



Virginia
Regulatory
Town Hall

Periodic Review and
Notice of Intended Regulatory Action
Agency Background Document

Agency Name:	Department of Mines, Minerals and Energy
VAC Chapter Number:	4 VAC 25-10
Regulation Title:	Public Participation Guidelines
Action Title:	Periodic Review - Pre-NOIRA
Date:	December 28, 2001

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

The purpose of the proposed action is to amend the Department of Mines, Minerals and Energy's Public Participation Guidelines. This regulation governs how the regulatory actions of the Department of Mines, Minerals and Energy, the Virginia Gas and Oil Board, the Board of Coal Mining Examiners, and the Board of Mineral Mining Examiners will: (i) respond to petitions for rulemaking; (ii) maintain a regulatory mailing list; (iii) notify and include interested persons in the regulatory development process; and (iv) comply with the requirements for adopting regulations in compliance with the Administrative Process Act.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

The director of the Department is authorized to promulgate this regulation pursuant to the following Code Sections: (i) 2.2-4007.D of the Code of Virginia which mandates that agencies adopt public participation guidelines for soliciting the input of interested parties in the formation and development of its regulations, (ii) 45.1-161.3 which provides the director of the department the authority to promulgate regulations necessary to perform its duties, (iii) 45.1-361.15 which provides the Virginia Gas and Oil Board with the authority to issue rules, regulations or orders pursuant to the provisions of the Administrative Process Act, (iv) 45.-161.28.C which provides the Board of Coal Mining Examiners with the authority to promulgate regulations necessary to perform its duties under the provisions of the Coal Mine Safety Act, and (v) 45.1-161.292:19.C which provides the authority to the Board of Mineral Mining Examiners to promulgate regulations necessary to perform its duties under the provisions of the Mineral Mine Safety Act.

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.

No public comments were received in response to the Notice of Periodic Review. An informal advisory group was formed for the purpose of assisting the Department with the periodic review and the development of a draft regulation.

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

The goal of this regulation is to ensure citizen and industry involvement in the regulatory actions taken by the Department and its boards.

The effectiveness in meeting this goal will be in the multiple opportunities the department provides the public in commenting on the regulations. The regulations provide for regulatory work committees be established for each regulatory action undertaken. The membership on these committees are very broad based including industry, citizen and environmental representatives and other interested parties.

This regulation is essential to protect the health, safety and welfare of citizens by providing the opportunity for comment by the various publics who will use this regulation to develop future regulatory proposals.

The informal advisory committee that was created to assist the department in the development of the proposed amendments believe that this regulation is clearly written and easily understandable by individuals and entities affected.

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

One alternative to the regulation that the informal advisory group discussed was whether to incorporate a web site for more information, copies of materials, etc. After discussion the committee decided to include a web site because it believed the use of electronic communication would only increase in the future. The committee decided to use the Commonwealth's website because it would be the least likely to change and because it would be the easiest to find should it ever change in the future.

Another alternative that the informal advisory group discussed was whether to leave the definition of promulgating authority as it was or to change it to specifically state which individual or body was initiating the regulatory action. The committee decided to specifically state which entity was responsible for the regulatory action.

Lastly, the department considered whether to address ex parte communication directly in the regulation. The department decided to add specific language to the regulation addressing ex parte communication.

The committee believes that the proposed regulation reflects the least burdensome alternative available for achieving its purpose.

Recommendation

Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.

The Department is recommending that the Public Participation Guidelines be amended. The amendments will implement the recommendations identified during the regulation review. The recommendations will streamline the regulatory promulgation process, clarify language, reflect changes made to the Administrative Process Act and to Executive Orders, and include references to the Regulatory Town Hall website.

Substance

Please detail any changes that would be implemented.

4 VAC 25-10-10. The definition of "promulgating authority" was deleted and is being replaced throughout the regulation with specific references to either the director, mines chief, or one of the department boards, whichever is initiating the regulatory action.

4 VAC 25-10-20. Changes code references to keep them consistent with the Code of Virginia.

4 VAC 25-10-30. Lists all of the specific documents that govern the regulatory process (executive orders, the Virginia Register Act and Regulations of the Code Commission and not just the Administrative Process Act.) Changes were also made consistent with the changes in 4 VAC 25-10-10 to clarify whether the Department director, mines chief, or one of its boards is initiating the regulatory action.

4 VAC 25-10-40. Includes the use of e-mail and the Commonwealth's Regulatory Town Hall Website as a means for interested parties to receive electronic notices of regulatory actions.

4 VAC 25-10-50. Changes were made consistent with the changes in 4 VAC 25-10-10 to clarify whether the Department director, mines chief, or one of its boards is initiating the regulatory action. Provides that the Notice of Intended Regulatory Action be posted on the Commonwealth's Regulatory Town Hall Website in addition to its publication in newspapers and the Virginia Register. Clarifies the additional newspaper publication provisions for the media releases.

4 VAC 25-10-60. Changes were made consistent with the changes in 4 VAC 25-10-10 to clarify whether the Department director, mines chief, or one of its boards is initiating the regulatory action. Corrected a Code of Virginia citation.

4 VAC 25-10-70. Changes were made consistent with the changes in 4 VAC 25-10-10 to clarify whether the Department director, mines chief, or one of its boards is initiating the regulatory action. Provides that the proposed draft regulation will also be posted on the Commonwealth's Regulatory Town Hall Website in addition to its publication in the Virginia Register. Removes redundant administrative language. Changes the requirement to send a copy or summary of the regulation to a requirement to send a notice of the regulatory change to interested parties. Addresses the treatment of ex parte communications.

4 VAC 25-10-80. Changes were made consistent with the changes in 4 VAC 25-10-10 to clarify whether the Department director, mines chief, or one of its boards is initiating the regulatory action. Lists all of the specific documents that govern the regulatory process (executive orders, the Virginia Register Act and Regulations of the Code Commission and not just the Administrative Process Act.)

Family Impact Statement

Please provide a preliminary analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulation will have no direct effect on families.