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## Periodic Review and Small Business Impact Findings Where Result is "Retain the Regulation As Is" Agency Background Document

<b>Agency name</b>	Air Pollution Control Board
<b>Virginia Administrative Code (VAC) citation</b>	9 VAC 5-5
<b>Regulation title</b>	Public Participation Guidelines
<b>Date</b>	June 9, 2017

This information is required pursuant to Executive Order 17 (2014) and 58 (1999).

### Legal basis

*Please identify the state and/or federal legal authority for the regulation, including: 1) the most relevant law and/or regulation; and 2) promulgating entity, i.e., agency, board, or person.*

Section 2.2-4007.02 of the Administrative Process Act (APA) requires agencies to develop and adopt public participation guidelines to solicit input from interested parties during the development of regulations. The Air Pollution Control Board previously adopted regulations concerning public participation guidelines.

### Alternatives

*Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.*

The options concerning alternatives to the current regulation are limited by state statute. Section 2.2-4007.02 of the Administrative Process Act (APA) requires agencies to develop and adopt public participation guidelines for soliciting input from interested parties during the development of regulations. Due to this statutory requirement, repeal of this regulation is not a viable alternative.

The current regulations are based on model public participation guidelines developed by the Virginia Department of Planning and Budget (DPB). Approximately 100 rulemaking bodies in Virginia have used DPB's model public participation guidelines as a basis for adopting regulations concerning public participation guidelines. Consideration was given to deviating from these guidelines. Consistency with DPB's model public participation guidelines greatly benefits the citizens of the Commonwealth by eliminating the need for citizens to read and understand numerous different public participation guidelines. Deviation from the DPB model public participation guidelines was rejected as an alternative to the current regulation.

### Public comment

*Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

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No comments were received during the public comment period. An informal advisory group was not formed to assist with this periodic review.

### Effectiveness

*Please 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.*

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The regulation is clearly written and easily understandable. This regulation includes the requirements for notification, seeking input, use of advisory panels, and public participation during regulatory actions.

### Result

*Please state that the agency is recommending that the regulation should stay in effect without change and provide the reason why.*

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The agency recommends retaining this regulation. During this review, one change was identified as being needed to the regulation to be consistent with the requirements of the Code of Virginia. Section 2.2-4007.02 B allows interested parties to be accompanied by or represented by counsel during the formulation of a regulation. DPB's model Public Participation Guidelines were modified in 2012 to include this additional language. This regulation will be updated in the future as part of a separate regulatory action to make this regulation consistent with the language in state statute and DPB's model public participation guidelines.

### Small business impact

*In order to minimize the economic impact of regulations on small business, please include, pursuant to § 2.2-4007.1 E and F, 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. Also, include a discussion of the basis for the agency's determination to retain the regulation as is, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.*

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The current regulation continues to be needed. The regulation explains how the public will be notified, how input will be sought, explains the use of advisory panels, and details the public participation process during regulatory actions. The regulation is explanatory in nature and does not place any additional regulatory burden on the regulated community including small businesses.

### Family impact

*Please provide an analysis of the regulation's impact on the institution of the family and family stability.*

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It is not anticipated that this regulation will have a direct impact on families.