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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Environmental Quality
Virginia Administrative Code (VAC) citation(s)	9VAC15-60
Regulation title(s)	Small Renewable Energy Projects (Solar) Permit by Rule
Action title	2019 Amendments Solar PBR
Date this document prepared	January 14, 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 VAC 7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The Small Renewable Energy Projects (Solar) Permit by Rule, 9VAC15-60, establishes criteria, procedures and permit requirements as required under the Code of Virginia (§10.1-1197.5 et seq.) which requires the Department of Environmental Quality (DEQ) to create a permits-by-rule (PBR) for solar energy projects 150 megawatts or less. The PBR requirements for a complete application to construct and operate are explicitly identified under the regulation rather than being developed on a case-by-case basis. Key application criteria include the following: public notice and comment period, local government approval, interconnection requirements, natural and cultural resource assessments, and a fee structure that should be sufficient to support the entire program including compliance and enforcement efforts.

The purpose of this amendment is to clarify specific definitions, establish clear timeframes for data submittals and recordkeeping activities, provide clarity for natural and cultural resource studies, clarify the public participation procedures and address the fee structure to adequately fund the program. The goals of this amendment are to clarify the requirements for applicants, operators and permitted facilities, improve permitting procedures, and streamline the regulations for ease of use while still protecting natural resources and human health.

Acronyms and Definitions

Please define all acronyms or technical definitions used in the Agency Background Document.

DEQ – means Department of Environmental Quality

MW – means megawatts, a measure of generated electricity.

PBR – means Permit by Rule, that a project or activity is deemed to have a permit if it meets the requirements of 9VAC15-60.

Mandate and Impetus

Please 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, board decision, etc.). 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.”

The Regulation for Small Renewable Energy Projects (Solar) became effective in 2012. The number of projects permitted under the program has grown exponentially beginning with one PBR in 2015, six in 2016, ten in 2017, and 14 issued in 2018. This represents over 800MW that has been permitted under this program. In addition to the permitted projects, over 60 projects in the que have provided notice of their intention to construct and operate a solar project representing an additional 3,000MW. In addition to the rapid growth of the program, the 2017 legislative modification to increase the size of projects eligible for a PBR from 100MW to 150MW has resulted in much larger projects seeking permits and applications that are more complex. Regulatory action is necessary in order to clarify the requirements for applicants, operators and permitted facilities, improve permitting procedures, and streamline the regulations for ease of use while still protecting natural resources and human health; and conduct a periodic review of the regulation.

Legal basis

Please identify: (1) the agency (includes any type of promulgating entity); and, (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should 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’s overall regulatory authority.

The legal basis for the Small Renewable Energy Projects (Solar) Permit by Rule (9VAC150-60) is the Small Renewable Energy Projects Act (Article 5, Chapter 11.1 of Title 10.1 of the Code of Virginia). Specifically, §10.1-1197.5 et seq. of the Code of Virginia authorizes the DEQ to permit renewable energy projects up to and including projects of 150MW or less in the Commonwealth and to promulgate regulations necessary to carry out appropriate powers and duties for such permitting activities.

Purpose

Please describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.

The purpose of this amendment is to update the regulation for permitting small solar renewable energy projects to clarify the regulatory requirements for applicants and permitted facilities, improve permitting procedures, and streamline the regulations for ease of use while still protecting the health, safety, and welfare of citizens. An appropriate fee structure to fully support the program including compliance and enforcement activities will be evaluated during the regulatory development phase.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both

The PBR regulation establishes the specific criteria required for a complete application to construct and operate a small renewable solar project in Virginia. Rules for public notice and public comment, determining potential significant impact to natural and cultural resources, and establishing an appropriate fee structure, are also included. Additional substantive provisions that are being considered include:

- Clarifying regulatory definitions;
- Clarifying the procedures and streamlining the permit structure for natural and cultural resource analysis
- Clarifying size of projects exempt from permitting;
- Clarify public participation requirements;
- Specifying the operation, recordkeeping, and reporting requirements of PRB regulation;
- Clarifying procedures for modification or transfer of ownership of a permitted facility; and
- Overall improvement of regulatory structure, procedures, and use.

Alternatives

Please 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.

One alternative is to keep the current regulation; in which case, the existing regulation will continue to be cumbersome, disjointed, and outdated regarding permitting of small solar renewable energy projects and not adequately fund the existing program. However, during the participatory process, other alternatives may be considered and developed as appropriate. The process for this regulatory action will involve the use of a regulatory advisory panel that will include members of the regulated community, local government representatives and the general public in an effort to elicit cost effective ideas for developing the necessary provisions.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”

In addition, pursuant to Executive Order 14 (as amended July 16, 2018) and § 2.2-4007.1 of the Code of Virginia, DEQ is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; (iii) designed to achieve its intended objective in the most efficient, cost-effective manner; (iv) is clearly written and easily understandable; (v) overlaps, duplicates, or conflicts with federal or state law or regulation; and (vi) technology, economic conditions, or other factors have changed in the area affected by the regulation since the last review.

Public Participation

Please indicate whether the agency is seeking comments on this regulation, including ideas to assist the agency in the development of the regulation and the costs and benefits of the alternatives stated in this

notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you are interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulation.

The agency is seeking comments on this regulation, including but not limited to: ideas to be considered in the development of this regulation, the costs and benefits of the alternatives stated in this background document or other alternatives, the potential impacts of the regulation, and periodic review and small business impact issues (see above section for more information).

A regulatory advisory panel will be appointed.

Please refer to the Regulatory Advisory Panel section for further information.

Anyone wishing to submit written comments may do so by mail, email or fax to Mary E. Major, P.O. Box 1105, Richmond, VA 23218; Telephone: (804) 698-4423; Fax: (804) 698-4319; Email Address: mary.major@deq.virginia.gov. Comments may also be submitted through the Public Forum feature of the [Virginia Regulatory Town Hall website](http://www.townhall.virginia.gov) (<http://www.townhall.virginia.gov>). Written comments must include the name and address of the commenter. In order to be considered, comments must be received before midnight on the last day of the public comment period.

Public hearing at proposed stage

Also, indicate whether a public hearing is to be held to receive comments.

A public hearing will not be held following the publication of the proposed stage of this regulatory action unless requests for a public hearing are received during the NOIRA public comment period from at least 25 persons.

Regulatory Advisory Panel

Please indicate, to the extent known, if advisers (e.g., regulatory advisory panel or negotiated rulemaking panel) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using a panel in the development of the proposal; 2) the agency is using a panel in the development of the proposal; or 3) the agency is inviting comment on whether to use a panel to assist the agency in the development of a proposal.

The Agency is using a panel to develop a proposal. Persons interested in assisting in the development of a proposal should notify the department contact person by the end of the comment period and provide their name, address, phone number, email address and the organization you represent (if any). The primary function of the panel is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus. Multi-applications from a single company, organization, group or other entity count as one for purposes of making the decision specified in the preceding sentence. Notification of the composition of the panel will be sent to all applicants.