



Economic Impact Analysis Virginia Department of Planning and Budget

23 VAC 10-10 – Guidelines for Public Participation in Regulation Development and Promulgation
Department of Taxation
September 10, 2007

Summary of the Proposed Amendments to Regulation

The Department of Taxation (Department) proposes to amend its policies and procedures for public participation in the development and promulgation of regulations. The proposed amendments include the following changes. First, any person interested in participating in the regulation development process will need to contact the Department staff person listed on the Virginia Department of Planning and Budget's Virginia's Regulatory Town Hall. Second, the Department will notify stakeholders of regulatory activities via the Town Hall; instead of identifying interested parties before or during each regulatory change, the Department will initially encourage those individuals/entities to become registered users of Town Hall to receive general electronic notification of the Department's regulatory activities. Third, the Department may periodically request that registered Town Hall users indicate their desire to continue to receive notification of the Department's regulatory activity electronically. If the electronic mail is returned as undeliverable, or there has been no response to a request from the Department, the Department may request that such persons be removed from the Town Hall's list of registered users. Finally, the method for disseminating a Notice of Intended Regulatory Action, a notice of a public hearing, a proposed regulation, a final regulation, and a published regulation will be limited to posting on the Town Hall and publishing in the Virginia Register of Regulations (when relevant).

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

The current regulation requires information dissemination about the Department's regulatory activity to occur almost entirely through paper (mailings and newspaper). Under the proposed amendments, all of that dissemination will be done electronically. First, under current regulation, any person interested in participating in the regulation development process contacts the Assistant Commissioner for Tax Policy whose address is listed in the regulation. Under the proposed amendment, the person would have to notify the Regulatory Coordinator or other agency contact listed on the Virginia Department of Planning and Budget's Virginia Regulatory Town Hall (Town Hall). Second, under current regulation, to disseminate a Notice of Intended Regulatory Action (NOIRA), the Department must send the notice to persons identified as having a potential interest in the regulation, publish the notice in the Virginia Register of Regulations (Virginia Register), and request that industry, professional, and taxpayer associations to whom the NOIRA is sent make it available to members. Under the proposed regulation, the Department must only post the NOIRA on the Town Hall and publish the NOIRA in the Virginia Register. Third, under current regulation, the Department shall furnish a copy of a proposed regulation to all interested parties, including a cover letter explaining the deadlines for submitting formal public comments under the Administrative Process Act (APA). Under the proposed regulation, the Department would be required only to post a proposed regulation to the Town Hall and publish it in the Virginia Register. Fourth, under current regulation, the time, date, and place of a public hearing must be clearly specified to interested parties, publicized in the Richmond Times Dispatch or another newspaper of general circulation in the state capital, and published in the Virginia Register. Under the proposed regulation, the Department would be required only to post the notice of a public hearing to the Town Hall and publish it in the Virginia Register. Fifth, under current regulation, the Department must send a copy of a final regulation—at least five days prior to adopting the regulation—with a summary of public comments to all interested parties. Under the proposed regulation, the Department must only post a final regulation to the Town Hall. Finally, under current regulation, the Department must print and distribute the final, published regulation. This requirement is repealed in the proposed amendments.

The benefit of moving to an electronic format—with stakeholders being notified via email and the primary means of getting information being via the Town Hall web site—is in cost

savings. According to the Department, publishing a regulatory change in a newspaper can cost the state several thousand dollars. In addition, depending on the size and state of the mailing list, one mailing generated from one regulatory change, can cost as much as a day of a full-time employee. When one adds the labor cost to the costs of paper, envelopes, and postage, and considers the number of regulatory changes the Department will make over a year, it is clear that moving to the electronic medium could provide significant cost savings.

The major cost of these amendments will be incurred by those stakeholders who do not have access to the internet, or who do not use the internet often enough to receive Department notification in a timely manner. If information about a regulatory change is not being disseminated across the state, the Department could run into problems with regulatory compliance and could spend more staff time and resources in dealing with unhappy constituents than would have been spent on dissemination through the newspaper or mailings. The Department argues, however, that most of their interested parties do use the internet regularly. The Department has already been requested by parties interested in their non-regulatory activity to send out all notification via email. In addition, the Department has mailed notices to all parties interested in regulatory activity on their current mailing list (around 4000 notices), alerting them that all future dissemination will happen through Town Hall and all notification will be via email. The Department has not received any complaints and less than five percent of the mailings were returned. Finally, the Department argues that because there are several newspapers of general circulation in the state capital, interested parties would need to monitor each issue of each newspaper to obtain notice of a regulatory change. In addition, these newspapers might not be available throughout the Commonwealth. Therefore, newspaper publication does little to insure that the public receives notices of public hearings.

The proposed amendments also include a section allowing the Department to periodically request that those persons who have enrolled as registered users on the Town Hall indicate their desire to continue to receive notification of the Department's regulatory activity electronically. When electronic mail is returned as undeliverable or there has been no response to a request from the Department, the Department may request that such persons be removed from the Town Hall's list of registered users. The benefit of this amendment is in being able to "clean the books" occasionally. The cost could be in deleting someone from the list who is interested in the Department's regulatory activity, but who went on vacation and therefore could not respond to

the request or whose server was temporarily down, causing the electronic mail to be returned as undeliverable. The Department has no intention of removing a party from the list quickly, however, and says that one undeliverable email will not result in removal.

On the whole, although it is important to remain vigilant about the reach of the electronic media, the benefits of these amendments outweigh the costs.

Businesses and Entities Affected

The proposed changes will affect all taxpayers and tax practitioners in the Commonwealth, particularly individuals and businesses interested in monitoring the Department's activities. As of August 6, 2006, there were 687 people signed up on Town Hall to be on the Department's mailing list.¹

Localities Particularly Affected

The proposed changes do not disproportionately affect any specific localities in the Commonwealth.

Projected Impact on Employment

The proposed changes are not anticipated to have any impact on employment.

Effects on the Use and Value of Private Property

The proposed amendments are not anticipated to have any negative effect on the use and value of private property.

Small Businesses: Costs and Other Effects

The proposed changes are not anticipated to add cost or otherwise affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact

The proposal does not add cost or otherwise affect small businesses.

Real Estate Development Costs

The proposed amendments do not create additional costs related to the development of real estate for commercial or residential purposes.

¹ Source: Department of Taxation

Legal Mandate

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.H of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.