

## Public Notice – Environmental Regulation

**Notice of action:** The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on the public participation guidelines to be used for the regulatory adoption process by the DEQ, State Air Pollution Control Board, State Water Control Board and Waste Management Board.

**Background:** The Administrative Process Act (Act) requires all entities with authority to adopt regulations to establish, by regulation, Public Participation Guidelines to be used for soliciting the input of interested persons in the formation and development of regulations. The existing guidelines were adopted by each of the Boards in 1994 and are essentially identical.

These guidelines apply to the development, amendment or repeal of regulations that are not exempt from the public participation requirements of the Administrative Process Act.

Chapter 321, 2008 Acts of the Assembly, requires that the Department of Planning and Budget (in consultation with the Attorney General's Office) develop model public participation guidelines meeting the requirements of §2.2-4007.02 of the Code of Virginia. This legislation came out of the Attorney General's Regulatory Reform Task Force.

The goals of the model guidelines are to promote uniformity and consistency among state agencies and to standardize the public participation process so that interested persons know how and when to comment and/or participate in various topics of interest.

This legislation requires that agencies repeal the current public participation guidelines and adopt new public participation guidelines by December 1, 2008.

The DEQ, State Air Pollution Control Board and State Water Control Board have adopted the model public participation guidelines, effective January 1, 2009. As part of their action each requested comment on the model public participation guidelines. The Waste Management Board is scheduled to adopt the guidelines at its December 2008 meeting.

**Regulations affected:** The regulations of the board affected by this action are as follows: 9VAC5-5 (State Air Pollution Control Board), 9VAC15-11 (DEQ), 9VAC20-11 (Waste Management Board) and 9VAC25-11 (State Water Control Board).

**Purpose of notice:** DEQ is seeking comment on the model guidelines including what, if any, recommended changes to the guidelines and whether the changes should be set forth in regulation or Board policy.

This public comment period is being held at the request of the boards and is not required to satisfy any public participation requirement or other legal requirement of federal or state statutes.

**Public comment period:** October 20, 2008 to November 19, 2008.

**Description of proposal:** In essence, the model public participation guidelines (i) provide for the appointment of negotiated rulemaking panels and regulatory advisory panels, (ii) provide for the establishment and maintenance of notification lists of interested persons, (iii) provide for notification via electronic means or postal carrier, and (iv) specify the information to be sent to persons on the notification lists.

The model public participation guidelines apply to regulatory actions for which a notice of intended regulatory action is filed with the Registrar of Regulations on or after January 1, 2009.

**How to comment:** DEQ accepts written comments by e-mail, facsimile transmission and postal mail. In order to be considered, comments must include the full name, address and telephone number of the person commenting and be received by DEQ by 5:00 p.m. on the last day of the comment period. All comments, exhibits and documents received are part of the public record.

**To review regulation documents:** A copy of Chapter 321, 2008 Acts of the Assembly, the model public participation guidelines that become effective January 1, 2009, and the public participation guidelines in effect until January 1, 2009 are included at the end of this notice.

**Contact for public comments, document requests and additional information:** Karen G. Sabasteanski, Policy Analyst, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, Virginia 23218 (phone 804-698-4426, fax 804-698-4510, email [kgsabastea@deq.virginia.gov](mailto:kgsabastea@deq.virginia.gov)).

# VIRGINIA ACTS OF ASSEMBLY -- 2008 SESSION

## CHAPTER 321

*An Act to standardize public participation guidelines for executive branch agencies.*

Approved March 4, 2008

[H 1167]

**Be it enacted by the General Assembly of Virginia:**

1. § 1. *That on or before July 1, 2008, the Department of Planning and Budget, in consultation with the Office of the Attorney General, shall (i) develop model public participation guidelines meeting the requirements of § 2.2-4007.02 of the Code of Virginia and (ii) provide these model public participation guidelines to each agency that has the authority to promulgate regulations. By December 1, 2008, each agency shall either (a) adopt the model public participation guidelines or (b) if significant additions or changes are proposed, promulgate the model public participation guidelines with the proposed changes as fast-track regulations pursuant to § 2.2-4012.1 of the Code of Virginia. Agency action in adopting the model public participation guidelines in accordance with clause (a) shall be exempt from the operation of Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia. The repeal of any existing public participation guidelines shall occur in the same regulatory action as the promulgation of the model public participation guidelines required by this section.*

§ 2. *The model public participation guidelines adopted pursuant to this act shall apply to the promulgation and adoption of regulations for which a notice of intended regulatory action is filed in accordance with § 2.2-4007.01 of the Code of Virginia on or after January 1, 2009.*

§ 3. *However, any amendments made after January 1, 2009, to an agency's public participation guidelines adopted as required by this act shall be subject to the requirements of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).*

§ 4. *For the purposes of this act, the terms "agency" and "regulations" mean the same as those terms are defined in § 2.2-4001 of the Code of Virginia.*

CHAPTER \_\_  
MODEL PUBLIC PARTICIPATION GUIDELINES  
(effective January 1, 2009)

Part I  
Purpose and Definitions

\_\_VAC\_\_ - \_\_-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the [Insert name of Board/Department]. 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).

\_\_VAC\_\_ - \_\_-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 [Insert the name of Board/Department], 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](http://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

\_\_\_VAC\_\_\_ - \_\_\_-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.

\_\_VAC\_\_ - \_\_-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 \_\_VAC\_\_ - \_\_-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

\_\_VAC\_\_ - \_\_-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 or in writing, 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 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.

\_\_\_VAC\_\_\_ - \_\_\_-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.

\_\_VAC\_\_ - \_\_-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.

\_\_VAC\_\_ - \_\_-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.

\_\_VAC\_\_ - \_\_-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.

\_\_VAC\_\_ - \_\_-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 \_\_VAC\_\_ - \_\_-100.C.3.

\_\_VAC\_\_ - \_\_-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.

CHAPTER \_\_\_\_  
PUBLIC PARTICIPATION GUIDELINES  
(in effect until January 1, 2009)

\_\_VAC\_\_ - \_\_\_\_-10. Definitions.

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

"Administrative Process Act" means Chapter 1.1:1 (§9-6.14:1 et seq.) of Title 9 of the Code of Virginia.

"Agency" means the Department of Environmental Quality including staff, etc., established pursuant to Virginia law that implements programs and provides administrative support to the approving authority.

"Approving authority" means the [Insert name of Board/Department] established pursuant to Virginia law as the legal authority to adopt regulations.

"Director" means the Director of the Department of Environmental Quality or his designee.

"Environmental Protection Law" means the provisions found in Virginia statutory law authorizing the approving authority, director or agency to make regulations or containing procedural requirements of them.

"Formal hearing" means agency processes other than those informational or factual inquiries of an informal nature provided in §9-6.14:7.1 of the Administrative Process Act and includes only opportunity for private parties to submit factual proofs in formal proceedings as provided in §9-6.14:8 of the Administrative Process Act.

"Locality particularly affected" means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

"Participatory approach" means a method for the use of (i) standing advisory committees, (ii) ad hoc advisory groups or panels, (iii) consultation with groups or individuals registering interest in working with the agency, or (iv) any combination of them in the formation and development of regulations for agency consideration. When an ad hoc advisory group is formed, the group shall include representatives of the regulated community and the general public. The decisions as to the membership of the group shall be at the discretion of the director.

"Person" means an individual, a corporation, a partnership, an association, a governmental body, a municipal corporation, or any other legal entity.

"Public hearing" means an informal proceeding, held in conjunction with the Notice of Public Comment and similar to that provided for in §9-6.14:7.1 of the Administrative Process Act, to afford persons an opportunity to submit views and data relative to regulations on which a decision of the approving authority is pending.

"Public meeting" means an informal proceeding conducted by the agency in conjunction with the Notice of Intended Regulatory Action to afford persons an opportunity to submit comments relative to intended regulatory actions.

Unless specifically defined in the Virginia Environmental Protection Law or in this chapter, terms used shall have the meanings commonly ascribed to them.

\_\_VAC\_\_ - \_\_-20. General.

A. The procedures in \_\_VAC\_\_ - \_\_-30 of this chapter shall be used for soliciting the input of interested persons in the formation and development, amendment or repeal of regulations in accordance with the Administrative Process Act. This chapter does not apply to regulations exempted from the provisions of the Administrative Process Act (§9-6.14:4.1 A and B) or excluded from the operation of Article 2 of the Administrative Process Act (§9-6.14:4.1 C).

B. The failure of any person to receive any notice or copies of any documents provided under these guidelines shall not affect the validity of any regulation.

C. Any person may petition the director for the adoption, amendment or repeal of a regulation. The petition, at a minimum, shall contain the following information:

1. Name of petitioner;
2. Petitioner's mailing address and telephone number;
3. Petitioner's interest in the proposed action;
4. Recommended regulation or addition, deletion or amendment to a specific regulation or regulations;
5. Statement of need and justification for the proposed action;
6. Statement of impact on the petitioner and other affected persons; and
7. Supporting documents, as applicable.

The director shall provide a written response to such petition within 180 days from the date the petition was received.

\_\_VAC\_\_ - \_\_-30. Public participation procedures.

A. The agency shall establish and maintain a list or lists consisting of persons expressing an interest in the adoption, amendment or repeal of regulations. Any person wishing to be placed on any list may do so by writing the agency. In addition, the agency, at its discretion, may add to any list any person, organization or publication it believes will be interested in participating in the promulgation of regulations. Individuals and organizations may be periodically requested to indicate their desire to continue to receive documents or be deleted from a list. Individuals and organizations may be deleted from any list at the request of the individual and organization, or at the discretion of the agency when mail is returned as undeliverable.

B. Whenever the approving authority so directs or upon its own initiative, the agency may commence the regulation adoption process and proceed to draft a proposal according to these procedures.

C. The agency shall use the participatory approach to assist in the development of the proposal or use one of the following alternatives:

1. Proceed without using the participatory approach if the approving authority specifically authorizes the agency to proceed without using the participatory approach; or

2. Include in the Notice of Intended Regulatory Action (NOIRA) a statement inviting comment on whether the agency should use the participatory approach to assist the agency in the development of the proposal. If the agency receives written responses from at least five persons during the associated comment period indicating that the agency should use the participatory approach, the agency will use the participatory approach requested. Should different approaches be requested, the director shall determine the specific approach to be utilized.

D. The agency shall issue a NOIRA whenever it considers the adoption, amendment or repeal of any regulation.

1. The NOIRA shall include the following:

- a. A description of the subject matter of the planned regulation;
- b. A description of the intent of the planned regulation;
- c. A brief statement as to the need for regulatory action;
- d. A brief description of alternatives available, if any, to meet the need;

e. A request for comments on the intended regulatory action, to include any ideas to assist the agency in the development of any proposal;

f. A request for comments on the costs and benefits of the stated alternatives or other alternatives;

g. A statement of the agency's intent to hold at least one public hearing on the proposed regulation after it is published in The Virginia Register of Regulations; and

h. A statement inviting comment on whether the agency should use the participatory approach to assist the agency in the development of any proposal. Including this statement shall only be required when the agency makes a decision to pursue the alternative provided in subdivision C 2 of this section.

2. The agency shall hold at least one public meeting whenever it considers the adoption, amendment or repeal of any regulation unless the director specifically authorizes the agency to proceed without holding a public meeting. In those cases where public meetings will be held, the NOIRA shall also include the date, not to be less than 30 days after publication in The Virginia Register of Regulations, time and place of the public meetings.

3. The public comment period for NOIRAs under this section shall be no less than 30 days after publication of the NOIRA in The Virginia Register of Regulations.

E. The agency shall disseminate the NOIRA to the public via the following:

1. Distribution to the Registrar of Regulations for publication in The Virginia Register of Regulations; and

2. Distribution by mail to persons on the lists established under subsection A of this section.

F. After consideration of public input, the agency may complete the draft proposed regulation and any supporting documentation required for review. If the participatory approach is being used, the draft regulation shall be developed in consultation with the participants. A summary or copies of the comments received in response to the NOIRA shall be distributed to the participants during the development of the draft regulation. This summary or copies of the comments received in response to the NOIRA shall also be distributed to the approving authority.

G. Upon approval of the draft proposed regulation by the approving authority, the agency shall publish a Notice of Public Comment (NOPC) and the proposal for public comment.

H. The NOPC shall include at least the following:

1. The notice of the opportunity to comment on the proposed regulation, location of where copies of the draft may be obtained and name, address and telephone number of the individual to contact for further information about the proposed regulation;

2. A request for comments on the costs and benefits of the proposal;

3. The identity of any locality particularly affected by the proposed regulation;

4. A statement that an analysis of the following has been conducted by the agency and is available to the public upon request:

a. A statement of purpose: the rationale or justification for the new provisions of the regulation, from the standpoint of the public's health, safety or welfare;

b. A statement of estimated impact:

(1) Projected number and types of regulated entities or persons affected.

(2) Projected cost, expressed as a dollar figure or range, to regulated entities (and to the public, if applicable) for implementation and compliance. In those instances where the agency is unable to quantify projected costs, it shall offer qualitative data, if possible, to help define the impact of the regulation. Such qualitative data shall include, if possible, an example or examples of the impact of the proposed regulation on a typical member or members of the regulated community.

(3) Projected cost to the agency for implementation and enforcement.

(4) The beneficial impact the regulation is designed to produce.

c. An explanation of need for the proposed regulation and potential consequences that may result in the absence of the regulation;

d. An estimate of the impact of the proposed regulation upon small businesses as defined in §9-199 of the Code of Virginia or organizations in Virginia;

e. A description of provisions of the proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed;

f. A discussion of alternative approaches that were considered to meet the need the proposed regulation addresses, and a statement as to whether the

agency believes that the proposed regulation is the least burdensome alternative to the regulated community that fully meets the stated purpose of the proposed regulation; and

g. A schedule setting forth when, after the effective date of the regulation, the agency will evaluate it for effectiveness and continued need.

5. The date, time and place of at least one public hearing held in accordance with §9-6.14:7.1 of the Code of Virginia to receive comments on the proposed regulation. The public hearings may be held at any time during the public comment period and, whenever practicable, no less than 15 days prior to the close of the public comment period. The public hearings may be held in such locations as the agency determines will best facilitate input from interested persons. In those cases where the agency elects to conduct a formal hearing, the notice shall indicate that the formal hearing will be held in accordance with §9-6.14:8 of the Code of Virginia.

I. The public comment period shall close no less than 60 days after publication of the NOPC in The Virginia Register.

J. The agency shall disseminate the NOPC to the public via the following:

1. Distribution to the Registrar of Regulations for:

a. Publication in The Virginia Register of Regulations; and

b. Publication in a newspaper of general circulation published at the state capital and such other newspapers as the agency may deem appropriate.

2. Distribution by mail to persons on the lists established under subsection A of this section.

K. The agency shall prepare a summary of comments received in response to the NOPC and the agency's response to the comments received. The agency shall send a draft of the summary of comments to all public commenters on the proposed regulation at least five days before final adoption of the regulation. The agency shall submit the summary and agency response and, if requested, submit the full comments to the approving authority. The summary, the agency response, and the comments shall become a part of the agency file and after final action on the regulation by the approving authority, made available, upon request, to interested persons.

L. If the agency determines that the process to adopt, amend or repeal any regulation should be terminated after approval of the draft proposed regulation by the approving authority, the agency shall present to the approving authority for their consideration a recommendation and rationale for the withdrawal of the proposed regulation.

M. Completion of the remaining steps in the adoption process shall be carried out in accordance with the Administrative Process Act.

\_\_VAC\_\_ - \_\_-40. Transition.

A. All regulatory actions for which a NOIRA has been published in The Virginia Register of Regulations prior to May 18, 1994, shall be processed in accordance with the emergency Public Participation Guidelines VR 304-01-01 which are effective from June 29, 1993, until June 28, 1994, unless sooner modified or vacated or superseded by permanent regulations.

B. This chapter shall supersede and repeal the emergency Public Participation Guidelines which became effective June 29, 1993. All regulatory actions for which a NOIRA has not been published in The Virginia Register of Regulations prior to May 18, 1994, shall be processed in accordance with this chapter.