



## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	Virginia Department of Health
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 20-10
<b>Regulation title</b>	Guidelines for Public Participation in Developing Regulations
<b>Action title</b>	Repealing this regulatory chapter of the defunct Virginia Health Planning Board,
<b>Date this document prepared</b>	5/22/2013

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

Once the governing board for the Virginia Certificate of Public Need Program (COPN), the Virginia Health Planning Board (VHPB) was abolished in 2002 (Acts of Assembly, c. 83) when its oversight and regulatory authority was transferred to the Virginia Board of Health. Although the duties and oversight of the health planning regions (HPR) was transferred, the regulations remained the designate of the defunct VHPB. Over the succeeding years, four of the five designated HPR ceased operation, no longer able to meet financial obligations to remain operationally viable. Legislation in 2009 (HB1958) and 2010 (HB1285) codified to the Department of Health the authority to conduct local public hearings in the review of requests for COPNs and conveyed responsibility for notifying local governments of pending reviews when no regional health planning agency had been designated. As the VHPB no longer exists and this chapter was duplicative of law under the VHPB, the department is taking this action to repeal the entire regulatory chapter 12VAC20-10.

### 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.*

Pursuant to § 32.1-20 of the Code of Virginia, the State Health Commissioner signed this action for the Board of Health when not in session.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.*

Section 32.1-12 of the Code of Virginia provides the legal basis to repeal this chapter. In addition, Governor McDonnell instructed all regulatory agencies "to conduct a comprehensive review of regulations currently in place and repeal regulations that are unnecessary or no longer in use..." The five regulatory chapters of the VHPB were deemed appropriate for repeal as part of that initiative. This regulatory chapter has not been enforced since 2002, when the Virginia Health Planning Board was abolished.

### 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 regulatory chapter no longer serves its intended purpose, and is not necessary to protect the health, safety or welfare of citizens; therefore, the department is taking action to repeal the entire chapter. Because the 2002 legislation transferred oversight of the HPRs to the department, the department has the authority to promulgate regulations should there be a need in the future.

### 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 30-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 objections 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.*

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The department is seeking to repeal the entire chapter 12VAC20-10. The regulation has not been enforced since 2002, when the VHPB was abolished (Acts of Assembly 2002, c. 83.). Since the department did not receive a direct legislative mandate to repeal the VHPB regulations, the department has chosen Fast Track to expedite the repeal process. As the VHPB no longer exists and this chapter was duplicative of law under the VHPB, the department is taking this action to repeal the entire regulatory chapter 12VAC20-10.

### 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.) Please be sure to define any acronyms.*

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The regulatory chapter is duplicative of statutory provisions and no longer serves its intended purpose; therefore, the department is taking action to repeal the entire chapter. The department has the authority to promulgate regulations should there be a need in the future.

### 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.*

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The regulatory chapter is duplicative of statutory provisions and no longer serves its intended purpose; therefore, the department is taking action to repeal the entire chapter. Governor McDonnell instructed all regulatory agencies "to conduct a comprehensive review of regulations currently in place and repeal regulations that are unnecessary or no longer in use.." In keeping with this goal, this action is advantageous to the public, the agency and the Commonwealth as it removes an unnecessary regulation from the Virginia Administrative Code. The department has the authority to promulgate regulations should there be a need in the future. There are no disadvantages to the public or the Commonwealth.

### 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.*

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There are no applicable federal regulations. This action is to repeal an existing regulation; therefore this action is not creating a regulation that is more restrictive than federal regulations.

**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.*

Of the original five HPRs, one remains active. Repeal of this regulation is not expected to undermine the currently status of that remaining HPR as it has been functioning under the authority of the Board of Health since 2002 when the Virginia Health Planning Board was abolished.

**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 regulation has been determined no longer necessary. Therefore, VDH is taking this action to repeal the chapter.

**Economic impact**

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.*

<b>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</b>	N/A
<b>Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.</b>	N/A
<b>Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.</b>	N/A
<b>Agency’s best estimate of the number of such entities that will be affected. Please include an</b>	N/A

<p><b>estimate of the number of small businesses affected.</b> 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><b>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</b></p>	N/A
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	N/A

**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.*

The alternative would be to retain the current regulation. However, since 4 of the 5 HPRs no longer function, VDH has determined this regulation is no longer necessary.

**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.*

There is no direct impact on the institution of the family or family stability.

**Detail of changes**

*Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact.*

Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

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

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For changes to existing regulation(s), use this chart:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change, intent, rationale, and likely impact of proposed requirements</b>
10 - 130			Repeal all sections, chapter 12VAC20-10 no longer enforced as explained above.

Enter any other statement here