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Fast-Track Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation(s)	22VAC40-12-50
Regulation title(s)	Public Participation Guidelines
Action title	Amend Public Participation Guidelines
Date this document prepared	August 16, 2017

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 proposed amendment brings the regulation into compliance with § 2.2-4007.02 of the Code of Virginia. Amendment to 22VAC40-12-50, Public Comment, provides that persons wishing to submit data, views and arguments related to a regulatory action shall be afforded the opportunity to be accompanied by and represented by counsel or other representative.

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.

The State Board of Social Services took final action on 22VAC40-12, Public Participation Guidelines, on August 16, 2017.

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 63.2-217 authorizes the State Board of Social Services to adopt regulations necessary or desirable to carry out Title 63.2.

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.

Public participation guidelines exist to promote public involvement in the development, amendment or repeal of State Board of Social Services regulations. The State Board of Social Services promulgates regulations for programs which help to protect the safety and well-being of citizens. The goal of the proposal is to align the regulation with the Code of Virginia regarding citizen opportunity to utilize representation when submitting input on regulatory actions.

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?

Executive Order 17 (2014) allows state agencies to use a fast-track rule making process to expedite regulatory changes that are expected to be non-controversial. This regulatory action reflects opportunities for citizen input into the regulatory process, as already established in Code. Therefore no controversy it anticipated.

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.

Currently 22VAC40-12-50 affords interested persons the opportunity to submit data, views and arguments related to regulatory actions, but makes no reference to affording the opportunity to be accompanied by or represented by counsel or other representatives. The amendment adds this provision.

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 to the public and Commonwealth is consistency between Code of Virginia and regulatory provisions regarding citizen input. Interested persons will be aware of these provisions whether they access the Code of Virginia or 22VAC40-12. There are no disadvantages to the public and Commonwealth.

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.

N/A

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.

None identified.

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 proposed amendment merely conforms the agency’s Public Participation Guidelines regulation to § 2.2-4007.02 of the Code of Virginia. There is no alternative regulatory method.

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>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</p>	<p>There are no costs to the state.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>There are no costs to localities.</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>Entities likely to be affected are citizens who wish to be accompanied and represented by counsel or other person when providing views on certain State Board of Social Services regulatory activities.</p>
<p>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.</p>	<p>There is no way to estimate the number of people who will utilize council or other representatives when providing views on regulatory activities. Currently, the State Board of Social Services has 40 VAC chapters and the level regulatory activity varies .</p>
<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>There are no projected costs.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>Interested persons will benefit from experiencing consistency between the Code of Virginia and regulation, relative to being aware of opportunities to submit feedback on regulatory activities.</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.

The proposed amendment merely conforms the agency's Public Participation Guidelines regulation to § 2.2-4007.02, there is no alternative regulatory method. The proposed amendments may serve to ease the burden on those wishing to provide input into regulatory development

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.

Notice of periodic review was published May 29, 2017, with public comment ending June 19, 2017. While no comments were received, amendments are needed to Section 50 in order to conform the regulation to the Code of Virginia.

The regulation meets the criteria set forth in Executive Order 17 (2014) and is necessary to ensure adequate opportunities for public participation in the regulatory process. No complaints have been received, the regulation is straight-forward and does not overlap, duplicate or conflict with other laws and regulations. The regulation was last evaluated in 2012.

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.

None identified.

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 follow the instructions in the text following the three chart templates below.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
50	n/a	Interested persons can submit data, views and arguments, orally or in writing, to the agency.	Interested persons can also be accompanied and represented by counsel or other representatives. This provision already exists in the Code of Virginia, so there is not likely to be a practical impact.