



townhall.virginia.gov

Periodic Review Report of Findings

Agency name	Virginia Department of Juvenile Justice
Virginia Administrative Code (VAC) citation	6 VAC35-11
Regulation title	Public Participation Guidelines
Date this document prepared	May 21, 2019

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 (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Acronyms and Definitions

Please define all acronyms used in this Report. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

No acronyms are used in this report.

Legal Basis

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

The promulgating entity is the Board of Juvenile Justice (the board).

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 parties in the formation and development of the agency's regulations. Among other requirements, subsection B directs agencies, pursuant to such

guidelines, to provide interested parties with the opportunity to be accompanied and represented by counsel or other representatives.

Alternatives

Please describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

There are no viable alternatives to accomplishing the objective of this regulation as § 2.2-4007.02 of the Code of Virginia requires agencies to develop, adopt, and use public participation guidelines.

Public Comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

The department did not receive public comments regarding this regulation chapter. Nor did the department convene an informal advisory group to assist in this periodic review.

Effectiveness

Pursuant to § 2.2-4017, please indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

This regulation meets the criteria set out in Executive Order 14, as amended July 16, 2018. The regulation is required by § 2.2-4007.02 of the Code of Virginia and establishes the provisions by which agencies will ensure the general public's access to the regulatory development, repeal, and amendment process. Public participation in the regulatory process provides the public the opportunity to bring any concerns related to the protection of public health, safety, and welfare to the attention of the board and the department. In this way, these regulations are essential to protecting the public's welfare. The regulation is clearly written and easily understandable.

Decision

Please explain the basis for the rulemaking entity's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

As part of the statutory mandate set out in Code of Virginia § 2.2-4007.1, the department considered whether this regulation should be amended, repealed, or retained as is. The department concluded that amending the regulation is the best means of ensuring compliance with the governing statute.

Repealing the regulation in its entirety would violate the statutory provision set out in subsection A of § 2.2-4007.02 mandating that agencies develop, adopt, and use public participation guidelines. Retaining

the regulation as is would fail to account for the legislative change enacted in 2012 (Chapter 795 of the 2012 Acts of Assembly) that requires the department, pursuant to these guidelines, to afford interested parties the opportunity to be accompanied and represented by counsel or other representatives.

The only viable option is to amend the regulation to adopt the additional language mandated by the 2012 legislation. Amending the regulation in this manner is the only way to ensure the department maintains compliance with the statutory requirements regarding regulation development and general public input.

In connection with this recommendation, the department is submitting a proposed amendment to subsection A of 6VAC35-11-50, as set forth below:

6VAC35-11-50. Public comment

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested parties an opportunity to (i) submit data, views, and arguments, either orally or in writing, to the agency; and (ii) be accompanied by and represented by counsel or other representative. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.
2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, 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. Also, discuss why the agency's decision, consistent with the stated objectives of applicable law, will minimize the economic impact of regulations on small businesses.

Continued need for the regulation: This regulation continues to be necessary to comply with the statutory mandates set out in § 2.2-4007.02 of the Code of Virginia.

Nature of the complaints or comments received concerning the regulation: The department did not receive any public comments either in support of or in opposition to the existing regulation.

Complexity of the regulation: With one omission, the existing regulation conforms to the Model Public Participation Guidelines established by the Department of Planning and Budget. The regulation clearly outlines the requirements for notice and timelines for public comments, is written clearly, and is easy to understand.

Extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation. The regulation does not overlap with or duplicate federal or state law. The regulation omits an important provision required by legislation as passed by the 2012 Session of the General Assembly that requires nonexempt agencies to afford interested parties an opportunity to be represented by counsel or other representative. The department is proposing an amendment to the regulation to reflect this legislative change.

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. The department last conducted a periodic review of the regulation in 2015 and determined that the regulation should be retained, as is. While no economic, technological, or other changes have prompted a need to amend the regulation since that time, the department failed to update the regulation to reflect applicable changes enacted by the 2012 Session of the General Assembly.

Inasmuch as small businesses are members of the general public and are afforded the opportunity to be involved in the development, amendment, and repeal of regulations, this chapter serves to benefit such businesses.