of the APA, and to remove language that would be confusing to the public.</p> <p><b>Issues:</b> None.</p>
18 VAC 5-10-50		The current section lists all definitions of terms addressed in this regulation.	<p><b>Amendment:</b> In this section, language is added to bring it in line with the current language and relevant citations of the Administrative Process Act concerning the “Notice of Intended Regulatory Action.”</p> <p><b>Consequences:</b> Unless enacted, the terms relevant to public participation in the regulation process will be more restrictive and confusing.</p> <p><b>Essential Nature:</b> Current regulations do not clarify the linkage of the public participation guidelines to the Administrative Process Act, and the use of different types of lists and other means for the Board to</p>



			<p>communicate to the public about regulatory changes. These changes are to bring the Board's PPG regulations in line with the current language of the APA, and to remove language that would be confusing to the public.</p> <p><b>Issues:</b> None.</p>
18 VAC 5-10-60		<p>The current section lists all definitions of terms addressed in this regulation.</p>	<p><b>Amendment:</b> In this section, language is added to bring it in line with the current language and relevant citations of the Administrative Process Act concerning "Informational proceedings or public hearing for existing rules."</p> <p><b>Consequences:</b> Unless enacted, the terms relevant to public participation in the regulation process will be more restrictive and confusing.</p> <p><b>Essential Nature:</b> Current regulations do not clarify the linkage of the public participation guidelines to the Administrative Process Act, and the use of different types of lists and other means for the Board to communicate to the public about regulatory changes. These changes are to bring the Board's PPG regulations in line with the current language of the APA, and to remove language that would be confusing to the public.</p> <p><b>Issues:</b> None.</p>
18 VAC 5-10-70		<p>The current section lists all definitions of terms addressed in this regulation.</p>	<p><b>Amendment:</b> In this section, language is added to bring it in line with the current language and relevant citations of the Administrative Process Act concerning the means by which the Board will provide a "notice of formulation and adoption" of final regulations to the public.</p> <p><b>Consequences:</b> Unless enacted, the terms relevant to public participation in the regulation process will be more restrictive and confusing.</p> <p><b>Essential Nature:</b> Current regulations do not clarify the linkage of the public participation guidelines to the Administrative Process Act, and the use of different types of lists and other means for the Board to communicate to the public about regulatory changes. These changes are to bring the Board's PPG regulations in line with the current language of the APA, and to remove language that would be confusing to the public.</p> <p><b>Issues:</b> None.</p>
18 VAC 5-10-80		<p>The current section lists all definitions of terms addressed in this regulation.</p>	<p><b>Amendment:</b> In this section, minor language changes (substituting "Board" for "agency") have been made to clarify the language, and bring it in line with changes in</p>

			<p>the Administrative Process Act.  <b>Consequences:</b> Unless enacted, the terms relevant to public participation in the regulation process will be more restrictive and confusing.  <b>Essential Nature:</b> Current regulations do not clarify the linkage of the public participation guidelines to the Administrative Process Act, and the use of different types of lists and other means for the Board to communicate to the public about regulatory changes. These changes are to bring the Board's PPG regulations in line with the current language of the APA, and to remove language that would be confusing to the public.  <b>Issues:</b> None.</p>
<p>18 VAC 5-10-90</p>		<p>The current section lists all definitions of terms addressed in this regulation.</p>	<p><b>Amendment:</b> In this section, citations from the Administrative Process Act have been revised.  <b>Consequences:</b> Unless enacted, the statute citations relevant to public participation in the regulation process will be more restrictive and confusing.  <b>Essential Nature:</b> Current regulations do not clarify the linkage of the public participation guidelines to the Administrative Process Act, and the use of different types of lists and other means for the Board to communicate to the public about regulatory changes. These changes are to bring the Board's PPG regulations in line with the current language of the APA, and to remove language that would be confusing to the public.  <b>Issues:</b> None.</p>