Proposed Model Public Participation Guidelines for Enactment of Regulations under the Administrative Process Act

Richard L. Walton Jr.
Chief of Policy and Environment
Virginia Department of Transportation

October 15, 2008

Background

Public Participation Guidelines

- The Virginia Administrative Process Act (APA), § 2.2-4007.02 of the *Code of Virginia*, requires state agencies to develop public participation guidelines (PPG) for the purpose of soliciting the input of interested parties in the formation of regulations
- The 2008 General Assembly passed legislation, Chapters 321 and 575 of the Acts of Assembly of 2008, which required the Department of Planning and Budget (DPB), in consultation with the Office of the Attorney General (OAG), to develop model public participation guidelines to be adopted by state agencies, boards, and commissions
- The legislation afforded state agencies two alternatives: adopt the model provided as an APA-exempt action or, if there are significant changes, adopt a modified version as a fast-track action; the fast-track action involves more steps and takes longer to implement than an exempt action

Purpose of Model PPGs

- Before the APA was amended in 2008, the *Code of Virginia* did not provide detailed information on what the scope or content of an agency's public participation guidelines should be; so guidelines tended to vary widely among state agencies, commissions, and boards
- This mandate standardizes procedures used by state agencies in the development of APA regulations

Key Features of Model PPGs

Model PPGs:

- Do not apply to public participation requirements for construction and maintenance projects, only regulations adopted through the APA
  - VDOT currently has 16 regulations subject to the APA; these include the *Land Use Permit Manual*, the *General Rules and Regulations of the Commonwealth Transportation Board*, and the *Subdivision Street Requirements*
  - DRPT currently has no regulations subject to the APA; however, PPGs are recommended for DRPT in the event that regulations are adopted in the future
- Provide a detailed process for identifying persons interested in a given regulatory matter and a requirement that the agency maintain a notification list for each regulatory action.
- Address the use of current technologies such as e-mail and the DPB Regulatory Town Hall Web site that were not in existence at the time the current PPGs were adopted
- Formalize the agency's use of ad hoc committees to consult on regulatory actions by creating specialized panels called Regulatory Advisory Panels (RAPs) and Negotiated Rulemaking Panels (NRPs)
- Outline statutory requirements for public comment periods at various regulatory stages, and the method to petition the agency for rulemaking

Anticipated Benefits

Model PPGs:

- Provide consistency among state agencies regarding the process in which agencies promote public involvement
- Present the public with a comprehensive view of the agency's public participation process, from petitions for rulemaking through adoption of final regulation
- Encourage citizen involvement through specialized stakeholder panels
- Promote public participation through electronic communications and postal delivery of notices for public comment and hearings, online postings of copies of proposed regulations and supporting documents, and notification lists maintained for the purpose of contacting persons interested in the agency's regulatory actions

Upcoming Statutory Deadlines

- Chapters 321 and 575 of the Acts of Assembly of 2008 requires agencies to adopt new public participation guidelines and repeal their current ones by December 1, 2008
- If the new PPGs are not in effect on January 1, 2009, the agencies cannot move forward with new regulations
- To be effective on January 1, 2009, VDOT's and DRPT's PPGs must be submitted to the Virginia Registrar by November 5, 2008; if significant changes are made to the model PPGs, the public participation guidelines must be submitted to the Registrar as a fast-track regulation by October 22, 2008

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