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## Proposed Regulation Agency Background Document

<b>Agency name</b>	Department of Historic Resources
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	17 VAC5-40
<b>VAC Chapter title(s)</b>	Regulations Governing Contextualization of Monuments or Memorials for Certain War Veterans
<b>Action title</b>	Regulations Governing Contextualization of Monuments or Memorials for Certain War Veterans
<b>Date this document prepared</b>	May 13, 2022

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.*

These are a new regulations pursuant to Chapters 1100 and 1101 of the 2020 Acts of Assembly. The chapters mandate in the 4<sup>th</sup> enactment clause: "That the Board of Historic Resources shall promulgate regulations governing the manner in which any monument or memorial may be contextualized pursuant to the provisions of this act." These regulations provide guidance to local governing bodies that choose to contextualize certain war monument or memorials within their jurisdiction. This guidance includes general provisions regarding the markers including their appearance, location, and ownership and the application requirements and approval process.

### 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.

N/A

## 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."*

This action fulfills the mandate as required pursuant to Chapters 1100 and 1101 of the 2020 Acts of Assembly which states in the 4<sup>th</sup> Enactment clause: "That the Board of Historic Resources shall promulgate regulations governing the manner in which any monument or memorial may be contextualized pursuant to the provisions of this act."

This rulemaking is expected to be noncontroversial as contextualization is a voluntary choice made by local governing bodies, and the General Assembly has required the Board to guide those local governing bodies in this 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 Director of the Department is granted the authority pursuant to § 10.1-2202(5) "to promulgate regulations, in accordance with the Virginia Administrative Process Act (§ [2.2-4000](#) et seq.)."

## 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.*

(1) The promulgation of this new regulation is mandated pursuant to Chapters 1100 and 1101 of the 2020 Acts of Assembly which states in the 4<sup>th</sup> Enactment clause: "That the Board of Historic Resources shall promulgate regulations governing the manner in which any monument or memorial may be contextualized pursuant to the provisions of this act." (2) These regulations are essential to protect the health, safety or welfare of citizens in order to provide localities, their leaders, and their citizens with guidance on interpreting certain war monuments and memorials. (3) The goal of the regulations is to provide the needed guidance to local government officials in relation to contextualizing certain war monuments or memorials if they so choose. These regulations will solve the problem of the current state in which there exists no guidance for localities that choose to contextualize certain war monuments or memorials.

## 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.*

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The Department has added a new Chapter 40 to 17VAC5 in order to provide for regulations governing contextualization of monuments or memorials for certain war veterans as provided for in 15.2-1812. 17VAC5-40-10 provides definitions. 17VAC5-40-20 states the authorized applicability of the chapter. 17VAC4-40-30 outlines the general provisions of the regulations including where the markers must be placed, their appearance, and who owns them and covers all costs. 17VAC5-40-40 describes the contents of the application including basic contact information, location, text, factual information about the monument or memorial itself, statement of purpose, proposed text and location for the marker, all source documentation, timetable, and proposed marker design. 17VAC4-40-50 describes the issuance of approval process stating that the Board shall evaluate application that are presented by the Department and that the approval of applications is in the Board’s sole discretion. Criteria that the Board may consider are listed. It is also stated that the marker that is erected shall not differ from what the Board approved and that the Board shall not consider an application until the Department has determined that it is complete and accurate including sufficient documentary evidence to establish the authenticity of the proposed text.

## 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.*

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The primary advantage to the public is that they will know the process by which localities must undergo in order to contextualize certain monuments or memorials. There are no disadvantages to the public. The primary advantage to the Commonwealth is that contextualization of certain monuments or memorials will be done in a uniform fashion. There are no disadvantages to the Commonwealth. The primary advantage to all is that the information on the marker will be vetted by historians at the Department and only credible, documented facts will be a part of the contextualization.

## 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.*

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There are no federal requirements.

## 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**

There are no other state agencies particularly affected.

**Localities Particularly Affected**

Any locality choosing to contextualize a monument or memorial to a certain war veteran will be particularly affected.

**Other Entities Particularly Affected**

No other entities will be particularly affected.

**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**

<i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	There are no fiscal impacts to the agency for implementation.
<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.	There are no fiscal impacts to other state agencies for implementation.
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	Fulfilling a mandate by the General Assembly positively impacts all state agencies.

**Impact on Localities**

Projected costs, savings, fees or revenues resulting from the regulatory change.	Potential cost of a marker could possibly range from \$500 to \$1500.
Benefits the regulatory change is designed to produce.	It provides a detailed process that vets and certifies historical information for public education.

**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.	Only localities choosing to contextualize certain monuments or memorials are required to follow these regulations.
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.	0
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.	0
Benefits the regulatory change is designed to produce.	It provides a detailed process that vets and certified historical information for public education.

**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 alternatives.

**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 alternative regulatory methods.

**Periodic Review and Small Business Impact Review Report of Findings**

*If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.*

*In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.*

This regulation is mandated as previously described. The comments thus far have mainly objected to using the fast-track process; the comments that were directed towards the regulations themselves were mainly calling into question the proposed substantive information that must be included in the contextualization text. There is no evidence thus far that this regulation is complex; it has been drafted as an application process outlining criteria for approval. This is a new regulation; therefore, it has not been previously evaluated in terms of technology, economic conditions, or other factors and the degree to which they have changed in the area affected by the regulation. These regulations have no impact on small businesses.

**Public Comment**

*Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.*

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
4 comments	Objections to the Board having approval authority.	The Board has this legal authority as mandated by Chapters 1100 and 1101 of the 2020 Acts of Assembly as well as authority stated in 10.1-2209 of the Code of Virginia.
2 comments	Concerns regarding what sources can be cited.	The Department staff employs qualified historians to determine this. In addition, the definition of “contextualization” has been revised to address this further.

2 comments	Objections to there being a limit of one sign per monument or memorial.	Marker text will include documented information relating to differing points of view and tell a complete, factually-based story.
3 comments	Criticism of the information proposed to be included on each marker.	The Board and Department staff have revised this portion of the regulations.
1 comment	Concern that there is no proposed public comment period.	Public comment is provided for in 15.2-1812 (B).
25 comments	Objections to the fast-track process and other general criticism of the promulgation of these regulations in general.	These comments are irrelevant as they are not related to the substance of the regulations.

## 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.*

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The Department of Historic Resources is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, (iii) the potential impacts of the regulation, and (iv) the agency's regulatory flexibility analysis stated in that section of 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 Stephanie Williams, 2801 Kensington Avenue, Richmond, VA 23221, 804-482-6082, and [Stephanie.williams@dhr.virginia.gov](mailto:Stephanie.williams@dhr.virginia.gov). In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of this stage of this regulatory action.

## 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.*

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*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 to be added to VAC	Other regulations and laws that apply	Change, intent, rationale, and likely impact of new requirements
40-10	Definitions		
40-20	Applicability	15.2-1812	
40-30	General Provisions		To set out the general rules for contextualization.
40-40	Marker Approval Application		To set out the information required to submit a complete application.
40-50	Issuance of Approval		To set out the process by which an application will be reviewed and either approved or not approved.

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