



Virginia  
Regulatory  
Town Hall

## Periodic Review and Retention of Existing Regulations Agency Background Document

<b>Agency Name:</b>	Chesapeake Bay Local Assistance Department
<b>VAC Chapter Number:</b>	9 VAC 10-10
<b>Regulation Title:</b>	Public Participation Guidelines
<b>Action Title:</b>	Periodic Review
<b>Date:</b>	October 29, 2002

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to retain an existing regulation.

### Summary

*Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.*

The Public Participation Guidelines establish procedures to be used for soliciting the input of interested persons in the formation and development, amendment or repeal of regulations in accordance with the Administrative Process Act. The Guidelines include provisions for petitioning for rulemaking, establishing and maintaining mailing list(s) of interested persons, the use of advisory committees, and the content of notices issued at the Notice of Intent and Notice of Public Comment Period stages.

### Basis

*Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or*

*discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.*

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The Administrative Process Act requires agencies to establish public participation guidelines. Specifically, the Act provides the following. §2.2-4007.D of the Code of Virginia: “Public participation guidelines for soliciting the input of interested parties in the formation and development of its regulations shall be developed, adopted and utilized by each agency pursuant to the provisions of this chapter. The guidelines shall set out any methods for the identification and notification of interested parties, and any specific means of seeking input from interested persons or groups that the agency intends to use in addition to the Notice of Intended Regulatory Action. The guidelines shall set out a general policy for the use of standing or ad hoc advisory panels and consultation with groups and individuals registering interest in working with the agency. Such policy shall address the circumstances in which the agency considers the panels or consultation appropriate and intends to make use of the panels or consultation.”

In addition there is directive in the Chesapeake Bay Preservation Act that the Board promulgate such regulations. Specifically, §10.1-2103.4 of the Code of Virginia (Duties of the Board – CBLAB) states “Promulgate regulations pursuant to the Administrative Process Act (§ [2.2-4000](#) et seq.)”

The Board’s guidelines exceed the minimum requirements of the APA in several respects. However, the requirements are imposed on the Board and the department, not on the public. It is important to note that the requirements are there to ensure consistency on the part of the Board and the department during all phases of the rulemaking process, that citizens have access to information and procedures of the Board, and citizens are allowed numerous opportunities to provide comment on actions undertaken by the Board.

## Public Comment

*Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

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No comments were received as a result of the Notice of Periodic Review published in the Virginia Register. Also, a review announcement was provided in the Periodic Review Information for 9 VAC 10-10 as maintained on the Virginia Regulatory Town Hall and no comments were received. No advisory group was formed to assist with this review.

## Effectiveness

*Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. Please*

*assess the regulation's impact on the institution of the family and family stability. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.*

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The Guidelines comply with the principles set out in Executive Order 21 (2002), as described in the following.

The purpose of the Guidelines is to establish standard procedures for public input into the adoption, amendment or repeal of the Board's regulations and to provide the public with assurances that all regulatory actions will be processed by the Board in the same manner, unless exempt from the APA. In addition, the Guidelines assure public access to the process at each stage and establish the means for providing notice to the public.

The Guidelines are mandated in order to provide for the efficient and economical performance of an important governmental function by establishing predictable guidelines to be used by the Board and the department during all phases of the regulatory process. It also sets out a predictable timetable for the public to provide meaningful comment on the effects of a proposed action on their health, safety and welfare.

The Guidelines are written in basic, non-technical language in order to be easily understood by the general public. They clearly state the requirements placed on the department and clearly indicate opportunities for public involvement and information available for public consumption.

The existing guidelines were put to an extensive test as the agency recently (March, 2002) completed a multi-year process for major revisions of its Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC 10-20 et. seq.). The process was completed without challenge and on a harmonious note.

Pursuant to Executive Order 21 (2002), the Office of the Attorney General has provided an examination to ensure statutory authority for these regulations. The memorandum concluding that there is appropriate statutory authority is maintained in the Departmental file.

In the 2002 General Assembly Session, two bills (HR 725 and HR 726) were adopted and affect the Guidelines. The items affected pertain to the handling and decision making associated with petitions filed by the public for creating new regulations, amending existing regulations, or the repeal of regulations; and, require an additional 30 day public comment period when an agency wishes to change a proposed regulation prior to adopting it. These items should be reflected in the agency public participation guidelines.

## Alternatives

*Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.*

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The department does not believe there are any acceptable alternatives that are less burdensome or less intrusive on the public for achieving the purpose of the regulation. The Guidelines are mandated by state law, they are intended to ensure that the public has opportunities and information necessary to participate in the regulatory process in a timely fashion, and they place requirements primarily on the department.

### Recommendation

*Please state that the agency is recommending that the regulation should stay in effect without change.*

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The department recommends that the Public Participation Guidelines be retained without change at this time.

It is further recommended that in a separate action, a change be made, through the process of a final-exempt action, to accommodate changes required by legislation passed in the 2002 General Assembly, specifically HR 725 and HR 726 . It is recommended that a separate action be used in order to provide for better coordination with other agencies in the Secretariat of Natural Resources.

### Family Impact Statement

*Please provide an analysis of the regulation's impact on the institution of the family and family stability including the extent to which it: 1) strengthens or erodes the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourages or discourages economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthens or erodes the marital commitment; and 4) increases or decreases disposable family income.*

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The Public Participation Guidelines do not impact the institution of family and family stability.