

PUBLIC PARTICIPATION GUIDELINES

**22 VAC 40-11**

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~~PART I~~

~~GENERAL PROVISIONS~~

**22 VAC 40-11-10. 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 (APA)" means Chapter ~~4:1:1~~ 40 (§ ~~9-6.14:1~~ 2.2-4000 et seq.) of Title ~~9~~ 2.2 of the Code of Virginia.

"Approving authority" means State Board of Social Services.

"Board" means State Board of Social Services.

"Commissioner" means the Commissioner of the Department of Social Services or his designee.

"Department" means Department of Social Services.

"Division" means organizational entity within the Department, designated by the commissioner, which develops regulations subject to the Administrative Process Act.

"Governor's Executive Order" means any policy or procedure issued by the Governor under § ~~2.1-41.1~~ 2.2-103 or § ~~9-6.14:9.1A~~ 2.2-4013 of the Code of Virginia establishing the administrative policy and procedures for gubernatorial review and

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regulatory actions governed by the Administrative Process Act.

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

**22 VAC 40-11-20. Application.**

These guidelines apply to all regulations promulgated by the board.

~~PART II~~

~~PUBLIC PARTICIPATION~~

**22 VAC 40-11-30. General.**

A. The procedures in ~~22 VAC 40-11-70~~ 22 VAC 40-11-50 shall be used for soliciting the input of interested persons in the initial formation and development, amendment or repeal of regulations in accordance with the Administrative Process Act. This chapter does not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ ~~9-6.14:4-1~~ 2.2-4006 of the Code of Virginia).

B. The department shall follow the policies and procedures established by the Administrative Process Act and the Governor's Executive Order in developing emergency, proposed and final adoption, amendment or repeal of regulations.

C. At the discretion of the approving authority or the department, the public participation procedures in ~~22 VAC 40-11-70~~ 22 VAC 40-11-50 may be supplemented to

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provide additional public participation in the regulation adoption process or as necessary to meet federal requirements.

D. 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 regulations otherwise adopted in accordance with this chapter.

**22 VAC 40-11-40. Petitions from interested parties.**

Any person may petition the agency to develop a new regulation or to adopt, amend or repeal 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 new 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 department shall provide a written response to such petition pursuant to the provisions of subsection A. of § 2.2-4007 of the Code of Virginia.

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**22 VAC 40-11-50. Solicitation of input.**

A. Each division of the department shall establish and maintain ~~a list or~~ lists consisting of persons expressing an interest in the adoption, amendment or repeal of regulations under its administration, management or supervision. Persons may request the addition of their name and address to the ~~list~~ lists at any time. Persons who elect to be included on an electronic mailing list may also request that all mailings be sent in hard copy. The lists will be updated as additional interested parties are identified. Deletions will be made when either regular or electronic mail is returned undeliverable or a lack of interest is determined by the division as a result of periodic contact initiated by the division.

B. The department may form an ad hoc advisory group or utilize a standing advisory committee to assist in the drafting, formation or review of a proposal when expertise is necessary to address a specific regulatory interest or issue, or when persons register an interest in the subject of the regulation and in working with the department.

C. Whenever a division identifies a need for the adoption, amendment or repeal of regulations under its administration, management or supervision, it may commence the regulation adoption process according to these procedures.

D. Upon approval by the board, ~~The~~ the department shall issue a Notice of

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Intended Regulatory Action (NOIRA) which describes the subject matter and intent of the planned regulation for all regulatory proposals in accordance with the Administrative Process Act. The NOIRA shall state whether the department intends to hold a public hearing.

E. The commissioner shall disseminate the NOIRA to the public by:

1. Distribution to the Registrar of Regulations for publication in the Virginia Register, and
2. Distribution ~~by mail~~ to parties on the ~~list~~ lists established under subsection A of this section by mail or electronic transmission as chosen by the parties.

F. The department shall consider public comment in drafting proposed regulations and the department shall make provisions for receiving comment by regular mail, the internet, facsimile and other electronic means.

G. Upon approval by the board of the proposed regulations prepared by the department, the department shall solicit public comment through:

1. Distribution to the Registrar of Regulations for publication in the Virginia Register, and
2. ~~Publication of a Notice of Comment Period in a newspaper of general circulation published at the state capitol and such other newspapers as the department may deem appropriate, and~~

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3. Distribution of a notice of comment ~~by mail~~ period to persons on the ~~list(s)~~ lists established under subsection A of this section.

H. At the discretion of the board, the department may solicit public comment on a proposed regulation through publication of a notice in any newspaper as determined by the board. Any notice published shall comply with the provisions of subsection F. of § 2.2-4007 of the Code of Virginia.

I. The board shall consider public comment in approving final regulations. The department shall make provisions for receiving comment on the proposed regulation by regular mail, the internet, facsimile and other electronic means. At the conclusion of the public comment period, the department shall provide that comment to the board.

**22 VAC 40-11-60. Public hearings.**

A. The board shall permit public comment concerning the adoption, amendment, or repeal of a regulation submitted for its promulgation during the board's regularly scheduled public comment period of its authorized meetings in conformity with the established rules of the board. The board may allow public comment about a proposed regulation at a committee meeting when the proposed regulation is under consideration by the committee.

B. When the NOIRA states that the department does not plan to hold a hearing on the proposed regulation, the department shall schedule a hearing when it determines

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that there is sufficient public interest in a proposed regulation through receipt of requests for a hearing from 25 people or more. The hearing(s) may be held at any time during the public comment period and at such times and locations as the department decides will best facilitate input from interested persons.

**22 VAC 40-11-70. Withdrawal of regulations.**

If the department determines that the process to adopt, amend or repeal any regulation should be terminated after promulgation of the proposed regulation by the approving authority, the department shall present a recommendation and rationale for the withdrawal of the proposed regulation to the approving authority.