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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	Department of Fire Programs
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	19 VAC 15-11
<b>VAC Chapter title(s)</b>	Public Participation Guidelines
<b>Action title</b>	Revision of "Agency" in Public Participation Guidelines
<b>Date this document prepared</b>	10/2/23

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.*

This regulatory change amends 19 VAC 15-11 Public Participation Guidelines to redefine "agency" as the Department of Fire Programs. *Code of Virginia* § 2.2-4007.02 requires that each agency that has the ability to promulgate regulations have public participation guidelines. The Virginia Fire Services Board, a board that is a component of the Department of Fire Programs, does not possess regulatory authority and has not since 1997 (Chapter 791). The Department of Fire Programs, through the Executive Director, still has regulatory authority as found in *Code of Virginia* § 9.1-215.

This regulatory change replaces "Virginia Fire Services Board" with "Department of Fire Programs" to comply with § 2.2-4007.02. This proposed change also conforms the Public Participation Guidelines to the change to the Administrative Process Act made during the 2012 Legislative Session (see Chapter 795 of the 2012 Acts of the Assembly) allowing counsel to be present during regulatory action.

## 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.*

VDFP: Virginia Department of Fire Programs

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## 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.*

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The date the action was taken is October 2, 2023. The Department Fire Programs is taking the action. The titled of the regulation is “Public Participation Guidelines”.

## Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

*Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.*

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Code of Virginia § 2.2-4007.02 mandates that agencies have Public Participation Guidelines. An internal review by VDFP of all agency related regulatory information to comply with Executive Order #19 (2022) resulted in a recommendation to redefine the “agency” as defined in 19 VAC 15-11.

This rulemaking is expected to be noncontroversial because it does not make any substantial changes to regulations by the Department of Fire Programs or Virginia Fire Services Board. This edit is technical in nature. Legislation in 1997 removed regulatory power from the Virginia Fire Services Board, thus removing the need for public participation guidelines. The Department of Fire Programs still possesses regulatory power, requiring public participation guidelines. Further, the proposed change merely conforms the regulation to the underlying statute (subsection B of § 2.2-4007.02 of the Code of Virginia), the rulemaking is not expected to be controversial and is, therefore, appropriate for the fast-track 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.*

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The Virginia Department of Fire Programs is the promulgating agency. Code of Virginia § 2.2-4007.02 requires agencies to develop public participation guidelines if they possess regulatory authority.

The Executive Director of VDFP has the authority to promulgate regulations related to Reduced Cigarette Ignition Propensity as found in *Code of Virginia* § 9.1-215.

### 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.*

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The purpose of this regulatory change is to comply with *Code of Virginia* § 2.2-4007.02. This will ensure the public has access to future regulatory changes issued by the Department of Fire Programs. This regulatory change is essential to protect the future safety of citizens if further regulation is needed for fire safety, whether related to cigarettes or other authority granted to the Department of Fire Programs.

The goal of this regulatory change is to correct the definition of “agency” found in 19 VAC 15 to the Department of Fire Programs. This will ensure compliance with *Code of Virginia* § 2.2-4007.02, ensure that the public can participate in the future development of regulations, and remove an outdated reference to a board with no regulatory authority. The proposed change also conforms the agency’s Public Participation Guidelines to the change in the Administrative Process Act made during the 2012 Legislative Session (see Chapter 795 of the 2012 Acts of the Assembly).

### 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.*

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The general definitions do not impose regulatory requirements in and of themselves but provide support for the Public Participation Guidelines section that require certain actions by the agency and members of the public when participating in regulatory activities.

The change removes “Virginia Fire Services Board” and replaces it with “Department of Fire Programs”.

The proposed change is to conform the agency’s Public Participation Guidelines to the current language in the Administrative Process Act, which was enacted during the 2012 General Assembly Session (see Chapter 795 of the 2012 Acts of the Assembly).

### 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.*

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There are not disadvantages to the public or the Commonwealth. This is a technical edit that will lead to greater opportunity for participation by members of the public.

**Requirements More Restrictive than Federal**

*Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.*

There are no applicable federal requirements.

**Agencies, Localities, and Other Entities Particularly Affected**

*Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

Other State Agencies Particularly Affected

No other state agencies outside of the Department Fire Programs and the Virginia Fire Services Board are affected.

Localities Particularly Affected

No localities are particularly affected.

Other Entities Particularly Affected

No other entities are particularly affected.

**Economic Impact**

*Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.*

**Impact on State Agencies**

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:</p> <ul style="list-style-type: none"> <li>a) fund source / fund detail;</li> <li>b) delineation of one-time versus on-going expenditures; and</li> <li>c) whether any costs or revenue loss can be absorbed within existing resources</li> </ul>	<p>There is no projected fiscal or economic impact for the Department of Fire Programs. The Department of Fire Programs already provides staff for the Virginia Fire Services Board.</p>
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<i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	There is no projected fiscal or economic impact for other state agencies.
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	There is no projected fiscal or economic benefit for all agencies.

**Impact on Localities**

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.*

Projected costs, savings, fees or revenues resulting from the regulatory change.	There is no projected fiscal or economic impact for localities.
Benefits the regulatory change is designed to produce.	There is no projected fiscal or economic impact for localities.

**Impact on Other Entities**

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.*

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	There is no projected impact for other entities related to this technical change.
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, 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.	There is no projected impact for other entities related to this technical change. This is not expected to affect any small businesses.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	There is no projected fiscal impact for other entities related to this technical change.
Benefits the regulatory change is designed to produce.	This is projected to provide greater opportunity for involvement by the public.

## Alternatives to Regulation

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.*

The purpose of this regulatory change is to comply with *Code of Virginia* § 2.2-4007.02 and current language in the Administrative Process Act, which was enacted during the 2012 General Assembly Session (see Chapter 795 of the 2012 Acts of the Assembly).

There is no viable alternative provided by the *Code of Virginia*. This is not expected to fiscally impact small businesses.

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.*

## Regulatory Flexibility Analysis

*Consistent with § 2.2-4007.1 B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.*

The purpose of this regulatory change is to comply with *Code of Virginia* § 2.2-4007.02. This does not create adverse impacts on small business and is consistent with other state agencies that promulgate regulations. This is a technical change that does not impose new requirements on small businesses.

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.*

## Public Participation

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.*

*Consistent with § 2.2-4011 of the Code of Virginia, 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.*

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Department of Fire Programs is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Spencer Willett, 1005 Technology Park Drive, Glen Allen, VA 23059, phone: (804) 249-1966, fax: (804) 371-3444 and [Spencer.Willett@vdfp.virginia.gov](mailto:Spencer.Willett@vdfp.virginia.gov). In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

### Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. 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. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

**Table 1: Changes to Existing VAC Chapter(s)**

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
19VAC15-11-20		Definition of agency is “Virginia Fire Services Board”, requiring the Virginia Fire Services Board to utilize public participation guidelines during regulatory action.	Definition of agency becomes “Department of Fire Programs”. The Virginia Fire Services Board does not possess regulatory authority. The Department of Fire Programs possesses regulatory authority and needs public participation guidelines. This is a technical change.

19VAC15-11-50		Current language does not specify that counsel can be present during a regulatory action.	Amend section 50 to explicitly state that an interested person may be accompanied by and represented by counsel or other representative during participation in a regulatory action.
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