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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	Department of Law
<b>Virginia Administrative Code (VAC) citation(s)</b>	1 VAC 45 - 20
<b>Regulation title(s)</b>	Regulations on the Virginia Human Rights Act
<b>Action title</b>	The Department of Law takes this action to make the statutorily required transfer of regulations on the Virginia Human Rights Act from the Virginia Human Rights Council to the Office of the Attorney General's Human Rights Division, which includes technical changes reflecting the transfer, clarifying language, and expanding the time that the Department is allowed to request information from the respondent and the time that the respondent is required to respond.
<b>Date this document prepared</b>	June 17, 2016

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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, Division of Human Rights (the "Division") is adopting the regulations promulgated by the former Virginia Human Rights Council and making the technical changes necessary to reflect that the operations of the former Virginia Human Rights Council were transferred to the Division pursuant to the General Assembly's government reorganization legislation (2012 Acts, cc. 803, 835), effective July 1, 2012. These regulations have been amended to reflect the transfer from the Human

Rights Council to the Office of the Attorney General's Human Rights Division, and, under 1 VAC 45-20-80(A), amends timelines to permit the Division to make a request for information within 30 working days of the complaint and allows the respondent 21 working days to respond to the Division's request.

## 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.*

"OAG" means the Office of the Attorney General, i.e., the Department of Law.

"DHR" or "Division" means the Department of Law's Division of Human Rights.

"HRC" means the former Virginia Human Rights Council.

"EEOC" means the federal government's U.S. Equal Employment Opportunity Commission.

"VHRA" means the Virginia Human Rights Act.

"Title VII" means Title VII of the federal Civil Rights Act of 1964, as amended.

"ADA" means the federal Americans with Disabilities Act, as amended.

"ADEA" means the federal Age Discrimination in Employment Act, as amended.

"GINA" means the federal Genetic Information Nondiscrimination Act, as amended.

"EPA" means the federal Equal Pay Act of 1963, as amended.

## 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 March 1, 2017, the Department of Law submitted its initial Regulations for the Division of Human Rights 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.*

Section 2.2-520(B)(2) of the Code of Virginia states that it is the Department of Law's Division of Human Rights duty to, among other things, adopt and amend regulations concerning the Virginia Human Rights Act pursuant to the Virginia Administrative Process Act (§ 2.2-4000 et seq.) ("APA"). While these amendments, in substantial part, consist of technical amendments reflecting the Department of Law's adopting these regulations to reflect a statutory change in Virginia law, which are exempted from the APA under § 2.2-4006(A)(4)(a), the Human Rights Division is now permitted 30 working days from the receipt of a complaint to request information and the respondent is now permitted 21 working days. As these changes are expected to be noncontroversial, they are submitted under the fast-track process. See § 2.2-4012.1.

## 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.*

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To further the policy of the Commonwealth to ensure that all Virginians are provided access to employment, places of public employment, including educational institutions, and in real estate transactions free from illegal discrimination, the Division of Human Rights adopts and promulgates these regulations to serve as the Division's regulations with regard to continuing the operations of the former Virginia Human Rights Council. After this fast-track process is completed, the Division intends to begin a general regulatory review process to consider and make necessary substantive changes to the Division's regulations.

## 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?*

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The promulgation of this regulation should be noncontroversial because the Division is, in substantial part, adopting the regulations of its predecessor, the Virginia Human Rights Council, with technical changes reflecting the Division assuming administrative and enforcement authority of the Virginia Human Rights Act and the substantive changes only expand deadlines.

## 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.*

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As previously noted, the vast majority of these amendments are technical in nature either reflecting the Department of Law's Division of Human Rights ("Division") adoption of the former Human Rights Council's regulations or providing clarifying language. Changes in substance are in 1 VAC 45-20-80(A), which now allows the Division 30 working days from the date of the filing of the complaint to request information from the respondent and now allows the respondent 21 working days to respond to the Division's request.

## 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.*

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The primary advantage of the Division’s regulations is that the Virginia Administrative Code will be updated to accurately reflect that the operations of the former Virginia Human Rights Council have been transferred to the Division. 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.

**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 Division’s 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 Division 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.*

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including:</b>  <b>a) fund source / fund detail; and</b>  <b>b) a delineation of one-time versus on-going expenditures</b></p>	<p>\$0. These Division is already using these regulations as guidance and is merely making technical changes as statutorily required to make the necessary changes to demonstrate the transfer of the regulations to the Division from the HRC.</p>
<p><b>Projected cost of the new regulations or changes to existing regulations on localities.</b></p>	<p>\$0. These Division is already using these regulations as guidance and is merely making technical changes as statutorily required to make the necessary changes to demonstrate the transfer of the regulations to the Division from the HRC.</p>
<p><b>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</b></p>	<p>These regulations currently affect employers with 6 or more employees, places of public accommodation, and educational institutions. The technical changes offered by the Division do not alter the regulations' applicability to such entities.</p>
<p><b>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.</b> 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.</p>	<p>The Division received approximately 120-150 complaints per year alleging discrimination against the entities identified above.</p>
<p><b>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:</b>  <b>a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and</b>  <b>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.</b></p>	<p>\$0. The Division is already using the existing HRC regulations as guidance where applicable. Because the proposed changes are technical in nature, the Division does not foresee any additional projected costs to its current budget.</p>
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>This regulation will notify the public of the Division's succession of the former Human Rights Council and of our regulatory scheme for handling complaints of discrimination.</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 Regulations of the Division of Human Rights 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.*

For changes to existing regulation(s) or regulations that are being repealed and replaced, use this chart:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change, intent, rationale, and likely impact of proposed requirements</b>
22 VAC 25-10-10	1 VAC 45-20-10	State the Division's policy for the regulations	Make technical changes to reflect the creation of the Division and to correct statutory citations; no likely impact.
22 VAC 25-10-20	1 VAC 45-20-20	Define terms used in the regulations	Make technical changes to reflect the creation of the Division and to correct statutory citations; no likely impact.
22 VAC 25-10-30	1 VAC 45-20-30	State the procedures for filing complaints with the Division	Make technical changes to reflect the creation of the Division and to correct statutory citations; no likely impact.
22 VAC 25-10-40	1 VAC 45-20-40	Provide information on where to file a complaint	Make technical changes to reflect the creation of the Division and to correct statutory citations; no likely impact.
22 VAC 25-10-50	1 VAC 45-20-50	State information that needs to be provided in a discrimination complaint	Make technical changes to reflect the creation of the Division and to correct statutory citations; no likely impact.
22 VAC 25-10-60	1 VAC 45-20-60	State the Division's authority to refer complaints to other state and federal agencies with jurisdiction over complaints	Make technical changes to reflect the creation of the Division and to correct statutory citations; no likely impact.
22 VAC 25-10-70	1 VAC 45-20-70	State the time period for notifying a Respondent of the Division's receipt of a complaint	Make technical changes to reflect the creation of the Division and to correct statutory citations; no likely impact.
22 VAC 25-10-80	1 VAC 45-20-80	State the Division's investigative authority	Make technical changes to reflect the creation of the Division and to correct statutory citations and expands deadlines; no likely adverse impact.
22 VAC 25-10-90	1 VAC 45-20-90	State the Division's procedures for dismissing a complaint	Make technical changes to reflect the creation of the Division and to correct statutory citations; no likely impact.
22 VAC 25-10-100	1 VAC 45-20-100	State the Division's procedures for the	Make technical changes to reflect the creation of the Division and to correct

		settlement of complaints	statutory citations; no likely impact.
22 VAC 25-10-110	1 VAC 45-20-110	State the Division's procedures for setting a matter for a public hearing	Make technical changes to reflect the creation of the Division and to correct statutory citations; no likely impact.
22 VAC 25-10-120	1 VAC 45-20-120	State the Division's procedures for issuing findings and recommendations	Make technical changes to reflect the creation of the Division and to correct statutory citations; no likely impact.
22 VAC 25-10-130	1 VAC 45-20-130	State general provisions for the Division	Make technical changes to reflect the creation of the Division and to correct statutory citations; no likely impact.