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Fast-Track Regulation Agency Background Document

Agency name	Air Pollution Control Board
Air Pollution Control Board	9 VAC 5-5
9 VAC 5-5	Public Participation Guidelines
Action title	Fast-track revisions to include changes needed as a result of Chapter 795 of the 2012 Acts of Assembly (Revision D17)
Date this document prepared	August 8, 2017

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation.

Agencies and Boards are required by §2.2-4007.02 A. of the Code of Virginia to adopt public participation guidelines to solicit input during the development of regulations. The current regulations are based on model public participation guidelines (PPGs) developed by the Virginia Department of Planning and Budget (DPB). Approximately 100 rulemaking bodies in Virginia have used DPB's model PPGs as a basis for adopting regulations concerning public participation guidelines.

Chapter 795 of the 2012 *Acts of Assembly* revised § 2.2-4007.02 B of the Code of Virginia to allow interested parties the right to be accompanied by or represented by counsel during the formulation of a regulation. As a result, DPB revised their model PPGs and DEQ is amending this regulation to be consistent with state statute and DPB's model PPGs.

Acronyms and definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

DEQ- Department of Environmental Quality
DPB- Department of Planning and Budget
PPGs- Public Participation Guidelines

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 September 21, 2017, the Air Pollution Control Board authorized the department to:

1. Promulgate the proposal for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The board’s authorization also constituted its amendment of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal
2. Set an effective date 15 days after close of the 30-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the department does not find it necessary to make any changes to the proposal.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.

Section 2.2-4007.02 of the Administrative Process Act (APA) requires agencies to develop and adopt public participation guidelines to solicit input from interested parties during the development of regulations. The Air Pollution Control Board previously adopted regulations concerning public participation guidelines using the regulatory development process.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe 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.

State law requires the Air Pollution Control Board to adopt public participation guidelines to solicit input during the development of regulations. Chapter 795 of the 2012 *Acts of Assembly* revised § 2.2-4007.02 B of the Code of Virginia to allow interested parties the right to be accompanied by or represented by counsel during the formulation of a regulation. As a result DPB revised their model PPGs and the Air Pollution Control Board is amending this regulation to be consistent with state statute and DPB's model PPGs.

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?

The proposed amendments are expected to be non-controversial, and therefore justify using the fast-track process. The amendments to this regulation make the regulations consistent with state statute and the model PPGs developed by DPB.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.

The Code of Virginia allows interested parties the right to be accompanied by or represented by counsel during the formulation of a regulation. This language has been added to the regulation.

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.

This regulatory change will benefit the public and the agency. The regulatory change amends the regulation to be consistent with state statute and DPB's model PPGs. The regulatory change does not place any additional requirements on the public or the agency; therefore, there are no disadvantages to the public or the agency.

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.

Federal regulatory programs encourage public participation by citizens and the regulated community; however, Virginia law details specific public participation requirements. This regulation was adopted as required by state statute.

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 impact of this regulation is statewide; therefore, the Board anticipates that all localities will be equally affected.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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.

This regulatory amendment is being made to conform to the requirements found in the Administrative Process Act (§2.2-4000 of the Code of Virginia.) No alternatives were identified that would be consistent with current state law.

Public participation

Please include a statement that in addition to any other comments on the regulation, the agency is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community and the impacts of the regulation on farm or forest land preservation.

In addition to any other comments, the Agency is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community and on any impacts of the regulation on farm and forest land preservation. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reported, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Melissa Porterfield, Office of Regulatory Affairs, P.O. BOX 1105, Richmond, VA 23218, phone: 804-698-4238, FAX: 804-698-4019, email: melissa.porterfield@deq.virginia.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: www.townhall.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Public participation notice

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; or the Department finds it necessary, based on public comments or for any other reason, to make any changes to the proposal, the agency shall: 1) file notice of the objection/reason with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

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.

<p>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</p>	<p>Virginia law was amended in 2012 to state interested parties have the right to be accompanied by or represented by counsel during the formulation of a regulation. There is no cost to the state to implement and enforce the provision allowing parties to be accompanied by or represented by counsel when a regulation is being formed or amended.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>The change to the regulation is being made to be consistent with state statute. Virginia law was amended in 2012 to state interested parties have the right to be accompanied by or represented by counsel during the formulation of a regulation. Since this is allowed by state law, amending the regulation to include this language will not impact the costs on localities.</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>Under Virginia law, all individuals, businesses and other entities currently have the option of being accompanied by or represented by counsel during the formation of a regulation.</p>
<p>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. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and;</p>	<p>Under Virginia law, all individuals, businesses and other entities currently have the option of being accompanied by or represented by counsel during the formation of a regulation. This regulation is being revised to be consistent with Virginia law. This regulatory change will not impact any small</p>

<p>b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>businesses since the provision is currently allowed by state law.</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) 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.</p>	<p>This regulatory change will have no fiscal impact on individuals, businesses or other entities.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>This regulatory change will make the regulatory language consistent with state law. This provides the regulated community with regulatory language that is consistent with state law.</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 Board could retain the regulation and not revise the regulation to be consistent with state law and DPB’s model public participation guidelines. This alternative was rejected. This regulatory change will make the regulatory language consistent with state law and provides the regulated community with regulatory language that is consistent with state law and DPB’s model public participation guidelines.

Family impact

Please assess the impact of this 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.

It is not anticipated that this regulation will have a direct impact on families.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact.

*Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please list separately: (1) all differences between the **pre-emergency** regulation and this proposed regulation; and 2) only changes made since the publication of the emergency regulation.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
50		Public comment	Added the following language to be consistent with state law and DPB's model public participation guidelines- "be accompanied by and represented by counsel or other representative".