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Exempt Action Final Regulation Agency Background Document

Agency name	Department of Environmental Quality
Virginia Administrative Code (VAC) citation(s)	9 VAC15-40
Regulation title(s)	Small Renewable Energy Projects (Wind) Permit by Rule
Action title	Amendments to the Small Renewable Energy Projects (Wind) Permit by Rule as mandated by Virginia 2017 Acts of Assembly Chapter 368 (SB 1395)
Final agency action date	May 10, 2017
Date this document prepared	May 8, 2017

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA) or an agency's basic statute, the agency is not required, however, is encouraged to provide information to the public on the Regulatory Town Hall using this form. Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

Amendments to the Small Renewable Energy Projects (Wind) Permit by Rule increase the size of a small renewable wind energy project from 100 to 150 MW. The amendments also require certification that the project is not proposed, developed, constructed or purchased by a person that is utility regulated under Title 56, stipulates that any projects commencing operation after July 1, 2017, are eligible for the Wind PBR and are exempt from State Corporation Commission environmental review if the project is proposed, developed, constructed or purchased by a public utility if the costs are not recovered from Virginia customers under base rates or the applicant is a utility aggregation cooperative formed Article 2 of chapter 9.1 of Title 56. The amendments are necessary to implement Chapter 368 of the 2017 Acts of Assembly.

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.

PBR – Permit by Rule

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.

The Director of the Department of Environmental Quality approved the Small Renewable Energy Projects (Wind) Permit by Rule on May 10, 2017.

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.

The Department does not expect that the regulation will have a direct impact on the institution of the family and family stability.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
9VAC15-40-10 Definition of “Small renewable energy project”		Small renewable energy project" means (i) an electrical generation facility with a rated capacity not exceeding 100 megawatts that generates electricity only from sunlight, falling water, wave motion, tides, or geothermal power; or (ii) an electrical generation facility with a rated	Small renewable energy project" means (i) an electrical generation facility with a rated capacity not exceeding 400 150 megawatts that generates electricity only from sunlight, or wind ; (ii) an electrical generation facility with a rated capacity not exceeding 100 megawatts that generates electricity only from falling water, wave motion, tides, or geothermal power; or (iii) an electrical generation facility with a rated capacity not exceeding 20 megawatts that generates

		capacity not exceeding 20 megawatts that generates electricity only from biomass, energy from waste, or municipal solid waste.	electricity only from biomass, energy from waste, or municipal solid waste. The changes are necessary to implement Chapter 368 of the 2017 Acts of Assembly.
Definition of "Small wind energy project"		"Small wind energy project," "wind energy project," or "project" means a small renewable energy project that (i) generates electricity from wind, consisting of one or more wind turbines and other accessory structures and buildings, including substations, post-construction meteorological towers, electrical infrastructure, and other appurtenant structures and facilities within the boundaries of the site; and (ii) is designed for, or capable of, operation at a rated capacity equal to or less than 100 megawatts. Two or more wind energy projects otherwise spatially separated but under common ownership or operational control, which are connected to the electrical grid under a single interconnection agreement, shall be considered a single wind energy project. Nothing in this definition shall imply that a permit by rule is required for the construction of meteorological towers to determine the appropriateness of a site for the development of a wind energy project.	"Small wind energy project," "wind energy project," or "project" means a small renewable energy project that (i) generates electricity from wind, consisting of one or more wind turbines and other accessory structures and buildings, including substations, post-construction meteorological towers, electrical infrastructure, and other appurtenant structures and facilities within the boundaries of the site; and (ii) is designed for, or capable of, operation at a rated capacity equal to or less than 400 150 megawatts. Two or more wind energy projects otherwise spatially separated but under common ownership or operational control, which are connected to the electrical grid under a single interconnection agreement, shall be considered a single wind energy project. Nothing in this definition shall imply that a permit by rule is required for the construction of meteorological towers to determine the appropriateness of a site for the development of a wind energy project. The changes are necessary to implement Chapter 368 of the 2017 Acts of Assembly.
15-40-20 Authority and applicability		This regulation is issued under authority of Article 5 (§ 10.1-1197.5 et seq.) of Chapter 11.1 of Title 10.1 of the Code of Virginia.	This regulation is issued under authority of Article 5 (§ 10.1-1197.5 et seq.) of Chapter 11.1 of Title 10.1 of the Code of Virginia. The regulation contains requirements for wind-powered electric generation projects

		<p>The regulation contains requirements for wind-powered electric generation projects consisting of wind turbines and associated facilities with a single interconnection to the electrical grid that are designed for, or capable of, operation at a rated capacity equal to or less than 100 megawatts. The department has determined that a permit by rule is required for small wind energy projects with a rated capacity greater than 5 megawatts and this regulation contains the permit by rule provisions for these projects in Part II (9VAC15-40-30 et seq.) of this chapter. The department has also determined that a permit by rule is not required for small wind energy projects with a rated capacity of 5 megawatts or less and this regulation contains notification and other provisions for these projects in Part III (9VAC15-40-130) of this chapter. Projects that meet the criteria for Part III of this chapter are deemed to be covered by the permit by rule.</p>	<p>consisting of wind turbines and associated facilities with a single interconnection to the electrical grid that are designed for, or capable of, operation at a rated capacity equal to or less than 400 150 megawatts. The department has determined that a permit by rule is required for small wind energy projects with a rated capacity greater than 5 megawatts and this regulation contains the permit by rule provisions for these projects in Part II (9VAC15-40-30 et seq.) of this chapter. The department has also determined that a permit by rule is not required for small wind energy projects with a rated capacity of 5 megawatts or less and this regulation contains notification and other provisions for these projects in Part III (9VAC15-40-130) of this chapter. Projects that meet the criteria for Part III of this chapter are deemed to be covered by the permit by rule.</p> <p>The changes are necessary to implement Chapter 368 of the 2017 Acts of Assembly.</p>
<p>15-40-30 A 5</p>		<p>In accordance with § 10.1-1197.6 B 5 of the Code of Virginia, furnishes to the department a certification signed by a professional engineer licensed in Virginia that the maximum generation capacity of the small wind energy project, as designed, does not exceed 100 megawatts;</p>	<p>In accordance with § 10.1-1197.6 B 5 of the Code of Virginia, furnishes to the department a certification signed by a professional engineer licensed in Virginia that the maximum generation capacity of the small wind energy project, as designed, does not exceed 400 150 megawatts;</p> <p>The changes are necessary to implement Chapter 368 of the 2017 Acts of Assembly.</p>
<p>15-40-30 A 13</p>		<p>13. Prior to authorization of the project and in accordance with §§ 10.1-</p>	<p>13. In accordance with § 10.1-1197.6 H and I of the Code of Virginia, furnishes to the department a certification signed by the</p>

		<p>1197.6 B 13 and 10.1-1197.6 B 14 of the Code of Virginia, conducts a 30-day public review and comment period and holds a public meeting pursuant to 9VAC15-40-90. The public meeting shall be held in the locality or, if the project is located in more than one locality, in a place proximate to the location of the proposed project; however, for projects located in nearshore waters or on state-owned submerged lands, the meeting shall be held in the locality that is the closest distance from the approximate center of the project's disturbance zone. Following the public meeting and public comment period, the applicant shall prepare a report summarizing the issues raised by the public and include any written comments received and the applicant's response to those comments. The report shall be provided to the department as part of this application; and</p>	<p><u>applicant that the small wind energy project is being proposed, developed, constructed, or purchased by a person that is not a utility regulated pursuant to Title 56 of the Code of Virginia or provides certification that (i) the project's costs are not recovered from Virginia jurisdictional customers under base rates, a fuel factor charge, or a rate adjustment clause or (ii) the applicant is a utility aggregation cooperative formed under Article 2 (§ 56-231.38 et seq.) of Chapter 9.1 of Title 56 of the Code of Virginia.</u></p> <p>The changes are necessary to implement Chapter 368 of the 2017 Acts of Assembly.</p>
<p>15-40-30 A 14</p>		<p>14. In accordance with 9VAC15-40-110, furnishes to the department the appropriate fee.</p>	<p><u>14.</u> Prior to authorization of the project and in accordance with §§ 10.1-1197.6 B 13 and 10.1-1197.6 B 14 of the Code of Virginia, conducts a 30-day public review and comment period and holds a public meeting pursuant to 9VAC15-40-90. The public meeting shall be held in the locality or, if the project is located in more than one locality, in a place proximate to the location of the proposed project; however, for projects located in nearshore waters or on state-owned submerged lands, the meeting shall be held in the locality that is the closest distance from the approximate center of the project's disturbance zone. Following the public meeting and public comment period, the applicant shall prepare a report summarizing the issues raised by the public and include any written comments received and the applicant's</p>

			<p>response to those comments. The report shall be provided to the department as part of this application; and</p> <p>The changes are necessary to implement Chapter 368 of the 2017 Acts of Assembly.</p>
	15-40-30 A 15		<p>44 15. In accordance with 9VAC15-40-110, furnishes to the department the appropriate fee.</p> <p>The changes are necessary to implement Chapter 368 of the 2017 Acts of Assembly.</p>

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.

The changes made to the Small Renewable Energy Projects (Wind) Permit by Rule are required by Virginia 2017 Acts of Assembly Chapter 368 (SB 1395).