



Virginia  
Regulatory  
Town Hall

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

<b>Agency Name:</b>	4 VAC 15
<b>VAC Chapter Number:</b>	10
<b>Regulation Title:</b>	Public Participation Guidelines
<b>Action Title:</b>	Retain regulation
<b>Date:</b>	March 19, 2001

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.*

This regulation provides a process for soliciting the input of interested persons in the initial formation and development, amendment or repeal of regulations in accordance with the Administrative Process Act. Virginia wildlife management regulations are exempted from provisions of the Administrative Process Act, and therefore from this regulation.

### 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.*

§ 9-6.14:7.1 of the Code of Virginia, Paragraph D in the Administrative Process Act.  
§29.1-103. Sections 3, 6, 7, 11, and 12. Powers and duties of the Board.  
§29.1-501. Promulgation of regulations; publication of proposed regulations or change therein;  
validation; evidentiary nature of publication.  
§29.1-502. Adoption of regulations.

§ 9-6.14:7.1 of the Code of Virginia, Paragraph D, in the Administrative Process Act, mandates this regulation by requiring each nonexempt regulatory agency to develop, adopt, and utilize "public participation guidelines for soliciting the input of interested parties in the formation and development of its regulations." DGIF administers four additional regulations (those governing watercraft) for which the agency is nonexempt.

### 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 citizen comments were received by mail, email, or other channels regarding this regulation during the announced periodic review comment period as provided in the Notice of Periodic Review published in the *Virginia Register of Regulations*. The comment period closed Tuesday, January 9, at 5 p.m. No informal advisory group was formed nor is advisory group formation planned.

### 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 specific goal of this regulation is to provide a process for soliciting the input of interested citizens in the initial formation and development, amendment or repeal of regulations subject to and in accordance with the Administrative Process Act.

The measurable aspect is receipt of public comment on every regulation amended or adopted under the Administrative Process Act and the public participation guidelines provided for in this regulation. No regulation has been amended under the Act or these guidelines during the time period covered by this review.

This regulation is essential to enable the agency to administer watercraft regulations, which in turn are essential to protect citizens' health, safety, and welfare in regards to boating and while on the waters of the Commonwealth.

The regulation is clear and readily understood by affected parties.

## 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.*

### Alternatives considered:

Alternative 1: No regulation in place.

Description: Without this or a similar regulation in place, DGIF would lack applicable guidelines under which to adopt or amend non-wildlife related regulations.

Level of burden on the public: Having no regulation in place might result in a slightly lower amount of public participation than will occur under the existing public participation guidelines. Prior to the adoption of 4 VAC 15-10 there was no such regulation in place and amending DGIF's non-wildlife-related regulations resulted in little intrusion on the lives of Virginia's citizens.

Satisfies essential government function: Yes, however the assumption of § 9-6.14:7.1 D of the Code of Virginia is that such essential functions are satisfied better under a Public Participation Guidelines regulation for nonexempt regulations.

Discussion: The assumption of § 9-6.14:7.1 D of the Code of Virginia is that such essential functions are satisfied better under a Public Participation Guidelines regulation for nonexempt regulations, and that such a guidelines regulation is appropriate. Therefore Alternative 1 must be rejected.

Alternative 2: A public participation guidelines regulation like the existing 4 VAC 15-10, except allowing individuals not receiving notification to successfully challenge the validity of the regulation.

Description: This alternative would in most cases have similar results to the regulation in effect. However, it would pose the possibility that a regulation which serves the greater public good could be rendered invalid by individuals, in their own special interests, based on the individual's not having received notification.

Level of burden on the public: This alternative could result in a needed regulation not going into effect; lack of such a needed regulation could cause an undue burden and imposition to be imposed on Virginia citizens at large.

Satisfies essential government functions: This option would less fully satisfy the essential government function of the regulation for reasons stated in the discussion below.

Discussion: Section 2, B of the existing 4 VAC 15-10 provides that "the failure of any person to receive any notice or copies of any documents provided under these guidelines shall not

affect the validity of any regulation." Though this clause is not directed by the Code of Virginia, its presence enables the regulatory process to proceed and allows regulations to become effective and remain valid in the face of challenges that are based on the adequacy of notification to individual parties. For that reason, Alternative 2 is rejected.

Alternative 3: The regulation as it exists.

Description: 4 VAC 15-10 as currently in effect.

Level of burden on the public: The existing regulation imposes a very limited level of intrusion into the lives of Virginia's citizens.

Satisfies essential government function: Yes, the existing regulation provides the department with the ability to effectively discharge its essential government functions in the administration of non-exempt regulations.

Discussion: This alternative provides the best balance of very limited intrusion into the lives of Virginians while providing a superior means to satisfy an essential government function.

**Recommendation**

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

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The agency recommends that the regulation stay in effect without change.

**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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This regulation is a safeguard against the adoption or amendment of other DGIF-administered regulations -- principally watercraft regulations -- subject to the Administrative Process Act without sufficient public participation. As such, it acts to ensure that private enterprise and the lives of Virginia's citizens are not imposed on or interfered in without their participation, through which they may act in their own interests to minimize the burden and intrusion posed by regulation.

This regulation has very minimal to negligible direct impacts on the authority and rights of parents in the education, nurturing and supervision of their children. It has very minimal to negligible direct impact on encouraging or discouraging economic self-sufficiency, self-pride or the assumption of responsibility for oneself or family members. The marital commitment is basically unaffected by this regulation.

This regulation does indirectly encourage business, industry, and economic self-sufficiency to some degree, by allowing for the efficient administration of non-APA-exempt watercraft regulations. These watercraft regulations, in turn, help sustain jobs related to the watercraft industry and waterborne commerce that might not otherwise be available if Virginia's waterways were deemed unsafe for recreational boating. The watercraft regulations supported by this regulation also provide the rules needed to ensure the safety of citizens on Virginia waters. Families are indirectly strengthened by the economic returns from the industry.