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Fast-Track Regulation Agency Background Document

Agency name	Department of Corrections
Virginia Administrative Code (VAC) Chapter citation(s)	__6__ VAC_16__-__10__
VAC Chapter title(s)	Public Participation Guidelines
Action title	Promulgate Model Public Participation Guidelines
Date this document prepared	8-13-2021

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The proposed regulatory action establishes Public Participation Guidelines for the Department of Corrections under 6VAC16. Section 2.2-4007.02 of the Administrative Process Act requires agencies to adopt public participation guidelines, which are procedures for obtaining public input from interested parties in the formation and development of an agency's regulations. Regulations under 6VAC15-10 are specific for the Board of Local and Regional Jails and do not extend to regulations that must be promulgated for the Department of Corrections under 6VAC16; therefore, separate Public Participation Guidelines are necessary under 6VAC16.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

“Department” means Department of Corrections.

“Director” means the chief executive officer of the Department, appointed in accordance with §53.1-9.

Statement of Final Agency Action

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 8/4/2021, the director of the department approved the Public Participation Guidelines, to be set out in 6VAC16 for submission through the fast-track regulatory process.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

As required by Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

The proposed regulatory action establishes Public Participation Guidelines for the Department of Corrections under 6VAC16. Section 2.2-4007.02 of the Administrative Process Act requires agencies to adopt public participation guidelines, which are procedures for obtaining public input from interested parties in the formation and development of an agency’s regulations. Regulations under 6VAC15-10 are specific for the Board of Local and Regional Jails and do not extend to regulations that must be promulgated for the Department of Corrections under 6VAC16; therefore, separate Public Participation Guidelines are necessary under 6VAC16.

The proposed regulations are model Public Participation Guidelines used by agencies throughout the Commonwealth for obtaining public input from interested parties in the formation and development of an agency’s regulations. Therefore, these are expected to be noncontroversial and appropriate for the fast-track process.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

The promulgating entity is the department.

Code of Virginia § 2.2-4007.02 requires state agencies to develop, adopt, and use public participation guidelines in order to ensure the involvement of interested persons in the formation and development of the agency’s regulations.

The director is authorized under Title 53.1 of the Code of Virginia to promulgate regulations as related to the administration of specific duties and responsibilities of the department.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

This regulatory action is necessary to comply with Code of Virginia § 2.2-4007.02, which requires state agencies to develop, adopt, and use public participation guidelines in order to ensure the involvement of interested persons in the formation and development of the agency's regulations.

Substance

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 proposed regulations new, and therefore substantive. They follow model Public Participation Guidelines used by agencies throughout the Commonwealth for obtaining public input from interested parties in the formation and development of an agency's regulations without deviation.

As provided for in model Public Participation Guidelines, the proposed regulations include the following parts and sections:

- Part I: Purpose and Definitions; sections: Purpose; Definitions
- Part II: Notification of Interested Persons; sections: Notification list; Information to be sent to persons on the notification list
- Part III: Public Participation Procedures; sections: Public comment; Petition for rulemaking; Appointment of regulatory advisory panel; Appointment of negotiated rulemaking panel; Meetings; Public hearings on regulations; Periodic review of regulations

Issues

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

There are no disadvantages associated with the regulatory proposal for the public or Commonwealth. The primary advantage of the regulatory proposal is to provide guidance for obtaining public input from interested parties in the formation and development of an agency's regulations. The regulation will benefit the general public and the department by ensuring that a standardized process for obtaining public input from interested parties is used in the formation and development of an agency's regulations.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

There are no related federal requirements associated with this regulatory action.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

No other state agencies are particularly impacted by the proposed regulations. Other state agencies will be impacted only to the extent they are considered interested persons who wish to provide input to regulation development.

Localities Particularly Affected

No localities are particularly impacted by the proposed regulations. Localities will be impacted only to the extent they are considered interested persons who wish to provide input to regulation development.

Other Entities Particularly Affected

No other entities are particularly impacted by the proposed regulations. Other entities will be impacted only to the extent they are considered interested persons who wish to provide input to regulation development.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail;</p>	<p>The proposed regulation is not expected to have an economic impact on the department.</p>
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b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	
<i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	The department does not anticipate the proposed regulation to have an economic impact on other state agencies.
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	The department does not anticipate the proposed regulation to result in any economic benefits for agencies.

Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	The department does not anticipate the proposed regulation to have an economic impact on localities.
Benefits the regulatory change is designed to produce.	The department does not anticipate the proposed regulation to result in any economic benefits for localities.

Impact on Other Entities

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	The proposed regulation will provide interested parties an opportunity to participate in the development of regulations through a standardized process.
Agency's best estimate of the number of such entities that will be affected. 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; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	The number of interested parties potentially impacted by this proposal cannot be determined. However, there is no anticipated economic impact.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	The proposal is not expected to impose costs on affected individuals, businesses, or other entities.
Benefits the regulatory change is designed to produce.	The proposed regulations are designed to allow for public participation in the department's regulatory actions subject to the Administrative Process Act.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

There are no viable alternatives to accomplish the objective of this regulation. Section 2.2-4007.02 of the Administrative Process Act requires agencies to adopt public participation guidelines. Regulatory agency 6VAC16 is specific to the Department of Corrections regulatory responsibilities and therefore, public participation guidelines specific to the agency are necessary. Guidelines previously adopted under 6VAC15 cannot be transferred to 6VAC16, therefore, new guidelines must be adopted. [Guidelines currently under 6VAC15 will also be amended to clarify that the Board of Local and Regional Jails has regulatory authority under that particular regulatory agency number.]

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

There are no viable alternatives to accomplishing the objective of this regulation that would not conflict with state law.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

As required by § 2.2-4011 of the Code of Virginia, 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, the agency shall: 1) file notice of the objections 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.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Department of Corrections is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative

approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Tracey L. Jenkins, Regulatory Coordinator; 6900 Atmore Drive, Richmond, VA 20225; phone: 804-887-7898, fax: 804-674-3509, email: tracey.jenkins@vadoc.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements

If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements
10-10	Purpose	The proposed regulations are in accordance with §2.2-4007 et seq. and §2.2-4100 et seq. of the Code of Virginia and 1VAC7-10 of the Administrative Code	This specifies the purpose of the regulation.
10-20	Definitions	The proposed regulations are in accordance with §2.2-4007 et seq. and §2.2-4100 et seq. of the Code of Virginia and	This lists the definitions as necessary for the regulation.

		1VAC7-10 of the Administrative Code	
10-30	Notification list	The proposed regulations are in accordance with §2.2-4007 et seq. and §2.2-4100 et seq. of the Code of Virginia and 1VAC7-10 of the Administrative Code	The specifies that a notification list shall be maintained.
10-40	Information to be sent to persons on the notification list	The proposed regulations are in accordance with §2.2-4007 et seq. and §2.2-4100 et seq. of the Code of Virginia and 1VAC7-10 of the Administrative Code	This specifies the information sent to individuals on the notification list.
10-50	Public comment	The proposed regulations are in accordance with §2.2-4007 et seq. and §2.2-4100 et seq. of the Code of Virginia and 1VAC7-10 of the Administrative Code	This specifies the regulations for public comment.
10-60	Petition for rulemaking	The proposed regulations are in accordance with §2.2-4007 et seq. and §2.2-4100 et seq. of the Code of Virginia and 1VAC7-10 of the Administrative Code	This specifies that a person may petition the agency to consider a regulatory action and how.
10-70	Appointment of regulatory advisory panel	The proposed regulations are in accordance with §2.2-4007 et seq. and §2.2-4100 et seq. of the Code of Virginia and 1VAC7-10 of the Administrative Code	This specifies that the agency may appoint a regulatory advisory panel.
10-80	Appointment of negotiated rulemaking panel	The proposed regulations are in accordance with §2.2-4007 et seq. and §2.2-4100 et seq. of the Code of Virginia and 1VAC7-10 of the Administrative Code	This specifies that the agency may appoint a negotiated rulemaking panel if a regulatory action is expected to be controversial.
10-90	Meetings	The proposed regulations are in accordance with §2.2-4007 et seq. and §2.2-4100 et seq. of the Code of Virginia and 1VAC7-10 of the Administrative Code	This specifies that open meetings shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least 7 working days in advance.
10-100	Public hearings on regulations	The proposed regulations are in accordance with §2.2-4007 et seq. and §2.2-4100 et seq. of the	This specifies when public hearings are to be conducted on proposed regulatory actions and how notice is made.

		Code of Virginia and 1VAC7-10 of the Administrative Code	
10-110	Periodic review of regulations	The proposed regulations are in accordance with §2.2-4007 et seq. and §2.2-4100 et seq. of the Code of Virginia and 1VAC7-10 of the Administrative Code	This specifies that the agency shall conduct periodic reviews of regulations consistent with executive orders and §2.2-4007.1 of the Administrative Process Act.

*If the regulatory change is replacing an **emergency regulation**, and the proposed regulation is identical to the emergency regulation, complete Table 1 and/or Table 2, as described above.*

*If the regulatory change is replacing an **emergency regulation**, but changes have been made since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.*

Table 3: Changes to the Emergency Regulation

Emergency chapter-section number	New chapter-section number, if applicable	Current <u>emergency</u> requirement	Change, intent, rationale, and likely impact of new or changed requirements since emergency stage