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Final Regulation Agency Background Document

Agency name	Department of Historic Resources
Virginia Administrative Code (VAC) Chapter citation(s)	17 VAC5-40
VAC Chapter title(s)	Regulations Governing Contextualization of Monuments or Memorials for Certain War Veterans
Action title	Regulations Governing Contextualization of Monuments or Memorials for Certain War Veterans
Date this document prepared	September 20, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

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.

These are new regulations pursuant to Chapters 1100 and 1101 of the 2020 Acts of Assembly. The chapters mandate in the 4th enactment clause: "That the Board of Historic Resources shall promulgate regulations governing the manner in which any monument or memorial may be contextualized pursuant to the provisions of this act." These regulations provide guidance to local governing bodies that choose to contextualize certain war monument or memorials within their jurisdiction. This guidance includes general provisions regarding the markers including their appearance, location, and ownership and the application requirements and approval process.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

N/A

Statement of Final Agency Action

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.

This action fulfills the mandate as required pursuant to Chapters 1100 and 1101 of the 2020 Acts of Assembly which states in the 4th Enactment clause: "That the Board of Historic Resources shall promulgate regulations governing the manner in which any monument or memorial may be contextualized pursuant to the provisions of this act."

This rulemaking is expected to be noncontroversial as contextualization is a voluntary choice made by local governing bodies, and the General Assembly has required the Board to guide those local governing bodies in this process.

The Virginia Board of Historic Resources adopted the Regulations Governing Contextualization of Monuments or Memorials for Certain War Veterans on September 19, 2024 at its Board Meeting.

Mandate and Impetus

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.

This action fulfills the mandate as required pursuant to Chapters 1100 and 1101 of the 2020 Acts of Assembly which states in the 4th Enactment clause: "That the Board of Historic Resources shall promulgate regulations governing the manner in which any monument or memorial may be contextualized pursuant to the provisions of this act."

This rulemaking is expected to be noncontroversial as contextualization is a voluntary choice made by local governing bodies, and the General Assembly has required the Board to guide those local governing bodies in this process.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The Director of the Department is granted the authority pursuant to § 10.1-2202(5) "to promulgate regulations, in accordance with the Virginia Administrative Process Act (§ 2.2-4000 et seq.)."

According to 15.2-1812, Chapter 1101 of the 2020 Acts of Assembly, the Virginia Board of Historic Resources is authorized to promulgate regulations for the contextualization of monuments or memorials for certain war veterans.

At the September 19, 2024 Virginia Board of Historic Resources meeting, the Board voted in favor (4 yeas, 0 nays and 1 abstention) to approve the final language and adopt the Regulations Governing Contextualization of Monuments or Memorials for Certain War Veterans.

Purpose

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 is intended to solve.

(1) The promulgation of this new regulation is mandated pursuant to Chapters 1100 and 1101 of the 2020 Acts of Assembly which states in the 4th Enactment clause: “That the Board of Historic Resources shall promulgate regulations governing the manner in which any monument or memorial may be contextualized pursuant to the provisions of this act.”

(2) These regulations are essential to protect the health, safety or welfare of citizens in order to provide localities, their leaders, and their citizens with guidance on interpreting certain war monuments and memorials.

(3) The goal of the regulations is to provide the needed guidance to local government officials in relation to contextualizing certain war monuments or memorials if they so choose. These regulations will solve the problem of the current state in which there exists no guidance for localities that choose to contextualize certain war monuments or memorials.

Substance

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 added a new Chapter 40 to 17VAC5 in order to provide for regulations governing contextualization of monuments or memorials for certain war veterans as provided for in 15.2-1812.

17VAC5-40-10 provides definitions.

17VAC5-40-20 states the authorized applicability of the chapter.

17VAC4-40-30 outlines the general provisions of the regulations including where the markers must be placed, their appearance, and who owns them and covers all costs.

17VAC5-40-40 describes the contents of the application including basic contact information, location, text, factual information about the monument or memorial itself, statement of purpose, proposed text and location for the marker, all source documentation, timetable, and proposed marker design.

17VAC4-40-50 describes the issuance of approval process stating that the Board shall evaluate application that are presented by the Department and that the approval of applications is in the Board's sole discretion.

Criteria that the Board may consider are listed. It is also stated that the marker that is erected shall not differ from what the Board approved and that the Board shall not consider an application until the Department has determined that it is complete and accurate including sufficient documentary evidence to establish the authenticity of the proposed text.

Issues

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.

The primary advantage to the public is that they will know the process by which localities must undergo in order to contextualize certain monuments or memorials. There are no disadvantages to the public. The primary advantage to the Commonwealth is that contextualization of certain monuments or memorials will be done in a uniform fashion. There are no disadvantages to the Commonwealth. The primary advantage to all is that the information on the marker will be vetted by historians at the Department and only credible, documented facts will be a part of the contextualization.

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

There are no federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.

Other State Agencies Particularly Affected

There are no other state agencies particularly affected.

Localities Particularly Affected

Any locality choosing to contextualize a monument or memorial to a certain war veteran will be particularly affected.

Other Entities Particularly Affected

No other entities will be particularly affected.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage and provide the agency’s response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response
2 Comments	Supportive of contextualizing monuments and memorials and creating a process to do so.	No agency response necessary. Comment has been noted.
1 Comment	Questioned the need for formal regulations but did not object to the language. Suggested that these proposed regulations should be guidance documents instead.	The Board has a legal authority as mandated by Chapters 1100 and 1101 of the 2020 Acts of Assembly as well as authority stated in 10.1-2209 of the Code of Virginia to promulgate a regulation.

Detail of Changes Made Since the Previous Stage

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements

N/A – No changes have been made since the previous stage.

Detail of All Changes Proposed in this Regulatory Action

List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of updated requirements
	40-10 Definitions		
	40-20 Applicability		
	40-30 General Provisions		To set out the general rules for contextualization.
	40-40 Marker Approval Application		To set out the information required to submit a complete application.
	40-50 Issuance of Approval		To set out the process by which an application will be reviewed and either approved or not approved.