



Exempt Action Final Regulation Agency Background Document

Agency name	Board of Conservation and Recreation
Virginia Administrative Code (VAC) citation	4 VAC 3 - 10
Regulation title	Regulatory Public Participation Procedures
Action title	Amend the Board of Conservation and Recreation's Regulatory Public Participation Procedures to address changes in Code and changes in Board Practices and Procedures
Final agency action date	October 21, 2005
Document preparation date	October 9, 2005

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 21 (02) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Board of Conservation and Recreation's Regulatory Public Participation Procedures regulations (4 VAC 3-10-10 et seq.) provide additional guidance to the general public on how the Department will solicit and receive the input on behalf of the Board from interested persons in the formation, development, amendment, or repeal of regulations.

Regulatory Changes Include:

1) These items represent changes in the section numbering of the "Administrative Process Act". Chapter 844 of the 2001 Acts of Assembly revised and recodified Titles 2.1 and 9. This legislation took effect October 1, 2001. Pursuant to § 2.2-4006 A4, this change is necessary to conform the regulation to changes in Virginia Statutory Law.

Chapter ~~1.1:1~~ 40 (§ ~~9-6.14:1~~ 2.2-4000 et seq.) of Title ~~9~~ 2.2
§ ~~9-6.14:7.1~~ 2.2-4007

~~§ 9-6.14:8 2.2-4009~~
~~A and B, §9-6.14:4.1 2.2-4002~~
~~§ 9-6.14:4.1 C 2.2-4006.~~
~~§ 9-199 2.2-2279 B~~

2) Proper Naming of Form; The RR02 Form utilized for this function is properly entitled the "Notice of Public Comment Period" and is amended in the regulation to read as such.

Notice of Public Comment Period
~~NOPC-Notice of Public Comment Period~~

3) Explanatory Statement; Addition of references to other items governing the regulatory process and procedures. Pursuant to § 2.2-4006 A2, this change represents a clarification on the Department's practices and procedures.

Added references to the "applicable Governor's Executive Orders, the Virginia Register Act, and the Regulations of the Virginia Code Commission for Implementing the Virginia Register Act."

4) Clarification of intent; Pursuant to § 2.2-4006 A3, this change represents only a change in form to clarify intent.

~~Recommended regulation or addition, deletion or amendment to~~ Recommendations for language to be added to or deleted from a specific regulation or regulations;

5) Removal of antiquated Requirements and Language; Pursuant to § 2.2-4006 A4, these changes are necessary to conform the regulation to changes in Virginia Statutory Law.

a) ~~The approving authority shall provide a written response to such petition within 180 days from the date the petition was received.~~ [Chapter 241 (HB725) of the 2002 Virginia Acts of Assembly deleted this language.]

b) ~~Publication in a newspaper of general circulation published at the state capital and such other newspapers as the agency may deem appropriate.~~ [Chapter 717 (HB1473) of the 1995 Virginia Acts of Assembly changed this requirement from "shall" to "may".]

6) Explanatory Statement; Also Conforms language to that used in Virginia Soil and Water Conservation Board's Public Participation Procedures. Pursuant to § 2.2-4006 A2, this change represents a clarification on the Department's practices and procedures.

At the discretion of the approving authority or the director, the procedures in 4 VAC 3-10-30 may be supplemented to provide additional public participation in the regulation adoption process or as necessary to meet federal requirements.

7) Clarification of Process; Virginia's regulatory process has become significantly more oriented towards electronic submission and administration in the last few years with the establishment of the Town Hall. We now have much quicker and reliable methods of communicating with the public through e-mails and faxes. This language recognizes that these means of electronic communication may be utilized in addition to regular mail by the Department and the public in regulatory actions. Pursuant to § 2.2-4006 A2, this change represents a clarification on the Department's practices and procedures.

a) electronic notification or by writing the agency.

b) It will be up to the interested parties to notify the department if there is a change in their contact information.

c) Parties may also contact the Commonwealth's Regulatory Town Hall Website to receive electronic notices of regulatory actions.

- d) Distribution through posting the document on the Commonwealth's Regulatory Town Hall Website.
- e) Distribution of the NOIRA, or notification of how to obtain a copy of the document electronically, by mail or e-mail to persons on the list or lists established under subsection A of this section.
- f) The agency shall make provision for receiving comments pertaining to the NOIRA by regular mail, the Internet, or facsimile.
- g) The agency shall make provision for receiving comments pertaining to the proposed regulation by regular mail, the Internet, or facsimile.

8) Removal of antiquated Requirements and Language. The transition language set out in 4 VAC 3-10-40 is no longer necessary and may be repealed.

- a) ~~All regulatory actions for which a NOIRA has been published in The Virginia Register of Regulations prior to July 13, 1994, shall be processed in accordance with emergency amendments to 4VAC3-10-10 et seq., Regulatory Public Participation Procedures effective from June 30, 1993, until June 29, 1994, unless sooner modified or vacated or superseded by permanent regulations.~~
- b) ~~This chapter shall supersede and repeal emergency amendments to 4VAC3-10-10 et seq., Regulatory Public Participation Procedures which became effective June 30, 1993. All regulatory actions for which a NOIRA has not been published in The Virginia Register of Regulations prior to July 13, 1994, shall be processed in accordance with this chapter.~~

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 Department of Conservation and Recreation is amending the Board of Conservation and Recreation's Regulatory Public Participation Procedures regulations (4 VAC 3-10-10 et seq.) that provide additional guidance to the general public on how the Department will solicit and receive the input from interested persons in the formation, development, amendment or repeal of regulations. The Board of Conservation and Recreation authorized the Director of the Department of Conservation and Recreation to take this action on June 17, 2003. This regulatory action addresses changes to the Code of Virginia in Chapter 844 (SB1098) of the 2001 Acts of Assembly which revised and recodified Titles 2.1 and 9 and thus changed referenced section numbers; changes in Chapter 241 (HB725) of the 2002 Acts of Assembly which clarified steps a petitioner must take to perfect a petition for rulemaking and agency responsibilities and provided for publication of petitions in the Virginia Register of Regulations; and changes in Chapter 717 (HB1473) of the 1995 Virginia Acts of Assembly changed this requirement which removed the requirement to publish regulatory notices in the newspaper.

In addition to the changes made to conform the regulations to changes in Virginia Statutory Law, other amendments to the regulations relate to other exempt actions allowed for in § 2.2-4006 A including actions relative to updating the regulations to reflect changes in Department internal practices and procedures, changes in style or form, and to correct technical errors. Changes to the regulation were found to be exempt from the operation of article 2 of the Administrative Process Act by the Office of the Attorney General on July 16, 2003.

The Secretary of Natural Resources on July 16, 2003 approved the Department to proceed with submitting this regulation to the Virginia Register for publishing as an exempt final action provided Board approval was received.

On April 29, 2004, the Board of Conservation and Recreation authorized the Director of the Department of Conservation and Recreation and the Departmental Regulatory Coordinator to publish the final regulatory amendments to their Regulatory Public Participation Procedures.

Accordingly, the Director of the Department of Conservation and Recreation certified this final action to the regulation entitled "Regulatory Public Participation Procedures" (4 VAC 3-10-10 et seq.) on October 6, 2005. Although exempt, pursuant to § 2.2-4006.B the agency will receive, consider and respond to petitions by any interested person at any time with respect to consideration or revision. The effective date of regulations adopted under this subsection shall be in accordance with the provisions of § 2.2-4015, except in the case of emergency regulations, which shall become effective as provided in subsection B of § 2.2-4012.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

The Regulatory Public Participation Procedures do not directly impact the institution of family and family stability but do offer additional guidance to the public on how to participate in the regulatory process so that their concerns and opinions may be considered during regulatory actions.