



Economic Impact Analysis Virginia Department of Planning and Budget

8 VAC 20-11 – Regulations Governing Public Participation
Department of Education
November 26, 2008

Summary of the Proposed Amendments to Regulation

The Board of Education (Board) proposes to adopt the model public participation guidelines (PPGs) developed by the Department of Planning and Budget in consultation with the Office of the Attorney General (as required by Chapter 321 of the 2008 Acts of Assembly), with the following amendments:

1. **Title:** The Board proposes to change the title from “Public Participation Guidelines” to “Regulations Governing Public Participation.”
2. **Definition of “Agency”:** The Board proposes to amend the wording in the definition of the term “agency” for clarification purposes.
3. **Notification List:** The Board proposes to delete the provision stating that the “agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, and sections.”
4. **Undeliverable Electronic Mail:** The Board wishes to change the model provision of the notification list section that states “When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart” to “When electronic mail is returned as undeliverable on two occasions at least 24 hours apart.”
5. **Public Comment:** Lastly, with regard to the public comment section of the regulation, the model PPGs state as follows: “In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency.” The Board

proposes to amend this language to read “either orally at a public hearing or at a Board of Education meeting or in writing at any time during the public comment period.”

Result of Analysis

The benefits likely exceed the costs for one or more proposed changes. There is insufficient data to accurately compare the magnitude of the benefits versus the costs for other changes.

Estimated Economic Impact

Pursuant to Chapter 321 of the 2008 Acts of Assembly, the Department of Planning and Budget, in consultation with the Office of the Attorney General, (i) developed model PPGs and (ii) provided these model PPGs to each agency that has the authority to promulgate regulations. Chapter 321 requires that by December 1, 2008, each agency shall either (a) adopt the model public participation guidelines as an exempt action or (b) if significant additions or changes are proposed, promulgate the model public participation guidelines with the proposed changes as fast-track regulations pursuant to Code of Virginia § 2.2-4012.1.

The purpose of the model PPG legislation is threefold: first, to ensure that each agency or board has a current set of PPGs in place.¹ Second, to ensure that each agency or board’s PPGs incorporate the use of technology such as the Virginia Regulatory Town Hall, email to the extent possible, and the use of electronic mailing lists. Last, but perhaps most importantly, to have uniform guidelines in place to facilitate citizen participation in rulemaking and to make those guidelines consistent, to the extent possible, among all executive branch boards and agencies.

As described above, promulgating model PPGs will be beneficial in that the Department of Education (DOE) PPGs will: 1) reflect current information, 2) incorporate the use of technology such as the Virginia Regulatory Town Hall, email to the extent possible, and the use of electronic mailing lists, and 3) be largely consistent with other agency PPGs which will facilitate citizen participation in rulemaking. The Board does propose several amendments that make the DOE PPGs less consistent with other agency PPGs. The proposed changes to the title of the regulations, wording in the definition “agency,” and undeliverable electronic mail have no effect on requirements or opportunities for anyone or any entity private or public. According to

¹ Some agencies and boards have not updated their PPGs since the mid-late 1980’s.

DOE, there will always be one master notification list and there is no intention of ever maintaining additional lists for persons who have requested to be informed of specific regulatory issues, proposals, and sections. Thus, the proposal to delete language affording the agency the opportunity of maintaining such lists should have no impact.

Changing “In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency” to read “either orally at a public hearing or at a Board of Education meeting or in writing at any time during the public comment period” potentially produces both benefits and costs. DOE has stated that the additional language is intended to make clear to the public that the Board cannot practically consider comments from the public at informal settings such as when an individual spots a Board member at the supermarket. Making clear to the public that they need to make more official comments for their views and information to be properly considered is beneficial in informing in the public. On the other hand, there may be some individuals who are unable to appear in person or present their views in writing. The additional language may preclude or at least add to the difficulty for such individuals to present their views.

Businesses and Entities Affected

The proposed amendments affect the 132 school divisions in the Commonwealth, as well their students and staff, and all members of the public interested in participating in the development of Virginia’s education policies and regulations.

Localities Particularly Affected

The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment

The proposal amendments do not directly affect employment.

Effects on the Use and Value of Private Property

The proposal amendments do not directly affect the use and value of private property.

Small Businesses: Costs and Other Effects

The proposed amendments do not directly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact

The proposed amendments do not adversely affect small businesses.

Real Estate Development Costs

The proposed amendments do not directly affect real estate development costs.

Legal Mandate

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.