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Fast-Track Regulation Agency Background Document

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| Agency name | Department of Historic Resources |
| Virginia Administrative Code (VAC) citation(s) | 17 VAC 10-11 et seq. |
| Regulation title(s) | Public Participation Guidelines |
| Action title | Conforming to Code |
| Date this document prepared | 11/21/2018 |

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*.

Brief Summary

Please 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.

The Department has amended subsection A of 17VAC10-11-50 to include a requirement for the Department to afford interested persons an opportunity to present their views and be accompanied by and represented by counsel or other representative in the promulgation of any regulatory action.

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.

N/A

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 November 21, 2018, the Director amended 17 VAC10-11 et seq, Public Participation Guidelines.

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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

As required by Virginia Code § 2.2-4012.1, please also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

The action conforms the Department's regulation to Chapter 795 of the 2012 Acts of the Assembly amended subsection B of § 2.2-4007.02 on public participation guidelines:

B. In formulating any regulation, including but not limited to those in public assistance and social services programs, the agency pursuant to its public participation guidelines shall afford interested persons an opportunity to (i) submit data, views, and arguments, either orally or in writing, to the agency, to include an on-line *online* public comment forum on the Virginia Regulatory Town Hall, or other specially designated subordinate and (ii) **be accompanied by and represented by counsel or other representative**. However, the agency may begin drafting the proposed regulation prior to or during any opportunities it provides to the public to submit comments.

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 purpose is clarity and conformity to the Administrative Process Act. Participation by the public in the regulatory process is essential to assist the Department in the promulgation of regulations that will protect the public health and safety.

Purpose

Please 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.

The amendment was recommended by the Department of Planning and Budget and is intended to merely conform the regulation to the statute. Therefore, there is no controversy in its promulgation.

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.

The Department has amended subsection A of 17VAC10-11-50 to include a requirement for the Department to afford interested persons an opportunity to present their views and be accompanied by and represented by counsel or other representative in the promulgation of any regulatory action.

Issues

Please 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.

- 1) Other than conformity and consistency between law and regulation, there are no primary advantages and disadvantages to the public in implementing the amended provisions, since it is already in the Code of Virginia;
- 2) There are no primary advantages and disadvantages to the agency or the Commonwealth;
- 3) There are no disadvantages to the public or the Commonwealth.

Requirements More Restrictive than Federal

Please 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.

There are no federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Please 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 state agencies particularly affected.

Localities Particularly Affected

There are no localities particularly affected.

Other Entities Particularly Affected

There are no entities particularly affected.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, please 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. Please keep in mind that this is change versus the status quo.

Impact on State Agencies

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| <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. |
| <i>For all agencies:</i> Benefits the regulatory change is designed to produce. | Consistency between statute and regulation has a beneficial impact on all state agencies. |

Impact on Localities

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| Projected costs, savings, fees or revenues resulting from the regulatory change. | There are no fiscal impacts to localities for implementation. |
| Benefits the regulatory change is designed to produce. | Consistency between statute and regulation has a beneficial impact on all localities. |

Impact on Other Entities

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| 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. | Entities affected are an interested party in the promulgation of regulations by this 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; | There is no estimate of the number of entities or small businesses. |

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| b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million. | |
| All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please 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. | There are no projected costs; the language is permissive and conforms to existing statute. |
| Benefits the regulatory change is designed to produce. | Consistency between statute and regulation has a beneficial impact on the public. |

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.

There are no alternatives.

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) 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.

Public Participation

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.

Detail of Changes

Please 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.

If the regulatory change will be 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 change. Delete inapplicable tables.

If the regulatory change is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below. Please include citations to the specific section(s) of the regulation that are changing.

For changes to existing regulation(s), please use the following chart:

| Current section number | New section number, if applicable | Current requirement | Change, intent, rationale, and likely impact of new requirements |
|------------------------|-----------------------------------|---|--|
| 50 | | Sets out requirements in the Public Participation Guidelines for receipt of public comment by the Department. | Subsection A is amended to add “(ii): be accompanied by and represented by counsel or other representative.” The added provision is identical to language in § 2.2-4007.02, as amended by Chapter 795 in 2012. |
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If an existing regulation or regulations (or parts thereof) are being repealed and replaced by one or more new regulations, please use the following chart:

| Current chapter-section number | New chapter-section number, if applicable | Current requirement | Change, intent, rationale, and likely impact of new requirements |
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If a new regulation is being promulgated, that is not replacing an existing regulation, please use this chart:

| New chapter-section number | New requirements | Other regulations and law that apply | Intent and likely impact of new requirements |
|----------------------------|------------------|--------------------------------------|--|
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If the regulatory change is intended to replace an emergency regulation, and is identical to the emergency regulation, please choose and fill out the appropriate chart template from the choices above. In this case “current section number” or “current chapter-section number” would refer to the **pre-emergency** regulation.

If the regulatory change is intended to replace an emergency regulation, but includes changes made since the emergency regulation, please create two charts:

1. A chart describing changes from the **pre-emergency** regulation to the regulatory change, as described in the paragraph above; or if a new chapter is being promulgated, a chart describing the proposed new regulation.
2. A chart describing changes from the **emergency** regulation to the regulatory change. For the second chart please use the following title: "Changes from the Emergency Regulation." In this case "current section number" or "current chapter-section number" would refer to the **emergency** regulation.