

Board of Education Agenda Item

Item: _____ F. _____

Date: July 17, 2008

Topic: First Review of Proposed New Regulations Governing Public Participation (8VAC 20-11-10 et seq.) and Repeal of Public Participation Guidelines (8VAC 20-10-10) Under the Fast Track Provisions of the Administrative Process Act

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Origin:

- Topic presented for information only (no board action required)
- Board review required by
 - State or federal law or regulation
 - Board of Education regulation
 - Other: Board of Education By-laws
- Action requested at this meeting
- Action requested at future meeting: September 25, 2008

Previous Review/Action:

- No previous board review/action
- Previous review/action
 - date:
 - action:

Background Information: Public participation procedures exist to promote public involvement in the development, amendment, or repeal of state regulations.

Under § 2.2-4007.02 of the *Code of Virginia*, every rulemaking body in Virginia is required to adopt public participation procedures and to use such procedures in the development of its regulations. In compliance with this provision of the *Code*, the Board of Education has *Public Participation Guidelines* (8VAC 20-10-10), which were promulgated in 1984. The guidelines have not been revised since that time.

The *Code of Virginia* was modified during the 2008 General Assembly session. The amendments, which took effect on July 1, 2008, specify that agencies will have until December 1, 2008, to either adopt model public participation regulations issued by the Department of Planning and Budget (DPB), or, if they need to make significant changes to the model regulations, to file a fast-track regulatory action with DPB by that time.

DPB has now issued the required model regulations entitled *Public Participation Guidelines*. Since the legislative intent is to standardize the public participation process so that interested members of the public know how and when to comment and/or participate in various topics of interest, all state agencies were urged to consider whether any modifications to DPB's model regulations are appropriate.

The Department of Education's policy division has carefully reviewed the model regulations and is recommending to the Board of Education that minor, non-controversial modifications be made for clarity and consistency.

Hence, the fast-track rulemaking process is recommended in order to complete the new regulation. By simultaneous action, the current, out-dated regulation will be repealed and replaced by the new regulation.

Summary of Major Elements: The minor, non-controversial modifications to DPB's model regulations are necessary in order to make the public participation rules consistent with Board of Education policies and procedures for public participation.

In no instance is the intent or meaning of a provision changed or modified from the model public participation regulations as promulgated by DPB.

The proposed changes are non-controversial because of the following:

- In every case, the proposed changes are consistent with long-standing Board of Education practice and procedures;
- The words and terms are consistent with current, clearly understood use; and
- The changes serve to further clarify requirements so that they are easily understood by the Board of Education's constituents.
- The provisions of the model guidelines and the proposed modifications are consistent with current public participation practices used by the Board of Education. Complying with the new provisions will require few modifications in the Board's current practice.

The recommended modifications are shown in the attachment.

Superintendent's Recommendation: The Superintendent of Public Instruction recommends that the Board of Education receive the proposed fast-track *Regulations Governing Public Participation* for first review, authorize staff to distribute the proposed text for a 45-day public review and comment period, and receive the *Regulations Governing Public Participation* for final review at the September 25, 2008, meeting.

Impact on Resources: The impact on resources is expected to be insignificant for both the agency and for the public. The agency can absorb any such cost within its current resources.

Timetable for Further Review/Action: Pending the Board's action at the July 17th meeting, the proposed regulations will be distributed for a 45-day comment period. Following public comment, final regulations will be presented to the Board of Education for final review at the meeting on September 25th.



Fast Track Proposed Regulation Agency Background Document

Agency name	Board of Education
Virginia Administrative Code (VAC) citation	8VAC 20-10-10 (Repeal) 8VAC 20-11-10 et seq. (Promulgate)
Regulation title	Regulations Governing Public Participation
Action title	Promulgate regulation pursuant to 2008 Code revisions to promote public involvement in the development, amendment, or repeal of Board of Education regulations; simultaneous repeal of current, outdated regulation
Date this document prepared	July 9, 2008

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

The present action promulgates regulations entitled *Regulations Governing Public Participation* [8VAC 20-11-10 et seq.] and simultaneously repeals the Board of Education's current regulation entitled *Public Participation Guidelines* [8VAC 20- 10]. The new regulations are intended to promote public involvement in the development, amendment, or repeal of Board of Education regulations.

The present action proposes minor, non-controversial revisions to model public participation guidelines as developed by the Department of Planning and Budget, under the *Code of Virginia* § 2.2-4007.02, as amended. The changes proposed by the Board of Education are non-controversial in that, in every case, consistent with long-standing Board of Education practice and procedures and the terms are consistent with current, clearly understood use and serve to clarify a provision. In no instance is the intent or meaning of a provision changed or modified from the model public participation guidelines as promulgated by DPB.

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 (.....date.....), the Virginia Board of Education adopted the *Regulations Governing Public Participation* (8VAC 20-11-10 et seq.), as proposed. By simultaneous action, the Board of Education repealed the regulations entitled *Public Participation Guidelines* (8VAC 20-10).

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

Under § 2.2-4007.02 of the *Code of Virginia*, every rulemaking body in Virginia is required to adopt public participation guidelines and to use these guidelines in the development of its regulations. This law was modified during the 2008 General Assembly session, and the 2008 modifications permit the use of fast-track rulemaking procedures to promulgate the public participation regulations. By action of the General Assembly, the adoption of public participation rules is mandatory, and the use of the fast-track process is discretionary.

Pursuant to the *Code of Virginia*, Board of Education, as the promulgating entity, has adopted new public participation regulations as described herein. In doing so, the Board of Education has made minor, non-controversial modifications in the model guidelines as developed by DPB; thus, it is necessary to utilize the fast-track rulemaking process.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the *Regulations Governing Public Participation* is to promote public involvement in the development, amendment, or repeal of Board of Education regulations.

The Board of Education's rationale for the regulation is to comply with state law, as described above. The Board of Education proposes minor, non-controversial modifications to the model public participation guidelines developed by DPB; therefore the fast track process is being utilized.

The reason that the proposed regulation is essential to protect the welfare of citizens is the Board of Education's position that those who are affected by a decision have a right to be informed and involved in the decision-making process. Hence, the regulations set forth a uniform procedure for the public's contribution to the Board in its rulemaking process.

The goals of the proposed regulation are:

1. To set forth a procedure to seek out and facilitate the involvement of those potentially affected by or interested in a regulatory action;
2. To communicate clearly to the Board of Education's constituents how they may participate in the regulatory process in a meaningful way; and
3. To ensure that the Board of Education's regulatory procedures are in full compliance with state laws and regulations governing such actions.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The changes proposed by the Board of Education are non-controversial in that, in every case, the proposed changes are consistent with long-standing Board of Education practice and procedures; the terms are consistent with current, clearly understood use; and the proposed language serves to clarify a provision. In no instance is the intent or meaning changed from the model public participation guidelines as promulgated by DPB.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

The proposed regulations are consistent with the model public participation guidelines developed by DPB. The Board of Education has made minor adjustments in the model guidelines, including language to clarify the advisory capacity standing advisory committees. Certain terms are clarified to be consistent with terminology in current use in the field.

The current regulation (8VAC 20-10-10) is being repealed because it has not been amended since 1984. It is now seriously outdated because it pre-dates most of the current provisions of the Administrative Process Act. It also pre-dates the use of the Internet and electronic communications and, thus, contains no provision for electronic transmission of notices and comments.

Issues

Please identify the issues associated with the proposed regulatory action, including:

1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

The advantage to the Commonwealth, the Board of Education, and the public is that the proposed regulations are intended to inform the public in a way that encourages public participation and to make such participation meaningful, convenient, cost-effective, and accessible to constituents. There are no known disadvantages to the Commonwealth, the public, or the Board of Education.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no known applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

All Virginia localities are affected equally by the proposed regulations.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The provisions of the proposed regulation have no adverse impact on small business entities. All Board of Education constituencies are affected equally. No alternative flexibility was considered necessary or advantageous. In some instances, statewide professional or special interest groups may be considered a private enterprise and, thus, may be

considered a “small business.” However, the provisions have no adverse affect on any entity—private, public, civic, or proprietary.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>Insignificant; can be absorbed within current resources.</p>
<p>Projected cost of the regulation on localities</p>	<p>Insignificant.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>All Virginia residents are constituents of the Board of Education’s services through its regulatory authority with public schools in the 132 local school divisions in Virginia. Inquiries, comments, and requests for information come from any source: school personnel, potential teachers, parents, other state agencies, other states, professional/civic organizations, and political leaders.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>The provisions have no specific impact on small business.</p> <p>Affected entities: 132 local school divisions 100,000 classroom teachers 50,000 public school administrators and other staff 100 education/advocacy organizations 1.2 million schoolchildren and their families</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>The regulations pose an insignificant impact on interested participants.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

[Following first review of the proposed regulations on July 17, 2008, the Board of Education will post the proposed regulations on its Web site for public review prior to final action on September 25, 2008. Notice of the proposed regulation will be sent to all interested parties after the July 17 meeting. Following final adoption by the Board of Education, this section will be filled in to describe the public review process that was used.]

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent 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.

The proposed regulations have no impact whatsoever on the institution of the family, family stability, parental authority or rights, supervision of children, economic self-sufficiency, self-pride, responsibility for family, marital commitment, or family income.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

(Chart begins on next page)

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
8VAC 20-10-10			Entire text is proposed for repeal because the provision is outdated. Specifically, current provisions pre-date the the Internet and electronic communications and, thus, contain no provision for electronic transmission of notices and comments. Current provisions also pre-date most of the requirements contained in the APA.
	8VAC 20-11		The Board of Education proposes to entitle the regulations <i>Regulations Governing Public Participation</i> , rather than <i>Public Participation Guidelines</i> . The term “guidelines” is used in DPB’s model regulations. The change to the term “regulation” is for clarity and consistency in the terms in use by the Board of Education in regulatory matters. Historically, the Board of Education (and the Department of Education) uses the term “guidelines” only for non-regulatory purposes; i.e., actions or documents that are non-binding or in instances where best practices are being recommended as a form of technical assistance. The term “regulation” (rather than “guidelines”) is used in actions governed by the Administrative Process Act.
	8VAC20-11-10	N/A	No changes from the model guidelines
	8VAC 20-11-20	N/A	Clarifies that the term “agency” refers to the Board of Education (rather than the Department of Education, which is sometimes referred to in the field as the “agency”).
	8VAC 20-11-30	N/A	<p>The proposed regulation clarifies that the Board maintains one centralized list of persons to be notified of regulatory actions, regulatory notices, public meetings, and all other notifications required by FOIA and the APA. Thus, the Board proposes minor changes in the notification provisions that are consistent with agency policy.</p> <p>The proposed regulations clarify a person will be deleted from the electronic notification list after two notifications of an undeliverable electronic message or US mail.</p>
	8VAC 20-11-40	N/A	No changes from the model guidelines

	8VAC 20-11-50	N/A	The proposed regulations clarify that written comment may be submitted in writing at any time during the public comment period. Comments submitted via the Town Hall public forum are included. Oral comments will be received at public hearings or Board of Education meetings. These provisions permit all Board members to review all comments, and it enables staff to obtain e-mail address or mailing address so they may be provided the summary of comments.
	8VAC 20-11-60	N/A	No changes from model guidelines
	8VAC 20-11-70	N/A	No changes from model guidelines
	8VAC 20-11-80	N/A	No changes from model guidelines
	8VAC 20-11-90		No changes from model guidelines
	8VAC 20-11-100	N/A	No changes from model guidelines
	8VAC 20-11-110	N/A	No changes from model guidelines

Enter any other statement here

TO BE REPEALED:
CHAPTER 10
BOARD OF EDUCATION PUBLIC PARTICIPATION GUIDELINES

~~8VAC20-10-10. Guidelines.~~

~~When the Department of Education or the Board of Education propose regulations or substantial changes to present regulations, a notice of intent will be published in the Virginia Register and the Calendar of Events. The notice will request input from interested parties, and will contain information as outlined in the guidelines.~~

~~Identification and notification of interested parties.~~

~~1. The Department of Education shall utilize mailing lists of interested parties and add to the lists as groups and individuals express an interest in the agency's regulatory activities.~~

~~2. Notice of proposed regulatory action shall include:~~

~~a. Subject of proposed regulation;~~

~~b. Identification of parties that will be affected by regulation;~~

~~c. Purpose of proposed regulation;~~

~~d. Place where proposed regulation can be obtained;~~

~~e. Request for comments from interested parties;~~

~~f. Place and time of public meetings when scheduled;~~

~~g. Name, address, and telephone number of contact person; and~~

~~h. Date for submission of information by interested parties.~~

~~3. Methods of seeking input from interested parties shall include:~~

~~a. The Registrar publishing the advertisement of the proposed regulation in a newspaper of general circulation at the capital and coordinating with the Department of Education the publication of the proposed regulation in a locality where it has a particular effect;~~

~~b. Mailing of proposed regulation to groups or individuals that would be affected or have an interest in the regulation, and requesting comments in writing;~~

~~c. Advertising the intent of the board to consider a regulation in various department publications which are distributed on a statewide basis;~~

~~d. Provide information or speak on regulation as requested by interested parties;~~

~~e. Put proposed regulation on board's monthly agenda for discussion in committee or full board;~~

~~f. Consult with advisory committees that are involved in an activity requiring regulatory action;~~

- ~~g. Use media other than print, if necessary, to notify public of proposed regulation;~~
- ~~h. Inform appropriate interest groups that meet with Board of Education periodically; and~~
- ~~i. Publish proposed regulation in Virginia Register and provide for 60-day comment period.~~

NOTE: The mark-up shown below is based on the model Public Participation Guidelines developed by the Department of Planning and Budget

CHAPTER 11
REGULATIONS GOVERNING PUBLIC PARTICIPATION GUIDELINES

Part I
Purpose and Definitions

8VAC 20-11-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Board of Education. 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).

8VAC 20-11-20. 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 Education, 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~~ Board of Education.

"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 that 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

8VAC 20-11-30. 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. C.~~ When electronic mail is returned as undeliverable on ~~multiple~~ two 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. D.~~ When mail delivered by a postal carrier is returned as undeliverable on ~~multiple~~ two occasions, that person may be deleted from the list.

~~F. E.~~ 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.

8VAC 20-11-40. 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 8VAC 20-11-30, 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 or a repropoed 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

8VAC 20-11-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally at a public hearing or at a Board of Education meeting or in writing at any time during the public comment period, to the agency. 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 fasttrack 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.

8VAC 20-11-60. 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.

8VAC 20-11-70. 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.

8VAC20-11-80. 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.

8VAC 20-11-90. Meetings.

Notice of any open meeting, including meetings of a RAP, 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.

8VAC 20-11-100. 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 8VAC 20-11-100.C.3.

8VAC 20-11-110. 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.