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Fast-Track Regulation Agency Background Document

Agency name	Department of Law
Virginia Administrative Code (VAC) citation(s)	1 VAC 45 - 5 - _
Regulation title(s)	Public Participation Guidelines
Action title	Fast-track action to adopt initial PPG regulations
Date this document prepared	November 19, 2014

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

The Department of Law (the "Department") is adopting its initial Public Participation Guideline ("PPG") regulations because it now is responsible for promulgating regulations for the former Virginia Human Rights Council after the operations of that agency was transferred to the Department's Division of Human Rights pursuant to the General Assembly's government reorganization legislation (2012 Acts, cc. 803, 835), effective July 1, 2012. The Division of Human Rights ("DHR") is authorized to promulgate regulations regarding the performance of its statutory duties. In addition, the Department is authorized to promulgate regulations regarding the issuance of a Civil Investigative Demand ("CID") under the Virginia Antitrust Act. The Department's regulations may be subject to periodic regulatory review, thus necessitating the Department's need to adopt its initial PPG regulations, which are based upon the model PPG regulations issued by the Virginia Department of Planning and Budget.

The PPG regulations exist to promote public involvement in the development, amendment, or repeal of an agency’s regulations. Under Code of Virginia § 2.2-4007.02, every rulemaking body in Virginia is required to adopt public participation guidelines and to use these guidelines in the development of its regulations. Adoption of PPG regulations will ensure the Department’s rulemaking process is consistent with the process used by other Virginia rulemaking bodies.

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.

- PPG - Public Participation Guidelines
- CID - Civil Investigative Demand
- DHR - Division of Human Rights

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 February 11, 2015, the Department of Law submitted its initial Public Participation Guideline regulations to the Virginia Registrar for fast-track promulgation.

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.

The Department of Law’s legal basis for the promulgation of its initial PPG regulations is § 2.2-4007.02 of the Code of Virginia. The Department’s Division of Human Rights is authorized to adopt, promulgate, amend, and rescind regulations related to carrying out its statutory duties by Code of Virginia § 2.2-520(B)(2). The Department is also authorized to promulgate regulations for the issuance of a Consumer Investigative Demand (“CID”) under the Virginia Antitrust Act pursuant to Code of Virginia § 59.1-9.10(M).

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.

The purpose of adopting and promulgating the initial PPG regulations is to ensure the regulatory review process used by the Department with regard to the regulations it adopts, promulgates, amends, or rescinds is generally consistent with the rulemaking process used by other Virginia rulemaking bodies.

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 promulgation of this regulation should be noncontroversial because the Department is merely adopting the model Public Participation Guidelines developed by the Virginia Department of Planning and Budget.

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.

There are no substantive provisions or changes to the model PPG regulations offered to executive agencies by the Virginia Department of Planning and Budget.

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.

The primary advantage of this regulation is that the Department will have in place PPG regulations consistent with the Governor's executive agencies that will guide future regulatory action by the Department. There are no disadvantages to taking this action.

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.

The proposed regulations do not have any requirements that are more restrictive than applicable federal requirements, if any.

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.

No localities should be particularly affected by the promulgation of the PPG regulations.

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 Department considers the proposed changes as the least burdensome and no other alternatives were identified. The proposed regulations do not impact small businesses any differently than other businesses.

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.

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	\$0. This regulation will simply guide future rulemaking action by the Department.
Projected cost of the new regulations or changes to existing regulations on localities.	\$0. This regulation will simply guide future rulemaking action by the Department.
Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.	None. This regulation will simply guide future rulemaking action by the Department.
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; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	None. This regulation will simply guide future rulemaking action by the Department.

<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>\$0. This regulation will simply guide future rulemaking action by the Department.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>This regulation will ensure that future rulemaking actions by the Department are consistent with the same public participation guidelines used by other Virginia rulemaking agencies.</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.

None.

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, 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.

Periodic review and small business impact review report of findings

If this fast-track is the result of a periodic review/small business impact review, use this form to report the agency's findings. Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review and (2) indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (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.

Commenter	Comment	Agency response

N/A.

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 Division does not anticipate that these PPG regulations will have any impact on the institution of the family and family stability.

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.*

If a new regulation is being promulgated, use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
1 VAC 45-5-10	Purpose of PPG regulations	Va. Code § 2.2-4000 et seq.	Adopt PPG regulations. No impact.
1 VAC 45-5-20	Define terms used in the PPG regulations	Va. Code § 2.2-4000 et seq.	Adopt PPG regulations. No impact.
1 VAC 45-5-30	Development of a notification list for interested parties	Va. Code § 2.2-4000 et seq.	Adopt PPG regulations. No impact.
1 VAC 45-5-40	Specify information to be sent to persons on notification list	Va. Code § 2.2-4000 et seq.	Adopt PPG regulations. No impact.
1 VAC	Specify procedures for	Va. Code § 2.2-4000 et	Adopt PPG regulations. No

45-5-50	receiving public comments	seq.	impact.
1 VAC 45-5-60	Specify procedures for receiving petitions for rulemaking	Va. Code § 2.2-4000 et seq.	Adopt PPG regulations. No impact.
1 VAC 45-5-70	Specify procedures for appointing regulatory advisory panel	Va. Code § 2.2-4000 et seq.	Adopt PPG regulations. No impact.
1 VAC 45-5-80	Specify procedures for appointment of negotiated rulemaking panel	Va. Code § 2.2-4000 et seq.	Adopt PPG regulations. No impact.
1 VAC 45-5-90	Specify procedures for providing notice of open meetings	Va. Code § 2.2-4000 et seq.; Va. Code § 2.2-3707	Adopt PPG regulations. No impact.
1 VAC 45-5-100	Specify procedures for holding public hearings on regulations	Va. Code § 2.2-4000 et seq.	Adopt PPG regulations. No impact.
1 VAC 45-5-110	Specify procedures for periodic review of regulations	Va. Code § 2.2-4000 et seq.	Adopt PPG regulations. No impact.