Report of EO-17 Work Group

Recommendations:

1. The Governor's Office should adopt an internal policy that sets a time period for review by the Governor for each stage of the regulatory process. The policy could include a provision for the extension of any time period in a particular case after review and determination that the time period cannot be met.

The Work Group recommends the follow time periods:

a. Notice of Intended Regulatory Action: 14 days.

b. Proposed: No specific time recommended; discuss with full committee.

c. Revised proposed: same?

d. Final - no changes or changes that are not substantial: 30 days.

e. Final - substantial changes: 60 days.

f. Fast-Track: 30 days.

g. Emergency: no set period, but be mindful of 280 days.

2. The Office of the Attorney General should adopt an internal policy that sets a timeframe for review, if a timeframe does not already exist. Kristina is looking into this, and the work group will reconvene.

3. The work group also discussed whether it would be helpful for an agency to provide information to the executive branch regarding its proposed timeline for the regulatory process (such as board meetings, publication date). No final recommendation was reached. We can discuss this further with the full committee or when the work group reconvenes.

Comments: The work group noted that the EO had been streamlined and definitions were added, which made it an improved, more useful document.

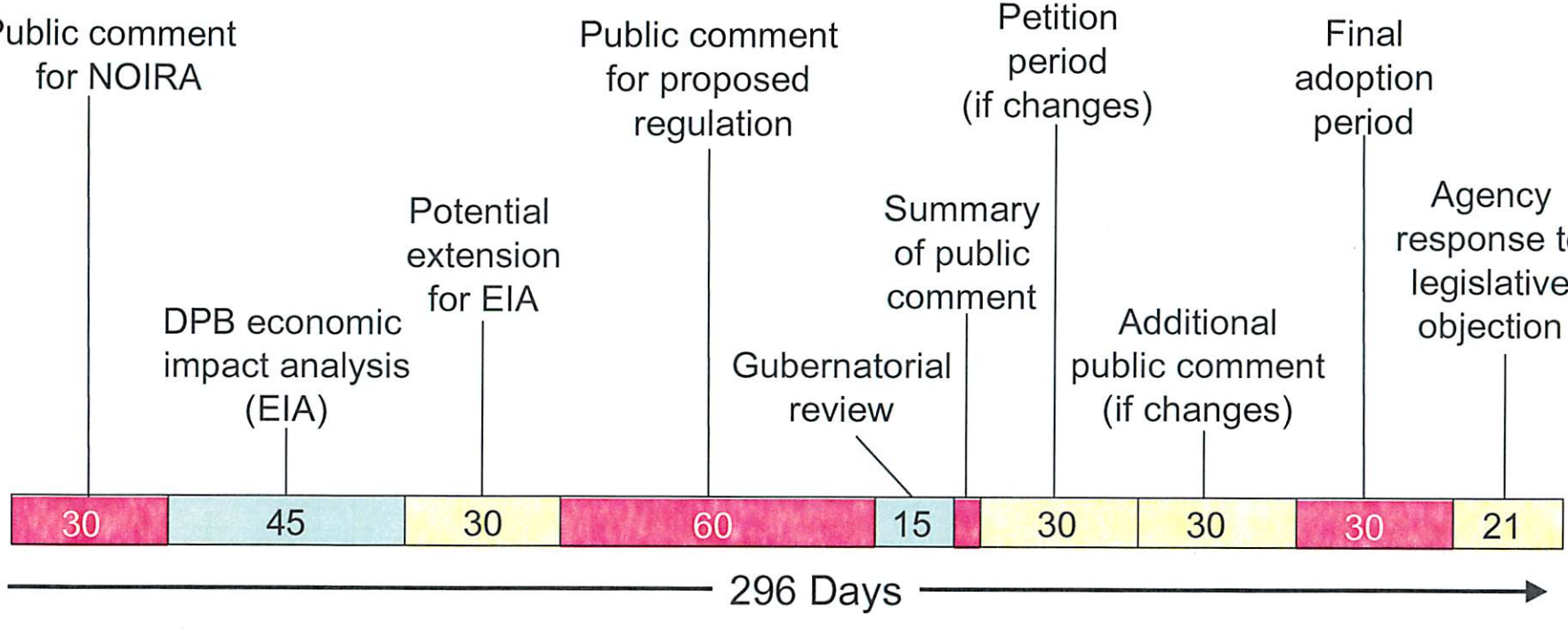
The section on guidance documents now gives agencies the option of either posting the actual guidance document itself on Town Hall or posting a link to the guidance document.

The section on periodic review clarifies that a periodic review may be accomplished during the course of a comprehensive regulatory action.

Administrative Process and Executive Branch Review -JLARC 2009 Report on APA Exemptions		
Stage	**APA**	**EO 17 (and several others before it)**
NOIRA		
	2.2-4007.01 Requires publication in Register *Note - JLARC states:* *APA does not address executive branch review before publication (p. 36)*	Before publication, requires: • DPB review - 14 days • Secretary review - only if DPB indicates further review is needed - 14 days • Governor approval Agency required to submit package to Registrar within 14 days of approval
Proposed		
	2.2-4007.04 Before submitting proposed regulation to Registrar, agency must submit regulation to DPB DPB determines public benefit and, in coordination with agency, conducts economic impact analysis - 45 days (with additional 30 days, if necessary) 2.2-4007.03 Requires: • publication in Register & posting on Town Hall • 60-day minimum public comment period after publication 2.2-4013 A Governor's executive order for review of proposed regulations: • must include review by OAG to ensure statutory authority • must include examination by Governor to determine that proposal is (i) necessary for public health, safety, and welfare and (ii) clearly written and understandable • may include review by Secretary Governor must transmit comments, if any, on proposed regulations to Registrar and agency within 15 days of end of 60-day public comment period Governor may recommend amendments for conformity with laws, regulations, or court decisions Agency may adopt regulation with or without recommended amendments of Governor, but adoption must be at least 15 days after end of 60-day public comment period	Before publication, requires: • OAG review • DPB policy analysis (whether regulation conforms to EO, statutes, & other policies) and economic impact analysis - 45 days • Secretary review • Governor approval Agency required to submit package to Registrar within 14 days of approval by Governor *Note - JLARC states:* • *Other than DPB review, there are no other APA requirements for executive review at proposed stage (p. 37)* • *APA is not clear if EO procedures for review at proposed stage are in advance of submission to Registrar for publication as well as after publication (p. 37)* • *APA does not state that cabinet secretary or Governor must "approve" proposed regulation before submission to Registrar. Instead, provision for Governor and legislative action are set out in APA at final stage (p. 37)*

Final		
	2.2-4012 E: Immediately upon adoption, agency submits regulation to the Registrar 2.2-4013 B: Upon final adoption, agency shall forward regulation to Registrar; all changes since proposed must be highlighted. 2.2-4013 C: During the 30-day final comment period, Governor may review whether agency has made changes with substantial impact to proposed, and notify agency & Registrar of required additional 30 day public comment period regarding such changes 2.2-4013 D: Publication in the Virginia Register begins a 30-day final adoption period. Governor may review final regulation during 30-day final adoption period and file an objection, suspend the regulation with concurrence of appropriate legislative body, or both. Formal objection or suspension must be filed prior to end of 30-day final adoption period.	Before publication, requires: • DPB review - 14 days • Secretary review - only if DPB indicates further review is needed - 14 days • Governor approval *Note: JLARC states:* *APA provides for executive branch review of final, but no provision for review of adopted final regulation prior to submission to Registrar (p. 39)* *APA does not require an agency to stop action on a regulation or withdraw the regulation solely due to governor's objection (p. 32)*
All Stages	*Note: JLARC states:* *APA does not expressly grant DPB, cabinet secretaries, or the Governor the authority to disapprove or refuse to authorize publication of a NOIRA, a proposed regulation, or a final regulation (p. 32)* *Exhibit 1 (Key Provisions for Executive Branch Review Contained in Executive Order (EO) 36 but Not Contained in VAPA) of the JLARC report is basically still correct due to similarities between EO 36 (2006) and EO 17 (2014) (p. 34)*	*JLARC options to expedite Executive Branch review (p. 43-44):* *1. Eliminate executive branch review at the NOIRA stage* *2. Limit Department of Planning and Budget review to economic impact analysis* *3. Explicitly authorize agencies to proceed with submitting proposed regulation if Governor has not acted within set amount of time* *4. Require Governor to comment on proposed regulation within 15 days following close of public comment period* *5. For fast-track regulations, require executive branch review to be completed within 40 to 50 days*

Timeframes Explicitly Set Forth by VAPA



	Total time	
	Days	Months
Minimum time required to complete stage	125	4.1
Time provided for analysis and review	60	2.0
Additional time allowed for some regulations	111	3.6

§ 2.2-4024.2. *Ex Parte* Communications (Option 1)

A. Except as otherwise provided in this section, while a contested case is pending, the hearing officer or presiding officer may not make to or receive from any person any communication concerning the case without notice and opportunity for all parties to participate in the communication.

B. A hearing officer or presiding officer may communicate about a pending contested case with any person if the communication is required for the disposition of *ex parte* matters authorized by statute or concerns an uncontested procedural issue.

C. A hearing officer or presiding officer may communicate about a pending contested case with an individual authorized by law to provide legal advice to the hearing officer or presiding officer and may communicate on ministerial matters with an individual who serves on the administrative staff of the hearing officer or presiding officer if the individual providing legal advice or ministerial information has not served as investigator, prosecutor, or advocate at any stage of the case, and if the communication does not augment, diminish, or modify the evidence in the record.

D. An agency employee or representative of the agency that is the presiding officer in a pending contested case may communicate about that case with another employee or representative of the agency if:

> **(1) the employee or representative: (A) has not served as investigator, prosecutor, or advocate at any stage of the case; (B) has not otherwise had a communication with any person about the case other than a communication a presiding officer is permitted to make or receive under this section or a communication permitted by this section; and**
>
> **(2) the communication does not augment, diminish, or modify the evidence in the agency hearing record and is:**
>
> > **(a) an explanation of the technical or scientific basis of, or technical or scientific terms in, the evidence in the agency hearing record;**
> >
> > **(b) an explanation of the precedent, policies, or procedures of the agency; or**
> >
> > **(c) any other communication that does not address the quality or sufficiency of, or the weight that should be given to, evidence in the agency hearing record or the credibility of witnesses.**

E. If a hearing officer or presiding officer makes or receives a communication in violation of this section, the hearing officer or presiding officer:

(1) if the communication is in a record, shall make the record of the communication a part of the hearing record and prepare and make part of the hearing record a memorandum that contains the response of the hearing officer or presiding officer or final decision maker to the communication and the identity of the person that communicated; or

(2) if the communication is oral, shall prepare a memorandum that contains the substance of the verbal communication, the response of the hearing officer or presiding officer or final decision maker to the communication, and the identity of the person that communicated.

F. If a communication prohibited by this section is made, the hearing officer or presiding officer shall notify all parties of the prohibited communication and permit parties to respond in a record not later than 15 days after the notice is given. For good cause, the hearing officer or presiding officer may permit additional testimony in response to the prohibited communication.

G. If a hearing officer or presiding officer is a member of a multi-member body of individuals that is the agency head, the hearing officer or presiding officer may communicate with the other members of the body when sitting as the hearing officer or presiding officer. Otherwise, while a contested case is pending, no communication, direct or indirect, regarding any issue in the case may be made between the hearing officer or presiding officer and members of the body. ~~Notwithstanding any provision of [state open meetings law], a communication permitted by this subsection is not a meeting.~~

H. If necessary to eliminate the effect of a communication received in violation of this section, a hearing officer or presiding officer may be disqualified under § 2.2-4021.1, the parts of the record pertaining to the communication may be sealed by protective order, or other appropriate relief may be granted, including an adverse ruling on the merits of the case.

§ 2.2-4024.2. *Ex Parte* Communications (Option 2)

A. Except as otherwise provided in this section, while a contested case is pending, the hearing officer may not make to or receive from any person any communication concerning the case without notice and opportunity for all parties to participate in the communication.

B. A hearing officer may communicate about a pending contested case with any person if the communication is required for the disposition of *ex parte* matters authorized by statute or concerns an uncontested procedural issue.

C. A hearing officer may communicate about a pending contested case with an individual authorized by law to provide legal advice to the hearing officer or presiding officer and may communicate on ministerial matters with an individual who serves on the administrative staff of the hearing officer if the individual providing legal advice or ministerial information has not served as investigator, prosecutor, or advocate at any stage of the case, and if the communication does not augment, diminish, or modify the evidence in the record.

D. If a hearing officer makes or receives a communication in violation of this section, the hearing officer:

> **(1) if the communication is in a record, shall make the record of the communication a part of the hearing record and prepare and make part of the hearing record a memorandum that contains the response of the hearing officer or presiding officer or final decision maker to the communication and the identity of the person that communicated; or**
>
> **(2) if the communication is oral, shall prepare a memorandum that contains the substance of the verbal communication, the response of the hearing officer or presiding officer or final decision maker to the communication, and the identity of the person that communicated.**

E. If a communication prohibited by this section is made, the hearing officer shall notify all parties of the prohibited communication and permit parties to respond in a record not later than 15 days after the notice is given. For good cause, the hearing officer may permit additional testimony in response to the prohibited communication.

F. If necessary to eliminate the effect of a communication received in violation of this section, a hearing officer may be disqualified under § 2.2-4021.1, the parts of the record pertaining to the communication may be sealed by protective order, or other appropriate relief may be granted, including an adverse ruling on the merits of the case.

§ 2.2-4024. Hearing officers.

A. In all formal hearings conducted in accordance with § 2.2-4020, the hearing shall be presided over by a hearing officer selected from a list prepared by the Executive Secretary of the Supreme Court and maintained in the Office of the Executive Secretary of the Supreme Court. Parties to informal fact-finding proceedings conducted pursuant to § 2.2-4019 may agree at the outset of the proceeding to have a hearing officer preside at the proceeding, such agreement to be revoked only by mutual consent. The Executive Secretary may promulgate rules necessary for the administration of the hearing officer system and shall have the authority to establish the number of hearing officers necessary to preside over administrative hearings in the Commonwealth.

Prior to being included on the list, all hearing officers shall meet the following minimum standards:

1. Active membership in good standing in the Virginia State Bar;

2. Active practice of law for at least five years; and

3. Completion of a course of training approved by the Executive Secretary of the Supreme Court. In order to comply with the demonstrated requirements of the agency requesting a hearing officer, the Executive Secretary may require additional training before a hearing officer shall be assigned to a proceeding before that agency.

B. On request from the head of an agency, the Executive Secretary shall name a hearing officer from the list, selected on a rotation system administered by the Executive Secretary. Lists reflecting geographic preference and specialized training or knowledge shall be maintained by the Executive Secretary if an agency demonstrates the need.

C. A hearing officer appointed **in accordance with this section** shall be **subject to disqualification as provided in § 2.2-4024.1. If the hearing officer denies a petition for disqualification pursuant to subsection D of § 2.2-4024.1, the petitioning party may request reconsideration of the denial by filing a written request with the Executive Secretary ~~of the Supreme Court,~~** ~~voluntarily disqualify himself and withdraw from any case in which he cannot accord a fair and impartial hearing or consideration, or when required by the applicable rules governing the practice of law in the Commonwealth. Any party may request the disqualification of a hearing officer by filing~~ **along with** an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded, or the applicable rule of practice requiring disqualification.

The issue shall be determined not less than 10 days prior to the hearing by the Executive Secretary ~~of the Supreme Court~~.

D. Any hearing officer empowered by the agency to provide a recommendation or conclusion in a case decision matter shall render that recommendation or conclusion within 90 days from the date of the case decision proceeding or from a later date agreed to by the named party and the agency. If the hearing officer does not render a decision within 90 days, then the named party to

the case decision may provide written notice to the hearing officer and the Executive Secretary of the Supreme Court that a decision is due. If no decision is made within 30 days from receipt by the hearing officer of the notice, then the Executive Secretary of the Supreme Court shall remove the hearing officer from the hearing officer list and report the hearing officer to the Virginia State Bar for possible disciplinary action, unless good cause is shown for the delay.

E. The Executive Secretary shall remove hearing officers from the list, upon a showing of cause after written notice and an opportunity for a hearing. When there is a failure by a hearing officer to render a decision as required by subsection D, the burden shall be on the hearing officer to show good cause for the delay. Decisions to remove a hearing officer may be reviewed by a request to the Executive Secretary for reconsideration, followed by judicial review in accordance with this chapter.

F. This section shall not apply to hearings conducted by (i) any commission or board where all of the members, or a quorum, are present; (ii) the Alcoholic Beverage Control Board, the Virginia Workers' Compensation Commission, the State Corporation Commission, the Virginia Employment Commission, the Department of Motor Vehicles under Title 46.2 (§ 46.2-100 et seq.), § 58.1-2409, or Chapter 27 (§ 58.1-2700 et seq.) of Title 58.1, or the Motor Vehicle Dealer Board under Chapter 15 (§ 46.2-1500 et seq.) of Title 46.2; or (iii) any panel of a health regulatory board convened pursuant to § 54.1-2400, including any panel having members of a relevant advisory board to the Board of Medicine. All employees hired after July 1, 1986, pursuant to §§ 65.2-201 and 65.2-203 by the Virginia Workers' Compensation Commission to conduct hearings pursuant to its basic laws shall meet the minimum qualifications set forth in subsection A. Agency employees who are not licensed to practice law in the Commonwealth, and are presiding as hearing officers in proceedings pursuant to clause (ii) shall participate in periodic training courses.

G. Notwithstanding the exemptions of subsection A of § 2.2-4002, this article shall apply to hearing officers conducting hearings of the kind described in § 2.2-4020 for the Department of Game and Inland Fisheries, the Virginia Housing Development Authority, the Milk Commission, and the Virginia Resources Authority pursuant to their basic laws.

§ 2.2-4024.1. Disqualification. (OPTION 1)

A. An individual who has served as investigator, prosecutor, or advocate at any stage in a contested case or who is subject to the authority, direction, or discretion of an individual who has served as investigator, prosecutor, or advocate at any stage in a contested case may not serve as the presiding officer or hearing officer in the same case. An agency head that has participated in a determination of probable cause or other preliminary determination in an adjudication may serve as the presiding officer in the adjudication unless a party demonstrates grounds for disqualification under subsection B.

B. A presiding officer or hearing officer is subject to disqualification for bias, prejudice, financial interest, ex parte communications as provided in § 2.2-4024.2, or any other factor that would cause a reasonable person to question the impartiality of the presiding officer or hearing officer. The presiding officer or hearing officer, after making a reasonable inquiry, shall disclose to the parties any known facts related to grounds for disqualification which are material to the impartiality of the presiding officer or hearing officer in the proceeding. The presiding officer or hearing officer may self-disqualify and withdraw from any case for the aforementioned reasons.

C. A party may petition for the disqualification of the presiding officer or hearing officer promptly after notice that the person will preside or, if later, promptly on discovering facts establishing a ground for disqualification. The petition must state with particularity the ground on which it is claimed that a fair and impartial hearing cannot be accorded or the applicable rule or canon of practice or ethics that requires disqualification. The petition may be denied if the party fails to promptly request disqualification after discovering a ground for disqualification.

D. A presiding officer not appointed pursuant to the provisions of § 2.2-4024, whose disqualification is requested shall decide whether to grant the petition and state in a record the facts and reasons for the decision. The decision to deny disqualification by such presiding officer shall be reviewable by the agency head. The decision to deny disqualification by a hearing officer appointed pursuant to § 2.2-4024 shall be reviewable according to the procedure set forth in subsection C of that provision. In all other circumstances, the presiding officer's or hearing officer's decision to deny disqualification is subject to judicial review in accordance with this chapter, but is not otherwise subject to interlocutory review.

§ 2.2-4024.1. Disqualification. (OPTION 2)

A. An individual who has served as investigator, prosecutor, or advocate at any stage in a contested case or who is subject to the authority, direction, or discretion of an individual who has served as investigator, prosecutor, or advocate at any stage in a contested case may not serve as the hearing officer in the same case. ~~An agency head that has participated in a determination of probable cause or other preliminary determination in an adjudication may serve as the presiding officer or final decision maker in the adjudication unless a party demonstrates grounds for disqualification under subsection B.~~

B. A hearing officer is subject to disqualification for bias, prejudice, financial interest, ex parte communications as provided in § 2.2-4024.2, or any other factor that would cause a reasonable person to question the impartiality of the hearing officer. The hearing officer, after making a reasonable inquiry, shall disclose to the parties any known facts related to grounds for disqualification which are material to the impartiality of the presiding officer in the proceeding. The hearing officer may self-disqualify and withdraw from any case for the aforementioned reasons.

C. A party may petition for the disqualification of the hearing officer promptly after notice that the person will hear the case or, if later, promptly on discovering facts establishing a ground for disqualification. The petition must state with particularity the ground on which it is claimed that a fair and impartial hearing cannot be accorded or the applicable rule or canon of practice or ethics that requires disqualification. The petition may be denied if the party fails to promptly request disqualification after discovering a ground for disqualification.

D. ~~A presiding officer not appointed pursuant to the provisions of § 2.2-4024, whose disqualification is requested shall decide whether to grant the petition and state in a record the facts and reasons for the decision. The decision to deny disqualification by such presiding officer shall be reviewable by the agency head.~~ The decision to deny disqualification by a hearing officer appointed pursuant to § 2.2-4024 shall be reviewable according to the procedure set forth in subsection C of that provision. ~~In all other circumstances, the presiding officer's~~ The decision to deny disqualification is subject to judicial review in accordance with this chapter, but is not otherwise subject to interlocutory review.

[NEW] § 2.2-4020.2 Default (OPTION 1)

A. Unless otherwise provided by law of this Commonwealth other than this Title, if a party without good cause fails to attend or appear at a formal hearing conducted in accordance with §2.2-4020, or an informal fact-finding proceeding conducted pursuant to §2.2-4019, the presiding officer may issue a default order.

B. A default order shall not be issued by the presiding officer unless the party against whom the default order is entered has been sent the notice that contains a notification that a default order may be issued against that party if that party fails without good cause to attend or appear at the hearing or informal fact-finding proceeding that is the subject of the notice.

C. If a default order is issued, the presiding officer may conduct any further proceedings necessary to complete the adjudication without the defaulting party and shall determine all issues in the adjudication, including those affecting the defaulting party.

D. A recommended, initial, or final order issued against a defaulting party may be based on the defaulting party's admissions or other evidence that may be used without notice to the defaulting party. If the burden of proof is on the defaulting party to establish that the party is entitled to the agency action sought, the presiding officer may issue a recommended, initial, or final order without taking evidence.

E. Not later than fifteen days after notice to a party subject to a default order that a recommended, initial, or final order has been rendered against the party, the party may petition the presiding officer to vacate the recommended, initial, or final order. If good cause is shown for the party's failure to appear, the presiding officer shall vacate the decision and, after proper service of notice, conduct another evidentiary hearing. If good cause is not shown for the party's failure to appear, the presiding officer shall deny the motion to vacate.

[NEW] § 2.2-4020.2 Default (OPTION 2)

A. Unless otherwise provided by law of this Commonwealth other than this Title, if a party without good cause fails to attend or appear at a formal hearing conducted in accordance with §2.2-4020, the hearing officer may issue a default order.

B. A default order shall not be issued by the hearing officer unless the party against whom the default order is entered has been sent the notice that contains a notification that a default order may be issued against that party if that party fails without good cause to attend or appear at the hearing or informal fact-finding proceeding that is the subject of the notice.

C. If a default order is issued, the hearing officer may conduct any further proceedings necessary to complete the adjudication without the defaulting party and shall determine all issues in the adjudication, including those affecting the defaulting party.

D. A recommended, initial, or final order issued against a defaulting party may be based on the defaulting party's admissions or other evidence that may be used without notice to the defaulting party. If the burden of proof is on the defaulting party to establish that the party is entitled to the agency action sought, the hearing officer may issue a recommended, initial, or final order without taking evidence.

E. Not later than fifteen days after notice to a party subject to a default order that a recommended, initial, or final order has been rendered against the party, the party may petition the hearing officer to vacate the recommended, initial, or final order. If good cause is shown for the party's failure to appear, the hearing officer shall vacate the decision and, after proper service of notice, conduct another evidentiary hearing. If good cause is not shown for the party's failure to appear, the hearing officer shall deny the motion to vacate.

E. The Department shall (i) provide technical assistance and training on the development and implementation of nutrient management plans, planning standards, and specifications and (ii) establish, prior to July 1, 2015, a cost-share program specific to golf courses for implementation of this section.

F. Any information collected pursuant to this section shall be exempt from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

G. A golf course owner found to be in violation of this section after July 1, 2017, shall be given 90 days to submit a nutrient management plan to the Department for approval before a $250 civil penalty is imposed. All civil penalties imposed under this section shall be deposited in the Nutrient Management Training and Certification Fund (§ 10.1-104.2).

H. Golf courses in compliance with this section shall not be subject to local ordinances governing the use or application of fertilizer.

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.

This is a technical amendment requested by the Virginia Agribusiness Council to clarify Section 4 VAC 5-15-150 D 1 of the Virginia Soil and Water Conservation Board's Nutrient Management Training and Certification Regulations to ensure that golf course nutrient management plans may be good for up to five years in accordance with § 10.1-104.5.

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.

In the past, a clarifying technical amendment of this nature to conform state regulations with the Code of Virginia would typically have been exempt; however, legislation was passed in 2011 limiting the exemption in § 2.2-4006 A 4 a, to those actions taken within 90 days of the of the law's effective date.

House Bill 1831 and Senate Bill 1055 (Chapters 341 and 353 of the 2011 Virginia Acts of Assembly respectively) created a § 10.1-104.5 requiring nutrient management plans for golf courses and established that such nutrient management plans shall be revised and resubmitted for

approval to the Department **every five years** thereafter or upon a major renovation or redesign of the golf course lands, whichever occurs sooner.

A review of the regulations in 2011 following the passage of the legislation did not identify a need for any amendments to the regulations. However, in recent months, the Virginia Agribusiness Council has requested that the Nutrient Management Training and Certification Regulations be amended to clarify that golf course nutrient management plans may be good for up to five years in accordance with § 10.1-104.5.

Accordingly, this action to amend Section 4 VAC 5-15-150 D 1 of the Virginia Soil and Water Conservation Board's Nutrient Management Training and Certification Regulations cannot be considered exempt as over 90 days have lapsed since the passage of the legislation and the use of a fast-track action is the next best option available to make this conforming technical amendment.

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.

This regulatory action amends the Nutrient Management Training and Certification Regulations to clarify that golf course nutrient management plans may be good for up to five years in accordance with § 10.1-104.5.

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.

None. This is a clarifying technical amendment to conform state regulations with the Code of Virginia as requested by the Virginia Agribusiness Council. The regulatory amendment creates no new requirements.

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.

CHAPTER 464

An Act to amend and reenact §§ 2.2-4006 and 2.2-4007.01 of the Code of Virginia, relating to the Administrative Process Act; timing for filing certain regulations.

[H 1939]
Approved March 24, 2011

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-4006 and 2.2-4007.01 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-4006. Exemptions from requirements of this article.

A. The following agency actions otherwise subject to this chapter and § 2.2-4103 of the Virginia Register Act shall be exempted from the operation of this article:

1. Agency orders or regulations fixing rates or prices.

2. Regulations that establish or prescribe agency organization, internal practice or procedures, including delegations of authority.

3. Regulations that consist only of changes in style or form or corrections of technical errors. Each promulgating agency shall review all references to sections of the Code of Virginia within their regulations each time a new supplement or replacement volume to the Code of Virginia is published to ensure the accuracy of each section or section subdivision identification listed.

4. Regulations that are:

a. Necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved*. However, such regulations shall be filed with the Registrar within 90 days of the law's effective date*;

b. Required by order of any state or federal court of competent jurisdiction where no agency discretion is involved; or