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## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	Chesapeake Bay Local Assistance Board
<b>Virginia Administrative Code (VAC) citation</b>	9 VAC 10 - 10
<b>Regulation title</b>	Regulatory Public Participation Guidelines
<b>Action title</b>	Amend the Chesapeake Bay Local Assistance Board's Regulatory Public Participation Guidelines to address changes in Code and changes in Practices and Procedures, and to conform them pursuant to the merger of the Chesapeake Bay Local Assistance Department into the Department of Conservation and Recreation
<b>Final agency action date</b>	October 24, 2005
<b>Document preparation date</b>	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 Chesapeake Bay Local Assistance Board's Regulatory Public Participation Guidelines regulations (9 VAC 10-10-10 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) Conforming definitions pursuant to Chapter 41 of the 2005 Virginia Acts of Assembly (SB1103) that merged the Chesapeake Bay Local Assistance Department (CBLAD) into the Department of Conservation and Recreation (DCR) effective July 1, 2004 and to

standardize/conform the language with other DCR Board Public Participation Guidelines (PPG) regulations:

- Definition of “agency” changed to mean “. . . ~~Chesapeake Bay Local Assistance Department of Conservation and Recreation, including staff, established pursuant to the Chesapeake Bay Preservation Act~~ Virginia law that implements programs and provides administrative support to the approving authority.”
- Definition of “Approving authority” added (“Approving authority” means the Chesapeake Bay Local Assistance Board, the collegial body (board), established pursuant to Virginia law as the legal authority to adopt regulations.) to replace the definition of “Board” (“Board” means the Chesapeake Bay Local Assistance Board established pursuant to the Chesapeake Bay Preservation Act.)
- Definition of “Director” changed to mean the “. . . ~~executive~~ director of the Chesapeake Bay Local Assistance Department of Conservation and Recreation or his designee.”
- Definition of “Virginia law” added (“Virginia law” means the provisions found in the Virginia statutory law authorizing the approving authority, director, or agency to make regulations or containing procedural requirements thereof.)
- Reference to context of definitions changed to say “Unless specifically defined in the Chesapeake Bay Preservation Act Virginia law or in this chapter, terms used shall have the meanings commonly ascribed to them.”

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 an item required within a petition, to conform to the standard language of other DCR Board PPGs, and renumbering of subsequent requirements 6-8 as 5-7:

~~“5. Reference to the legal authority of the agency to take the action requested;”~~

6) Standard language of other DCR Board PPGs added:

“At the discretion of the approving authority or the director, the procedures in 9 VAC 10 – 10 – 30 may be supplemented to provide additional public participation in the regulation adoption process or as necessary to meet federal requirements.”

7) Removal of language as unnecessary that already occurs in Code or regulation pertaining to this process:

~~“Within 14 days of receiving a petition, the agency shall send a notice identifying the petitioner, the nature of the petitioner's request and the agency's plan for disposition of the petition to the Registrar of Regulations for publication in the Virginia Register of Regulations. On the date of publication in the Virginia Register of Regulations, the agency shall commence a 21-day period for acceptance of written public comment on the petition. The agency shall issue a written decision to grant or deny the petitioner's request within 90 days following the close of the comment period. The written decision issued by the agency shall include a statement of its reasons and shall be submitted to the Registrar for publication in the Virginia Register of Regulations.”~~

~~“L. If the agency wishes to change a proposed regulation before adopting it as a final regulation, it may choose to publish a revised proposed regulation provided the latter is subject to a public comment period of at least 30 additional days and the agency complies in all other respects with § 2.2-4007 of the Code of Virginia.”~~

8) 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. Individuals and organizations may be deleted from any list at the request of the individual or organization, or the discretion of the agency ~~When when mail is returned as undeliverable, individuals and organizations may be deleted from any list at the discretion of the agency.~~

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(s) 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.

9) Clarification of authority from “board” to “approving authority” and from “agency” to “director.”

### 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 Chesapeake Bay Local Assistance Board's Regulatory Public Participation Guidelines regulations (9 VAC 10-10-10 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 Chesapeake Bay Local Assistance Board authorized the Director of the Department of Conservation and Recreation to take this action on March 21, 2005. 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. This action also conforms definitions pursuant to Chapter 41 of the 2005 Virginia Acts of Assembly (SB1103) that merged the Chesapeake Bay Local Assistance Department (CBLAD) into the Department of Conservation and Recreation (DCR) effective July 1, 2004 and to standardize/conform the language with other DCR Board Public Participation Procedures. 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 June 16, 2005.

On June 20, 2005, the Chesapeake Bay Local Assistance Board adopted the regulatory amendments and 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 Guidelines.

The Secretary of Natural Resources on October 5, 2005 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.

Accordingly, the Director of the Department of Conservation and Recreation certified this final action to the regulation entitled "Regulatory Public Participation Guidelines" (9 VAC 10-10-10 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.