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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Department of Environmental Quality
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC15-70
VAC Chapter title(s)	Small Renewable Energy Projects (Combustion) Permit by Rule Regulation
Date this document prepared	August 14, 2023

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*.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

DEQ – means Department of Environmental Quality.

HB – means House Bill.

MW – means Megawatt, a measure of generated electricity.

NOI – means Notice of Intent.

PBR – means Permit by Rule.

RAP – means regulatory advisory panel.

SCC – means Virginia State Corporation Commission.

VLR – means Virginia Landmarks Register.

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 or 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.

The Department of Environmental Quality is authorized by § 10.1-1197.6 of the Code of Virginia to adopt regulations for permits or permits by rule if the Department determines permits are necessary for the construction and operation of small renewable energy projects. The Department of Environmental Quality determined that a permit by rule was needed for small renewable energy combustion projects with a rated capacity greater than five megawatts and adopted the Small Renewable Energy Projects (Combustion) Permit by Rule (PBR) on August 28, 2013. These projects must not exceed twenty megawatts. State law requires other necessary environmental permits to be obtained in addition to this PBR. (§10.1-1197.6 B 12)

Statutory Authority

Code of Virginia [§10.1-1197.5 et seq.](#)

Promulgating Entity

Department of Environmental Quality

Federal Requirements

There are no federal standards associated with this regulation.

State Requirements

- Code of Virginia [§10.1-1197.5 et seq.](#)
- Administrative Code Chapter 70, Small Renewable Energy Projects (Combustion) Permit by Rule, [9VAC15-70](#)

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

Alternatives to the proposal have been considered by the department. The department has determined that the retention of the regulation (the first alternative) is appropriate, as it is the least burdensome and least intrusive alternative that fully meets the statutory requirements and the purpose of the regulation. The alternatives considered by the department, along with the reasoning by which the department has rejected any of the alternatives being considered, are discussed below.

1. Retain the regulation without amendment. This option is being selected because the current regulation provides the least onerous means of complying with the minimum requirements of the legal mandates.
2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. This option was not selected because it could result in the imposition of requirements that place unreasonable hardships on the regulated community without justifiable benefits to public health and welfare.
3. Repeal the regulation or amend it to satisfy the provisions of legally binding state mandates. This option was not selected because the regulation is effective in meeting its goals and already satisfies those mandates.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency's response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

An informal advisory group was not formed for the purpose of this periodic review. No comments were received during the public comment period.

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

This regulation enhances the department's ability to ensure compliance with all specific requirements under the state code through the approval of a Combustion permit by rule for combustion energy projects with rated capacity not exceeding 20 megawatts.

The regulation is necessary for the protection of public health and welfare, as it is needed to meet the following goals:

1. To protect public health and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.
2. To provide a streamlined administrative mechanism for a "permit by rule," which means the permit requirements are set forth "up front" within the regulation, rather than being developed on a case-by-case basis, thus reducing burdensome and costly permit application, review, and issuance procedures.
3. To meet specific requirements of the Code of Virginia to develop requirements for permits by rule for combustion energy projects with rated capacity not exceeding 20 megawatts

This regulation is necessary for the protection of public health, safety and welfare and is clearly written and easily understandable. The regulation provides a permitting process for small renewable energy combustion projects with a rated capacity greater than five megawatts and less than twenty megawatts that is protective of human health and the environment. State law requires other necessary environmental permits to be obtained in addition to this PBR. (§10.1-1197.6 B 12)

The department has determined that the regulation is clearly written and easily understandable by the individuals and entities affected. It is written so as to permit only one reasonable interpretation, is written to adequately identify the affected entity, and, insofar as possible, is written in non-technical language.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

This regulation satisfies the provisions of the law and legally binding state requirements, and is effective in meeting its goals; therefore, the regulation is being retained without amendment.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

This regulation continues to be needed as it provides applicants with the most cost-effective means of fulfilling ongoing state requirements that protect natural and historic resources. The regulation also provides a permitting process for small renewable energy combustion projects. The regulation details the permitting process, and a small renewable energy combustion project is deemed to operate under the PBR provision if it meets the requirements of the regulation. Other necessary environmental permits will need to be obtained in addition to the PBR.

No comments were received during the public comment period.

The regulation's level of complexity is appropriate to ensure that the regulated entity is able to meet its legal mandate as efficiently and cost-effectively as possible.

This regulation does not overlap, duplicate, or conflict with any state law or other state regulation.

This regulation was last reviewed in 2019. Prior to the 2009 legislation small renewable energy projects were to be permitted on a case-by-case basis by the SCC. For those considering small combustion energy projects there was large uncertainty concerning the requirements and potential costs of completing a project, as well as how long the permitting process would take. The permit by rule framework eliminates much of that uncertainty. Applicants need to meet the 14 criteria set forth by §§ 10.1-1197.6(B) of the Code of Virginia to obtain permit by rule. Further, the proposed regulations specify that DEQ must render a decision concerning the permit application within 90 days. This significant reduction in uncertainty is in itself beneficial and will increase the likelihood that net beneficial projects will go forward.

The department, through examination of the regulation and conversations with developers and others in the renewable energy sector, has determined that the regulatory requirements currently minimize the

economic impact of permitting small combustion energy project. The statutes and regulation will increase the likelihood that small combustion energy projects will go forward. Consequently, the proposed regulation may have a small positive impact on employment. The statutes and proposed regulation will reduce risk, time costs, and administrative costs for small firms wishing to develop a small combustion energy project.

Family Impact

Please assess the potential impact of the regulation's impact on the institution of the family and family stability.

DEQ has not identified any potential impacts on the institution of the family and family stability in relation to the small renewable energy combustion regulation.
