
Call to Order – Jason Graves, FSL, Board President

- Welcome and Introductions
- Mission of the Board
- Emergency Egress Procedures

Approval of Minutes (p. 4-15)

- Board Meeting – October 12, 2023
- Formal Administrative Hearing – October 12, 2023

Ordering of Agenda

Public Comment

The Board will receive public comment at this time. The Board will not receive comment on any pending regulation process for which a public comment period has closed or any pending or closed complaint or disciplinary matter.

Agency Report – Arne Owens, Director

Presentation

- **Electronic Death Registration System (EDRS) Updates – Seth Austin, State Registrar and Director, Office of Vital Records, and Celes Davis, Chief Deputy State Registrar, Virginia Department of Health**

Staff Reports

- **Executive Director’s Report – Corie E. Tillman Wolf, Executive Director**
- **Discipline Report – Melanie Pagano, Deputy Executive Director**
- **Licensing Report – Sarah Georgen, Licensing and Operations Supervisor**
- **Inspections Report – Lynne Helmick, Inspections Compliance Specialist, Melody Morton, Inspections Manager, Enforcement Division**

Board Counsel Report – Brent Saunders, Senior Assistant Attorney General

Committee and Board Member Reports

- Report from the International Conference of Funeral Service Examining Boards - **Lacyn Barton, FSL**

Legislative and Regulatory Report - Erin Barrett, Director of Legislative and Regulatory Affairs (p. 17)

- Report on Status of Regulatory Actions
- Legislative Report

Board Action - Erin Barrett (p. 19-29)

- Completion of Periodic Review of Public Participation Guidelines (18VAC65-11-10 et seq.)

Next Meeting - April 16, 2024

Business Meeting Adjournment

Probable Cause Case Review

This information is in **DRAFT** form and is subject to change. The official agenda and packet will be approved by the public body at the meeting and will be available to the public pursuant to the Code of Virginia.

Approval of Minutes

The Virginia Board of Funeral Directors and Embalmers convened for a full board meeting on Thursday, October 12, 2023, at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Board Room #4, Henrico, Virginia.

BOARD MEMBERS PRESENT:

Jason Graves, FSL, President
Lacyn Barton, FSL, Vice-President
S. Jonathan Hines, FSL, Secretary-Treasurer
Muhammad Hanif, Citizen Member
Mia F. Mimms, FSL, JD
Joseph Michael Williams, FSL

BOARD MEMBERS NOT PRESENT:

None

DHP STAFF PRESENT FOR ALL OR PART OF THE MEETING:

Erin Barrett, Director of Legislative and Regulatory Affairs
Alesia Baskin, Senior Licensing Program Coordinator
Christina Buisset, Health Practitioners' Monitoring Program Manager
Sarah Georgen, Licensing and Operations Supervisor
James Jenkins, RN, Agency Chief Deputy Director
Melanie Pagano, Deputy Executive Director
Matt Novak, Policy and Economic Analyst
Amy Ressler, LCSW, Administrative Director, Virginia Commonwealth University Health Practitioners' Monitoring Program Leadership Team
Brent Saunders, Senior Assistant Attorney General, Board Counsel
Corie Tillman Wolf, Executive Director

OTHER GUESTS PRESENT:

Andrew Inge, Senior Inspector, DHP Enforcement
Barry Robinson, Virginia Morticians' Association
Bo Keeney, Association of Independent Funeral Homes of Virginia/Keeney Group

**Participant indicates attendance to count toward continuing education requirements*

CALL TO ORDER

Mr. Graves called the meeting to order at 10:00 a.m. and asked the Board members and staff to introduce themselves.

With six board members present at the meeting, a quorum was established.

Mr. Graves read the mission of the Board, which is also the mission of the Department of Health Professions.

Mr. Graves reminded the Board members and audience about microphones, computer agenda materials, breaks, sign-in sheets, and attendance for continuing education requirements.

Ms. Tillman Wolf then read the emergency egress instructions.

APPROVAL OF MINUTES

Mr. Graves opened the floor to any edits or corrections regarding the draft minutes for the Board meeting held on July 11, 2023. With no edits or corrections, the minutes were approved as presented.

ORDERING OF THE AGENDA

Mr. Graves opened the floor to any additional items to add to the agenda.

Ms. Tillman Wolf noted that Mr. Jenkins, DHP Chief Deputy Director, would provide the Agency Report in Mr. Owen's absence and requested that Mr. Jenkins provide his report before Public Comment due to time constraints.

Upon a **MOTION** by Mr. Hanif, properly seconded by Mr. Williams, the Board voted to accept the agenda as amended. The motion carried (6-0).

AGENCY REPORT

Mr. Jenkins stated that Board service requires dedication and time by the Board Members. He thanked the Board and DHP staff for their service and presence on the Board.

Mr. Jenkins highlighted the Virginia Health Workforce Development Authority (VHWDA) study to examine workforce issues across the Commonwealth. He stated that the VHWDA has reviewed labor force gaps and has provided recommendations on alternative pathways to licensure, as well as the practices of licensure approval timeliness.

Mr. Jenkins spoke about the 2023 General Assembly Session and stated that DHP was preparing for the next session, focusing on the budget for the Fiscal Year 2024 to 2026 biennial years.

With no questions, Mr. Jenkins concluded his report.

PUBLIC COMMENT

Mr. Robinson, Virginia Morticians' Association (VMA), thanked the Board for their service and wished participants a happy holiday season and stated that he was looking forward to working with the Board next year.

STAFF REPORTS

Executive Director's Report – Corie E. Tillman Wolf, J.D., Executive Director

Board Updates

Ms. Tillman Wolf reported that the Board had not received notification regarding board appointments but would notify the Board once information was received.

Ms. Tillman Wolf stated that Board staff has met recently with the inspectors in the Enforcement Division regarding the inspections process to address a number of interesting questions received recently by the Board. She noted information from the Board's previous meeting regarding the opportunity for Board staff to accompany inspectors to observe the inspections process, which provided an invaluable learning opportunity. She stated that, as the Board receives questions related to inspections that may necessitate further Board guidance, those issues will be brought to the Board.

Ms. Tillman Wolf stated that the Board had not received a letter to request the Natural Organic Reduction/Human Composting study. She said that research was initiated and will be available should the Board receive a request in 2024.

International Conference Updates

Ms. Tillman Wolf announced that The International Conference of Funeral Service Examining Boards (The Conference) will convene their 2024 Annual Meeting on February 28-29, 2024, in Myrtle Beach, South Carolina. She stated that Ms. Barton would attend as a member of The Conference's Board of Directors, and that one additional Board Member would be eligible to attend. She asked those interested in attending to contact her for more information.

Ms. Tillman Wolf also said that The Conference will offer virtual webinar opportunities throughout the coming year and encouraged Board Members to attend.

Federal Updates

Ms. Tillman Wolf stated that Ms. Barton attended the Federal Trade Commission (FTC) Funeral Rule Workshop on September 7, 2023, and that Ms. Barton would provide more information during her report later in the meeting.

Edits to Appendix III

Ms. Tillman Wolf noted minor edits needed to the Appendix III form available from the Board related to Itemized Statement of Funeral Goods and Services Selected. She noted a type to FTC disclosure on the first page under "III. Embalming" and clarification on Board language for the inspector on the third page under "Warranty" as it relates to the name of the funeral home. She noted that this document does not require a motion to update and that the revised document would be posted with an effective date of October 12, 2023.

Data Point of Interest – Historical Licensee Counts

Ms. Tillman Wolf stated that during an inquiry of information, she had examined data of licensee counts dating back to 1988 and shared the findings of this data with the Board.

	1988	1994	2004	2014	2023
Establishments	479	487	516	503	509
Crematories	0	0	67	104	136
Funeral Directors	330	233	129	51	44
Embalmers	27	11	6	4	4
Funeral Service Licensees (fka FSP)	1,117	1,279	1,396	1,495	1,557

She stated that statewide in 1988, there were 1,474 individual licensees and 479 establishment licensees. By comparison in 2023, there are 1,605 individual licensees and 509 establishment licensees, which represents an 8.9% and 6.3% increase, respectively. She also noted that this information indicates that registered crematories had doubled in Virginia between 2004 and 2023.

Expenditure and Revenue Summary as of June 30, 2023

Ms. Tillman Wolf presented the Expenditure and Revenue Summary as of June 30, 2023.

On the Horizon

Ms. Tillman Wolf stated that the October DHP Board Member Training had been rescheduled. She said that she would keep the Board updated on any new training opportunities.

She also noted that updates to applications, forms, the website, and the probable cause review process were forthcoming.

Ms. Tillman Wolf shared, for informational purposes, that the Cemetery Board at the Virginia Department of Professional and Occupational Regulation was conducting a periodic review of its regulations.

Notes and Reminders

Ms. Tillman Wolf reminded Board Members of the required Conflicts of Interest Training due on October 27, 2023. She asked that Board Members provide any updates to their contact information or addresses, as needed.

2024 Board Meetings

Ms. Tillman Wolf announced the 2024 Board meeting schedule.

- January 12, 2024
- April 16, 2024

- July 16, 2024
- October 10, 2024

Discipline Report

Ms. Pagano reported the following Total Cases Received and Closed:

- Q2 2021 – 12/12
- Q3 2021 – 20/22
- Q4 2021 – 22/10
- Q1 2022 – 19/18
- Q2 2022 – 19/12
- Q3 2022 – 24/22
- Q4 2022 – 28/21
- Q1 2023 – 5/23
- Q2 2023 – 10/21
- Q3 2023 – 11/13
- Q4 2023 – 27/11

Ms. Pagano reported that the Board had closed more cases than received in the first three quarters of 2023 resulting in a 219% clearance rate.

As of August 30, 2023, Ms. Pagano reported the following disciplinary statistics:

- 32 Patient Care Cases
 - 7 at Informal
 - 3 at Formal
 - 3 at Enforcement
 - 17 at Probable Cause
 - 2 at APD
- 54 Non-Patient Care Cases
 - 6 at Informal
 - 0 at Formal
 - 20 at Enforcement
 - 23 at Probable Cause
 - 5 at APD
- 18 at Compliance

Ms. Pagano also reported that as of the date of the board meeting, there were five pending formal hearings and five pending informal conferences.

With no questions, Ms. Pagano concluded her report.

Licensure Report – Sarah Georgen, Licensing and Operations Manager

Licensure Statistics – All Licenses

Ms. Georgen presented licensure statistics that included the following information:

License	June 30, 2023 (Q4 2023)	September 30, 2023 (Q1 2024)	Difference (+/-)
Funeral Service Licensees	1,542	1,580	+38
Funeral Director	43	45	+2
Embalmer Only	4	5	+1
Supervisors	585	607	+22
Funeral Service Interns	208	232	+24
Funeral Directing Interns	36	39	+3
Embalmer Interns	2	2	0
Funeral Establishments	423	425	+2
Branch Establishments	84	87	+3
Crematories	132	137	+5
CE Providers	11	11	0
Courtesy Card Holders	131	134	+4
Surface Transport & Removal Svc.	45	47	+2
Total (*not incl. supervisors)	2,661	2,744	+83

Laws, Rules, and Regulations (LRR) Exam Scores

Ms. Georgen reported on the Q1-Q3 Laws, Rules, and Regulations (LRR) exam scores and provided the calendar year 2022 statistics.

On the Horizon

Ms. Georgen stated that Board staff was working toward the launch of a responsive correspondence bot for the Board. The bot would send acknowledgement letters for applications received by the Board, send a closure letter when a license has been issued and expire out pending applications that have no activity at the one-year mark. She stated that the anticipated target completion date was December 2023 for individual applications and February 2024 for facility applications.

Website Updates

Ms. Georgen stated that updates were made to the Crematory Registration application pertaining to formatting, conciseness, clarity, and links to relevant sites for the applicant. She also said that a checklist was added to the Application for Reinstatement as a Funeral Service Licensee for ease of use.

Ms. Georgen said that updates were made to the Board's Frequently Asked Questions related to Manager of Record questions.

Incomplete Renewals – March 2023

Ms. Georgen stated that fourteen licensees were audited due to incomplete renewal requirements. She reported that four licensees were issued advisory notices of the renewal requirements, seven licensees were found in compliance, and that three licensees were referred for disciplinary review.

Continuing Education Provider Renewals – 2023

Ms. Georgen reported on the Continuing Education Provider renewals due on July 1, 2023. She stated that all registrations found in compliance renewal requirements.

Updates for Expense Reimbursement Vouchers

Ms. Georgen provided information on the existing policy regarding compliance with the 30-day requirement to submit Expense Reimbursement Vouchers. She stated that all agencies were required to adhere to these regulations, and there would be no exceptions to this policy in the future.

With no questions, Ms. Georgen concluded her report.

BOARD COUNSEL REPORT – M. Brent Saunders, Senior Assistant Attorney General

Mr. Saunders provided an update on two pending court cases involving the Board.

With no questions, Mr. Saunders concluded his report.

COMMITTEE AND BOARD MEMBER REPORTS

Report from the International Conference of Funeral Service Examining Boards – Lacyn Barton, FSL

Ms. Barton reported on The International Conference of Funeral Service Examining Boards (the Conference) Fall Board Meeting which occurred on September 13, 2023, in Las Vegas, Nevada. She provided information on the Conference's candidate portal allowing applicants to create their own account to schedule examinations and request score report transfers to other jurisdictions. Ms. Barton shared that nationwide first-time test takers pass/fail rate and the nationwide retake pass/fail rate information. She provided an overview of Virginia pass/fail rate information with the Board.

Ms. Barton stated that she attended the Federal Trade Commission (FTC) Funeral Rule Workshop on September 7, 2023. She stated that there was a panel discussion about upcoming changes to the funeral rule pertaining to pricing disclosures, basic service fees, alkaline hydrolysis, and natural organic reduction. She stated that a recording of the workshop was available on the FTC website and that public comments on these changes were accepted until October 10, 2023.

Mr. Graves asked Ms. Barton for information on possible emerging trends in the future. Ms. Barton said that home burials were trending, and that more information would be provided by the Conference at a later date.

With no further questions, Ms. Barton concluded her report.

BREAK

The Board took a break at 10:39 a.m. and returned at 10:46 a.m.

LEGISLATION AND REGULATORY ACTIONS

Report on Status of Regulations – Erin Barrett, Director of Legislative and Regulatory Affairs

Ms. Barrett provided an update on pending regulatory actions.

With no questions or comments, Ms. Barrett concluded her report.

BOARD DISCUSSION AND ACTIONS

Initiation of Periodic Review of Public Participation Guidelines (18VAC65-11-10 et seq.)

Ms. Barrett provided an overview of the initiation of a periodic review of the Board's Public Participation Guidelines.

Upon a **MOTION** by Ms. Barton, properly seconded by Ms. Mimms, the Board voted to initiate a periodic review of the Public Participation Guidelines in 18VAC95-11-10 et seq., as presented by Ms. Barrett. The motion passed unanimously (6-0).

Delegation of Acceptance and Signature of Consent Orders for Surrender, Suspension, and Revocation to Executive Director

Ms. Tillman Wolf provided an overview of the delegation of acceptance and signature of Consent Orders for surrender, suspension, and revocation to the Executive Director.

Upon a **MOTION** by Ms. Barton, properly seconded by Mr. Williams, the Board voted to delegate the acceptance and signature of Consent Orders for surrender, suspension, and revocation to the Executive Director. The motion passed unanimously (6-0).

PRESENTATION

Health Practitioners' Monitoring Program – Christina Buisset, HPMP Manager, and Amy Ressler, LCSW, Administrative Director, VCU HPMP Leadership Team

Ms. Buisset and Ms. Ressler provided a presentation to the Board on the Department of Health Professions Health Practitioners' Monitoring Program.

NEXT MEETING

The next meeting date is January 12, 2024.

ADJOURNMENT

Mr. Graves stated that the Board would convene formal hearings and asked all Board Members to participate, with the exception of Mr. Hanif.

Mr. Graves called for any objections to adjourn the meeting. Hearing no objections and with all business concluded, the meeting adjourned at 11:36 a.m.

Corie Tillman Wolf, J.D., Executive Director

Date

Unapproved

**VIRGINIA BOARD OF FUNERAL DIRECTORS & EMBALMERS
FORMAL ADMINISTRATIVE HEARING
MINUTES**

Thursday, October 12, 2023

**Department of Health Professions
Perimeter Center
9960 Mayland Drive
Henrico, Virginia 23233**

CALL TO ORDER:

The formal hearing of the Board was called to order at 1:06 p.m.

MEMBERS PRESENT:

Jason Graves, FSL, President (Chair)
Joseph Michael Williams, FSL, Vice President
Lacyn Barton, FSL
S. Jonathan Hines, FSL
Mia Mimms, FSL, JD

BOARD COUNSEL:

M. Brent Saunders, Senior Assistant Attorney General

DHP STAFF PRESENT:

Corie Tillman Wolf, Executive Director
Melanie Pagano, Deputy Executive Director
Florence Venable, Discipline and Operations Manager

COURT REPORTER:

Mona Brooks, County Court Reporters, Inc.

**PARTIES ON BEHALF OF
COMMONWEALTH:**

Christine Corey, Adjudication Specialist, Administrative Proceedings Division

**COMMONWEALTH'S
WITNESS:**

Stephen Shirley, Senior Investigator, DHP

**RESPONDENTS'
WITNESSES:**

Casey Martin Jones, FSL
S. Wetzler, MD

OTHERS PRESENT:

Leigh Ann Nichols
Doug LeQuire
Donald Childers
Alexis Green
Melanie Cruz

MATTER:

Hollomon-Brown Funeral Home Inc.

License No.: 0501-000191

Case Number: 212247

James Lester Baswell, FSL

License No.: 0502-900413

Case Number: 212240

Casey Martin Jones, FSL

License No.: 0502-901242

Case Number: 212879

**ESTABLISHMENT OF A
QUORUM:**

With five (5) members present, a quorum was established.

**PRELIMINARY
MATTERS:**

All parties agreed to the consolidation of the Respondents' cases prior to proceeding to the formal hearing before the Board.

The Commonwealth's Motion to exclude other witnesses from the hearing room was denied.

DISCUSSION:

Hollomon-Brown Funeral Home, Inc., Mr. Baswell, FSL, and Mr. Jones, FSL, appeared before the Board in accordance with the Amended Notice of Formal Hearing dated August 8, 2023. They were represented by counsel, Justin Berger, Esq., and Pierre Green, Esq.

The Board received evidence and sworn testimony on behalf of the Commonwealth and parties regarding the allegations in the Notice.

CLOSED SESSION:

Upon a motion by Joseph Williams, FSL, and duly seconded by Lacyn Barton, FSL, the Board voted to convene a closed meeting, pursuant to §2.2-3711.A (27) of the Code of Virginia, for the purpose of deliberation to reach decisions in the matters of Holloman-Brown Funeral Home, Inc. James Baswell, FSL, and Casey Jones, FSL.

Additionally, Mr. Williams moved that Mr. Saunders,

Ms. Tillman Wolf, Ms. Pagano and Ms. Venable attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Board in its deliberations.

RECONVENE: Having certified that the matters discussed in the preceding closed session met the requirements of §2.2-3712 of the Code, the Board reconvened in open session.

DECISION: Upon a motion by Joseph Michael Williams, FSL, and duly seconded by Lacyn Barton, FSL, the Board voted to dismiss the case against James Baswell, FSL.
The motion carried.

VOTE: The vote was unanimous. (5-0)

DECISION: Upon a motion by Joseph Michael Williams, FSL, and duly seconded by Mia Mimms, FSL, the Board voted to dismiss the case against Hollomon-Brown Funeral Home Inc.
The motion carried.

VOTE: The vote was unanimous. (5-0)

DECISION: Upon a motion by Joseph Michael Williams, FSL, and duly seconded by Mia Mimms, FSL, the Board voted to dismiss the case against Casey Jones, FSL.
The motion carried.

VOTE: The vote was unanimous. (5-0)

ADJOURNMENT: The Board adjourned at 5:47 p.m.

For the Board:

Corie Tillman Wolf, JD, Executive Director

Date

Legislative and Regulatory Report

Board of Funeral Directors and Embalmers
Current Regulatory Actions
As of December 26, 2023

In the Governor's Office

None.

In the Secretary's Office

VAC	Stage	Subject Matter	Submitted from agency	Time in current location	Notes
18VAC65-20	Fast-Track	Adjustment of requirements related to documentation of continuing education pursuant to 2022 legislation	7/28/2022	Secretary 461 days	Changes the amount of time documents related to continuing education must be kept from two to three years.
18VAC65-20 18VAC65-30 18VAC65-40	NOIRA	2023 Regulatory reduction	5/8/2023	Secretary 221 days	Reduces requirements related to practice, funeral interns, and preneed funeral planning.

At DPB/OAG

None.

Recently effective or awaiting publication

None.

Board Action

Agenda Item: Completion of periodic review of public participation guidelines contained in 18VAC65-11

Included in your agenda packet:

- Town Hall summary page showing no comments on periodic review
- 18VAC65-11

Staff Note: Agencies are required to conduct periodic reviews of regulatory chapters every four years. Although this particular chapter is only changed when the Department of Planning and Budget provides new model language, the Board was still required to conduct a periodic review. Now that the review is complete, the Board should not initiate any changes, but retain as is until DPB amends the model regulations.

Action Needed:

- Motion to retain 18VAC65-11 as is.



- Agency** Department of Health Professions
- Board** Board of Funeral Directors and Embalmers
- Chapter** Public Participation Guidelines [18 VAC 65 - 11]

[Edit Review](#)

Review 2473

Periodic Review of this Chapter

Includes a Small Business Impact Review

Date Filed: 10/12/2023

Notice of Periodic Review

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, this regulation is undergoing a periodic review.

The review of this regulation will be guided by the principles in Executive Order 19 <https://TownHall.Virginia.Gov/EO-19-Development-and-Review-of-State-Agency-Regulations.pdf>.

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

In order for you to receive a response to your comment, your contact information (preferably an email address or, alternatively, a U.S. mailing address) must accompany your comment. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

Contact Information	
Name / Title:	Corie Tillman Wolf / <i>Executive Director</i>
Address:	9960 Mayland Drive Suite 300 Henrico, VA 23233
Email Address:	fanbd@dhp.virginia.gov
Telephone:	(804)367-4479 FAX: (804)527-4471 TDD: (-)

Publication of Notice in the Register and Public Comment Period

Published in the Virginia Register on 11/6/2023 [Volume: 40 Issue: 6]

Comment Period begins on the publication date and ended on 11/27/2023

Comments Received: 0

Review Result

Pending

TH-07 Periodic Review Report of Findings *(not yet submitted)*

ORM Economic Review Form *(not yet submitted)*

Attorney General Certification

Submitted to OAG: 10/12/2023
Review Completed: 10/25/2023
Result: Certified

 [Review Memo](#)

This periodic review was created by Erin Barrett on 10/12/2023 at 12:14pm

Commonwealth of Virginia



PUBLIC PARTICIPATION GUIDELINES

VIRGINIA BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Title of Regulations: 18 VAC 65-11-10 et seq.

**Statutory Authority: §§ 54.1-2400 and 2.2-4007
of the *Code of Virginia***

Revised Date: January 12, 2017

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Part I

Purpose and Definitions

18VAC65-11-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Board of Funeral Directors and Embalmers. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

18VAC65-11-20. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Administrative Process Act" means Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the Board of Funeral Directors and Embalmers, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by §2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at www.townhall.virginia.gov, which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§2.2-4031 et seq.) of the Administrative Process Act.

Part II

Notification of Interested Persons

18VAC65-11-30. Notification list.

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

18VAC65-11-40. Information to be sent to persons on the notification list.

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 18VAC65-11-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).
2. A notice of the comment period on a proposed, a repropoed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.
3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to §2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

Part III Public Participation Procedures

18VAC65-11-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to (i) submit data, views, and arguments, either orally or in writing, to the agency; and (ii) be accompanied by and represented by counsel or other representative. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.
2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).
2. For a minimum of 60 calendar days following the publication of a proposed regulation.
3. For a minimum of 30 calendar days following the publication of a repropoed regulation.

4. For a minimum of 30 calendar days following the publication of a final adopted regulation.
5. For a minimum of 30 calendar days following the publication of a fast-track regulation.
6. For a minimum of 21 calendar days following the publication of a notice of periodic review.
7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with § [2.2-4013](#) C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to § [2.2-4012](#) E of the Code of Virginia.

18VAC65-11-60. Petition for rulemaking.

A. As provided in §2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;
2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and
3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider and respond to a petition pursuant to §2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

18VAC65-11-70. Appointment of regulatory advisory panel.

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or
2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

18VAC65-11-80. Appointment of negotiated rulemaking panel.

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

B. A NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;
2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or
3. The agency determines that resolution of a controversy is unlikely.

18VAC65-11-90. Meetings.

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with §2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

18VAC65-11-100. Public hearings on regulations.

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;
2. The Governor directs the agency to hold a public hearing; or
3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

18VAC65-11-110. Periodic review of regulations.

- A. The agency shall conduct a periodic review of its regulations consistent with:
 1. An executive order issued by the Governor pursuant to §2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance; and
 2. The requirements in §2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.
- B. A periodic review may be conducted separately or in conjunction with other regulatory actions.
- C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.