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Fast-Track Regulation Agency Background Document

Agency name	Virginia Department of Labor and Industry/Safety and Health Codes Board
Virginia Administrative Code (VAC) citation(s)	16 VAC25-11-50
Regulation title(s)	Public Participation Guidelines
Action title	Amendment to Public Participation Guidelines to Comply with Chapter 795 of the 2012 Acts of Assembly
Date this document prepared	September 21, 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 Safety and Health Codes Board has amended Subsection A of 16VAC25-50-11 to include a requirement for the Board 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 actions.

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 September 13, 2016, the Safety and Health Codes Board approved the amendment of Subsection A of 16VAC25-11-50, Public Comment, to the Public Participation Guidelines of the Safety and Health Codes Board.

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.

Pursuant to §40.1-22(5) of the *Code of Virginia*, the Safety and Health Codes Board is authorized "...to adopt, alter, amend, or repeal rules and regulations to further, protect and promote the safety and health of employees in place of employment over which it has jurisdiction...and as may be necessary to carry out its functions established under this title."

The action conforms the Board's regulation to Chapter 795 of the 2012 Acts of Assembly amended subsection B of § 2.2-4007.02 of the *Code of Virginia* on public participation guidelines which reads as follows:

*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 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.*

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.

The purpose of this amendment is to make the Safety and Health Codes Board's Public Participation Guidelines conform to those of the Administrative Process Act. Participation by the public in the regulatory process is essential to assist the Board in the promulgation of regulations that will protect the public health and safety.

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?

The amendment was recommended by the Department of Planning and Budget and is intended to merely conform the Board's Public Participation Guidelines to Subsection B of §2.2-4007.02 of the *Code of Virginia* to those of the Administrative Process Act. The rulemaking is not expected to be controversial, and is appropriate for the fast-track process.

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 Safety and Health Codes Board has amended Subsection A of 16VAC25-50-11 to include a requirement for the Board 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 actions.

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.

- 1) Other than conformity and consistency between law and regulation, there are no primary advantages or disadvantages to the public in implementing the amended provisions since it is already in the Code of Virginia;
- 2) There are no primary advantages or disadvantages for the agency or the Commonwealth; and
- 3) The proposed change merely conforms the Board's Public Participation Guidelines to those of Subsection B of §2.2-4007.02 of the Administrative Process Act.

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.

None identified.

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.

Since the proposed change merely conforms the Board’s Public Participation Guidelines to the provisions of the Administrative Process Action (Subsection B of §2.2-4007.02 of the *Code of Virginia*), there is no alternative; otherwise, the Board’s Public Participation Guidelines would not conform to the Subsection B of §2.2-4007.02 of the *Code of Virginia*.

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.

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	There are no costs to the state for implementation.
Projected cost of the new regulations or changes to existing regulations on localities.	There are no costs to localities.
Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.	Entities affected are the parties interested in the promulgation of regulatory activities by the Safety and Health Codes Board.
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,	There is no estimate of the number of entities or small business affected.

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.	
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.	There are no projected costs.
Beneficial impact the regulation is designed to produce.	Consistency between statute and regulation has a beneficial impact on the public.

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.

Since the proposed change is necessary to conform the Board’s Public Participation Guidelines to the provisions of the Administrative Process Action (Subsection B of §2.2-4007.02 of the *Code of Virginia*), there is no viable alternative.

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

- 1) This fast-track is the result of a periodic review/small business impact review. No comments were received during the public comment period which began on May 23, 2016 and ended on June 14, 2016;
- 2) This regulation meets the criteria set out in Executive Order 17 (2014) in that it is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. There is a continued need for this regulation. There have been no complaints or comments received concerning this regulation from the public;
- 3) The regulation is not overly complex;
- 4) It does not overlap, duplicate or conflict with federal or state law or regulation; and
- 5) No new technology, economic conditions, or other factors have changed in the area affected by the regulation since it 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.

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

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
16VAC25-11-50		A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.	<p>A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to (i) submit data, views, and arguments, either orally or in writing, to the agency, (ii) <u>be accompanied by and represented by counsel or other representative</u>. Such opportunity to comment shall include an online public comment forum on the Town Hall.</p> <p>Rationale: The amendment is necessary to make the Safety and Health Codes Board’s Public Participation Guidelines conform to those of the Administrative Process Act.</p>

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	Proposed new chapter-section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements

If a new regulation is being promulgated, that is not replacing an existing regulation, please use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements

If the proposed regulation is intended to replace an emergency regulation, and the proposed regulation 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 proposed regulation is intended to replace an emergency regulation, and the proposed regulation includes changes since the emergency regulation, please create two charts: 1) a chart describing changes from the **pre-emergency** regulation to the proposed regulation as described in the paragraph above, and 2) a chart describing changes from the **emergency** regulation to the proposed regulation. 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.

Public Participation Guidelines, 16VAC25-11; Amendment

As Adopted by the

Safety and Health Codes Board

Date: September 13, 2016



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: _____

16VAC25-11, Public Participation Guidelines

16VAC25-11-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to (i) submit data, views, and arguments, either orally or in writing, to the agency, (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.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).

2. For a minimum of 60 calendar days following the publication of a proposed regulation.

3. For a minimum of 30 calendar days following the publication of a repropoed regulation.

4. For a minimum of 30 calendar days following the publication of a final adopted regulation.

5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with § 2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to § 2.2-4012 E of the Code of Virginia.