



Exempt Action Final Regulation Agency Background Document

Agency name	Virginia Dept. of Transportation (Commonwealth Transportation Board)
Virginia Administrative Code (VAC) citation	24 VAC 30-11/24 VAC 30-10
Regulation title	Public Participation Guidelines
Action title	Promulgation of New Public Participation Guidelines and Repeal of Existing Public Participation Guidelines to Meet Legislative Mandate
Date this document prepared	October 28, 2008

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 36 (06) 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.

This regulation establishes the manner in which the Virginia Department of Transportation (VDOT) will solicit input in the development of regulations promulgated under the Administrative Process Act (APA).

This regulatory action is required by Chapters 321 (HB 1167) and 575 (SB 734) of the 2008 Acts of Assembly. This legislation required the Department of Planning and Budget (DPB), in consultation with the Office of the Attorney General, to develop model public participation guidelines and provide these model public participation guidelines to each agency that has the authority to promulgate regulations. Each such agency is required, by December 1, 2008, to either (a) adopt the model public participation guidelines or (b) if significant additions or changes are proposed, promulgate the model public participation guidelines with the proposed changes as a fast-track regulation pursuant to § 2.2-4012.1. Any regulatory action subject to the APA commenced on or after January 1, 2009, shall use the model public participation guidelines in the form adopted by the promulgating agency. The public participation guidelines promulgated pursuant to this action (24 VAC 30-11) will replace VDOT's existing public participation guidelines (24 VAC 30-10), which will be repealed pursuant to this action.

This action updates the public participation guidelines to reflect current practices and technological innovations developed since the prior public participation guidelines were approved in 1992 (such as development of the Department of Planning and Budget's Virginia Regulatory Town Hall, and use of the Internet for communication between agencies and the public). It also addresses topics not mentioned in the 1992 public participation guidelines (such as petitions for rulemaking and explicit reference to the Commonwealth Transportation Commissioner and VDOT as entities authorized by statute to make regulations, in addition to the CTB). Finally, the action provides standardized procedures with greater detail for routine activities previously addressed in the 1992 regulations (such as notification of interested parties and use of ad hoc groups in regulatory formulation).

Significant differences between the two PPGs are summarized below:

24VAC 30-11-10. Purpose.

- Both current and model PPGs include a purpose statement that explains generally that the regulation is intended to promote public involvement in the regulatory process

24VAC 30-11-20. Definitions.

- Current PPGs do not include a definition section.
- Model PPGs create a definition section to standardize all state agencies' usage of certain terms of art.

24VAC 30-11-30. Notification list.

- Current PPGs include a general provision for VDOT to identify interested parties based on whether those parties have in the past shown interest in a given regulatory matter.
- Model PPGs require VDOT to have notification lists, and describe how a member of the public may request to be placed on a notification list, the allowable means of contact (electronic vs. paper mail), and conditions under which persons may be deleted from VDOT's notification lists. Model PPGs address current technologies, such as email and the DPB Regulatory Town Hall Web site, that were not in existence at the time VDOT's current PPGs were adopted.

24VAC 30-11-40. Information to be sent to persons on the notification list.

- Current PPGs address only the initial NOIRA notification. They also contain a provision that VDOT may request business and professional organizations receiving a notice publish it in their journals.
- Model PPGs delineates the information VDOT is required send to interested persons at each stage of the regulatory process.

24VAC 30-11-50. Public comment.

- Current PPGs provide that VDOT will conduct public hearings and provide notice of public hearings via the Virginia Registrar. Current PPGs include a provision that, upon request, VDOT will provide speakers to discuss regulatory matters with public or private sector groups, allow VDOT to hold informal meetings with interested parties between the close of the NOIRA comment period and the publication of the proposed regulation, and provide that VDOT may solicit additional information from interested parties after the comment period has ended.
- Model PPGs establish the length of time for public comment at each stage of the regulatory process (30 days for NOIRA; 60 days for a proposed regulation; 30 days upon publication of a final regulation), and contain a requirement for VDOT to provide commenters a summary of public comments received.

24VAC 30-11-60. Petition for rulemaking.

- Current PPGs do not address petition for rulemaking.

- Model PPGs describe the process to petition VDOT to consider taking a regulatory action.

24VAC 30-11-70. Appointment of regulatory advisory panel.

- Current PPGs allow VDOT to establish advisory committees.
- Model PPGs formalize the agency’s use of ad hoc committees to consult on regulatory actions by creating specialized advisory panels called Regulatory Advisory Panels (RAPs).

24VAC 30-11-80. Appointment of negotiated rulemaking panel.

- Current PPGs do not contemplate this type of panel.
- Model PPGs establish a new type of ad hoc panel composed of interested parties to consider controversial issues with the assistance of a facilitator or mediator (a Negotiated Rulemaking Panel).

24VAC 30-11-90. Meetings.

- Current PPGs do not address meetings concerning regulatory issues.
- Model PPGs require an agency to post notice of any open meeting, including meetings of a RAP or NRP, on DPB’s Regulatory Town Hall Web site and Commonwealth Calendar at least seven working days prior to the date of the meeting.

24VAC 30-11-100. Public hearings on regulations.

- Current PPGs state that VDOT will hold public hearings as required by the APA, and notice shall be provided via newspaper, press releases or through other media outlets.
- Model PPGs provide that if VDOT holds a public hearing it is required to post notice on DPB’s Town Hall and the Commonwealth Calendar.

24VAC 30-11-110. Periodic review of regulations.

- Current PPGs do not address periodic review of regulations.
- Model PPGs discuss the periodic review of regulations and state that notice of periodic review shall be posted on DPB’s Town Hall and published in the Virginia Register.

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.

On October 16, 2008, the Commonwealth Transportation Board adopted the new Public Participation Guidelines (24 VAC 30-11) and repealed the prior Public Participation Guidelines (24 VAC 30-10).

Family impact

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

This regulatory action has no effect on the institution of the family and family stability.