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Proposed Regulation Agency Background Document

Agency name	Virginia Board of Education
Virginia Administrative Code (VAC) Chapter citation(s)	8VAC20-821 [new chapter]; 8VAC20-820 [repeal]
VAC Chapter title(s)	<i>General Procedures and Information for Licensure</i> [new chapter]; <i>General Procedures and Information for Licensure</i> [repeal]
Action title	Adopt New Standards for the <i>General Procedures and Information for Licensure</i>
Date this document prepared	October 3, 2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This regulatory action will repeal 8VAC20-820, "General Procedures and Information for Licensure," and establish a comprehensive new chapter, 8VAC20-821. The *General Procedures and Information for Licensure* was originally promulgated by the Virginia Department of Social Services in 1984 and adopted by the Virginia Board of Education ("Board") in 2021. The Board intends to repeal the current chapter and promulgate a new chapter in its place in order to implement statutory requirements, clarify existing regulatory requirements, and update practices and procedures.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

“Board” means the Virginia Board of Education.

“General Procedures” means the *General Procedures and Information for Licensure* (8VAC20-820).

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

The Board has determined that significant revisions to the current chapter are necessary in order to implement statutory requirements, clarify existing regulatory requirements, and update practices and procedures. The Board will repeal the current chapter and promulgate a new chapter in its place.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

The Board’s overall regulatory authority is found in § [22.1-16](#) of the *Code of Virginia*, which states that “[t]he Board of Education may adopt bylaws for its own government and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of this title.”

The Board’s regulatory authority over child day programs and family day systems is found in § [22.1-289.046](#) of the *Code of Virginia*, which states in part that “[t]he Board shall adopt regulations for the activities, services, and facilities to be employed by persons and agencies required to be licensed under this chapter, which shall be designed to ensure that such activities, services, and facilities are conducive to the welfare of the children under the control of such persons or agencies.”

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

The *General Procedures* establishes procedures for initial application for license and license renewal for child day centers, family day homes, and family day systems. Additionally, the chapter includes processes

for requesting license modifications, variances, denial and refusal of a license or renewal application, and enforcement proceedings.

The Board has determined that a comprehensive revision of the chapter is necessary in order to implement statutory requirements, clarify existing regulatory requirements, and update practices and procedures. The current chapter was first promulgated almost three decades ago under the Virginia Department of Social Services. A comprehensive review of the regulations will provide clear, understandable, and updated requirements for licensees and ensure the sufficiency of care provided to children and adults receiving services.

The primary rationale for the regulatory action is that the chapter has not been revised for a considerable time. As a result, regulatory text from the chapter either no longer reflects standard operating procedure or contains ambiguities that result in delays in processing information or enforcement. The chapter also suffers from organizational deficiencies that make it difficult to track requirements for initial licensure or license renewal.

The regulatory action is essential to protecting the health, safety, and welfare of citizens because the licensing population subject to the chapter is involved in the care, supervision, and education of young children. State policy requires a licensing scheme that imposes minimum qualifications upon child care provider to ensure the safety of children. The Commonwealth is best served when the regulations governing licensure are organized and succinct and when licensees clearly understand the standards to which they are held.

The regulatory action is designed to solve the problems of lack of clarity and lack of organization, as well as inefficiencies in enforcement processes. The current action has condensed roughly 42 pages of regulatory text across three chapters into about 14 pages of regulatory text in a single chapter.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The major goals of the current regulatory action are to increase clarity by using more direct language; removing non-regulatory, informational text; and leverage organization to provide clarity. As a result, significant amounts of text have been removed, and the entire chapter has been restructured. In the current iteration of the regulations, a licensee may have to look in numerous places to find requirements for initial licensure or renewal. Moreover, in some instances, standards of conduct were mixed into the requirements for initial licensure.

The primary objective of the new organization is to provide clear directions related to each "phase" of the licensing cycle so that a licensee can find requirements easily. Part I provides definitions necessary to understand the language of the chapter. Part II focuses upon the process for initial licensure or changing an initial license (i.e., through license modifications or variances). Part II also clearly states all requirements for initial licensure in a single section (821-40), as well as expectations for the license process. Part III provides the standards for renewal. Part IV integrates the fee structure into the *General Procedure*. Fees are currently stated in a separate chapter ([8VAC20-830](#)).

Part V integrates the background check process into the *General Procedures*. Background checks are also currently regulated in a separate chapter ([8VAC20-770](#)). The agency currently has an action ([5879](#)) to repeal and replace [8VAC20-770](#). The NOIRA for Action [5879](#) regarding [8VAC20-770](#) was published on January 31, 2022, along with the NOIRA for the current regulatory action. In the process of developing new regulations, the agency determined that it would be best to combine the chapters for ease of use. The current chapter on background checks ([8VAC20-770](#)) is repetitive and, at points, conflicts with state law. The approach here with respect to background checks is to default as much as possible to the

statutory structure while still providing appropriate notice of the major requirements. The agency has only made minor regulatory intrusions into the statutory structure in order to provide clarity, as with individuals obtaining out-of-state background checks from non-responsive government agencies. The agency intends to continue Action [5879](#) in order to repeal the [8VAC20-770](#).

Part VI sets out standards of conduct for licensees. The standards set in Part VI are largely administrative (e.g., licensees must update contact information) or related to generalized responsibilities (e.g., licensees must comply with the terms of enforcement orders issued by the superintendent), which distinguishes them from the more particular and site-specific standards found in the *Standards for Licensed Child Day Centers* ([8VAC20-780](#)), *Standards for Licensed Family Day Homes* ([8VAC20-800](#)), and *Standards for Licensed Family Day Systems* ([8VAC20-810](#)). The proposed 821-270 is designed to increase the enforcement capacity of the agency by setting clear expectations with respect to the conduct of licensees.

Part VII offers a new approach to what are currently called “problem solving conferences,” which is a regulatory process designed to facilitate communication regarding disagreements on the agency’s application of regulations and statutes. Both licensees and agency staff have expressed considerable frustration with the current structure, due primarily to the repetitive nature of the current “first-step review.” In the current structure, the first-step review is performed by the licensing administrator of the field office where the violation originated. Both licensees and agency staff have found this step redundant, albeit for different reasons, because the licensing administrator is almost always involved in the original determination of a violation. As a result, the licensing administrators are often already aware of the licensee’s objections and so are unlikely to be persuaded in a first-step review. The proposed 821-280 consolidates the first- and second-step reviews into a single review process. Although not outlined in the regulatory text, the agency intends to implement in a manner that allows for greater oversight and consistency across licensing regions. In implementing the proposed regulations, when an applicant initiates the review process, the request will be sent to the licensing administrator in a different region for review and a determination made in conjunction with the central office.

Part VIII addresses sanctions, including administrative sanctions, revocation, summary suspension, and consent agreements. In most cases, the agency is deferring to the statutory structure. Of particular note is that the agency has found the current use of consent agreements to be overly restrictive. As a result, the proposed 821-320 does not restrict consent agreements to instances where the agency intends to revoke or deny a license.

Part IX provides licensees notice of the statutory rights of appeals. This section has been significantly reduced from the current chapter’s regulation of procedures related to administrative hearings. However, the agency has no basic law requiring administrative hearings other than when the agency pursues a summary suspension, and this is an exceedingly rare case. The agency has found that, should an administrative hearing be warranted or required, the procedures for the hearing will be communicated to the licensee in consultation with the Office of the Attorney General and in accordance with applicable laws.

Issues

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

The primary advantage of this regulatory change to the public, the agency and Commonwealth, and the regulated community is that the *General Procedures* will be easier to read, better organized, more clear with respect to responsibilities, and more comprehensive in their scope due to the consolidation of three

chapters into a single chapter. There are no disadvantages to the public, the agency, the Commonwealth, or the regulated community.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

There are no other state agencies that will be particularly affected by this regulatory action.

Localities Particularly Affected

There are no localities that will be particularly affected by this regulatory action.

Other Entities Particularly Affected

This action will affect child day centers, family day homes, and family day systems. However, it is not clear that there will be a "material impact" sufficient to meet the definition of "particularly affected."

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits) anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including: a) fund source / fund detail;</p>	<p>The regulatory action will not increase costs, fees, or revenues resulting from the regulatory change. The regulatory action will clarify processes and save administrative time.</p>
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b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources.	
<i>For other state agencies:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	The regulatory action will have no impact on other state agencies.
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	The regulatory action is designed to increase clarity of expectations and requirements for licensure.

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees, or revenues resulting from the regulatory change.	This regulatory action will not affect localities.
Benefits the regulatory change is designed to produce.	This regulatory action will not affect localities.

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	This action will affect child day centers, family day homes, and family day systems.
Agency’s best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated, and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	There are 1,418 licensed child day centers; 1,356 licensed family day homes; and 1 licensed family day system. Data is not readily available to determine how many licensees meet the definition of “small business,” but the agency suspects that most of its licensing population will meet this definition.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	The agency does not anticipate any additional costs that will result from the regulatory change.
Benefits the regulatory change is designed to produce.	The regulatory action will increase clarity with respect to the licensing process.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

There are no alternatives to regulatory action, as the *General Procedures and Information for Licensure* are necessary for program implementation.

The agency considered amending the *General Procedures and Information for Licensure* in its current structure and format. However, due to the number of updates and revisions, the agency has determined that promulgation of a new chapter will be more efficient.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

There are no alternatives to regulation, as the licensure process and standards of conduct must be set forth under the Board’s regulatory authority.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in EO 19 and the ORM procedures, e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable. In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the

agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

This action does not include a periodic review/small business impact review.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency’s response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response
Adrea Shantell Dunnville, Building Blockz	Commenter requested an application to apply for licensure.	Applications are available on the agency’s webpage.
Mark H. Emery	Commenter observed that there are “disparities and inequities” in the exemptions from licensure in § 22.1-289.030.	The agency does not have authority to change the statutes governing agency programs or exemptions from the agency’s regulatory authority. The agency recommends that the commenter contact his state representatives.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

The Board is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, (iii) the potential impacts of the regulation, and (iv) the agency’s regulatory flexibility analysis stated in that section of this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by email at tatanishia.armstrong@doe.virginia.gov or by mail to

Tatanishia Armstrong
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Virginia Department of Education
101 N. 14th St., 14th Floor
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In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

The Early Childhood Advisory Committee will advise the Board as regulations are developed. The Early Childhood Advisory Committee’s [meeting schedule](#) is available on the agency’s website.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between the existing VAC Chapter(s) and the proposed regulation. If the existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
820-10	821-10	This section sets definitions for terms used through the chapters.	1. Removes the following definitions: <ul style="list-style-type: none"> • Administrative hearing (the term is not used in the proposed regulations) • Adverse action • Aggrieved party • Hearing (the term is only used in 821-320 of the proposed regulations, and the context there makes clear that the definition in the Administrative Process Act would apply) • Hearing coordinator (the term is not used in the proposed regulations) • Recommended findings of fact and recommended decision • Regular license • Special order 2. Amends the following definitions: <ul style="list-style-type: none"> • Allowable variance (this definition is now “variance” and has been amended for clarity) • Applicant • Child day program (definition has been amended to match the definition in statute)

			<ul style="list-style-type: none"> • Consent agreement (definition has been amended to specify that the agreement is written) • Denial (definition amended to specify that denial is “refusing to approve” and the statutory bases for refusal to approve) • Functional design (definition amended for clarity) • Good character and reputation (definition amended for clarity) • Provisional license (definition amended for clarity) • Revocation (definition amended for clarity) <p>3. Adds the following definitions:</p> <ul style="list-style-type: none"> • Background check • Barrier crime • Child day center • Family day home • License • Licensee • Licensing standards • Living in • Person • Registered • Sworn statement or affirmation
820-20		This section provides information.	The section has been repealed because it is largely informational. The agency can publicize the information through means other than regulation (e.g., on its webpage and other communications material).
820-30		This section provides information.	The section has been repealed because it is largely informational. The agency can publicize the information through means other than regulation (e.g., on its webpage and other communications material).
820-40		This section provides information.	The section has been repealed because it is largely informational.
820-50		This section provides information.	The section has been repealed because it is largely informational.
820-60	821-20; 821-30; 821-270	<p>Subsection A specifies that a license is issued to a specific person or organization.</p> <p>Subsection B provides information about criminal penalties for violations of § 22.1-289.026 of the Code of Virginia.</p>	<p>Subsection A has been clarified in 821-20 and 30. A definition of “person” from statute has been added in order to clarify meaning. Under the definition, “person” includes different business entities and organizations.</p> <p>The notice of potential misdemeanor charges in subsection B has been removed since it is not enforceable by</p>

		Subsection C requires that a licensee notify the appropriate licensing office at least 60 days prior to the anticipated closure.	<p>the Board. However, these items have been added as prohibited acts in 821-270 or covered elsewhere in the proposed regulations:</p> <ul style="list-style-type: none"> • 820-60 B 1 corresponds to 821-270 M; • 820-60 B 2 corresponds to 821-270 A and B; • 820-60 B 3 corresponds to 821-20; • 820-60 B 4 corresponds to 821-270 C <p>Subsection C has been removed as unenforceable. The agency cannot stop a licensee from going out of business and does not need notice 60 days prior to closure. If a business is being sold, the responsibility is on the new owner to comply with licensing standards.</p>
820-70	821-30 A	The section currently does not allow for a license transfer when there is a change in the ownership or location of the facility or agency to which the license has been issued.	The proposed 821-30 A only restricts the transferability of a license between persons. Licensees often change locations, and the agency has typically allowed licensees to do so without reapplying by issuing a variance. The change will not affect procedures, but will clarify potential misunderstandings that a licensee’s changing locations will require a new license rather than a new inspection of the proposed facility.
820-80	821-80	Section 820-80 specifies that the agency may issue a conditional license in order for an applicant to demonstrate compliance with licensing standards.	<p>The proposed 821-80 clarifies the current language regarding the total period for which a conditional license may be held by an applicant.</p> <p>The proposed 821-80 also broadens what is currently the “early compliance” provision in 820-200 by allowing the agency to initiate early compliance rather than requiring applicant to make a written request.</p> <p>The reorganization of the chapter more accurately situates a conditional license as part of the process for initial licensure.</p>
820-90			This section has been repealed because it is largely informational. The proposed regulations cover licensure requirements in Part II.
820-100	821-30 B	The current regulations interpret § 22.1-289.011 so as to create tiered licensing terms based on whether a licensee “substantially	The proposed 821-30 B moves to a standard two-year license term in order to standardize agency operations across child day programs and family day systems. The primary rationale is that the

		<p>exceeds” (three-year license term), “routinely meet[s] and maintain[s] compliance with minimum standards” (two-year license term), or has an “inconsistent level of compliance” (one-year license term).</p>	<p>agency prefers to enact minimum standards for licensure and the care and safety of children rather than make hazy determinations about a licensee “substantially exceeding” the minimum standards. The agency can better account for the issuance of a one-year license to those with “inconsistent levels of compliance” through a provisional license or consent agreement.</p> <p>Further, the agency proposes to adjust the license fee schedule in order to keep the current costs the same (see Part IV, 821-140 and 150).</p>
<p>820-110</p>	<p>821-130</p>		<p>The proposed 821-130 clarifies the language regarding the total period for which a provisional license may be held by an applicant.</p> <p>The proposed 821-130 also broadens what is currently the “early compliance” provision in 820-200 by allowing the agency to initiate early compliance rather than requiring applicant to make a written request.</p> <p>The reorganization of the chapter more accurately situates a provisional license as part of the process for license renewal.</p>
<p>820-120</p>	<p>821-30</p>	<p>Subsection A states the terms of the license.</p> <p>Subsection B requires that the provisional license cite the standards with which the licensee is not in compliance, and Subsection C requires that the conditional license cite the standards with which the licensee must demonstrate compliance when operation begins and also any standards with which the licensee is not in compliance.</p>	<p>The terms of the license have been reorganized under requirements for “the license.” Since this section is descriptive of the license itself, prescriptive language about operating within the terms of the license has been moved to a new section that specifies “prohibited acts” (821-270 C).</p> <p>Subsections B and C have been removed here and restated as a prohibited act in 821-270 F 2.</p> <p>The agency has added that “any administrative sanction imposed by a special order or any sanction imposed by a final order shall be considered a term of the license” due to problems of licensee compliance with such sanctions and orders. This addition provides the agency with a clear mechanism for ensuring compliance through the proposed 821-270 C.</p>

<p>820-130</p>	<p>821-40 C</p>		<p>Subsection A has been removed as informational language inappropriate for regulatory text.</p> <p>Subsection B has been moved to 821-40 C 6 and restated for clarity.</p>
<p>820-140</p>	<p>821-40 B</p>	<p>Subsection A states that the department will provide a license application form.</p> <p>Subsection B states when an application is deemed complete and sets requirements for notice of an incomplete application. Further, subsection B requires the return of an application to an applicant who has not submitted a complete application within 30 days of notification of an incomplete application.</p> <p>Subsection C requires that an applicant submit an application at least 60 days prior to a planned opening date.</p> <p>Subsection D allows an applicant to withdraw a request for a license.</p>	<p>Subsection A has been removed as informational language that is inappropriate for regulatory text. The agency provides an application on its website.</p> <p>Subsection B has been restated in 821-40 B, however the notification provision and resubmission-within-30-day requirement have been removed. The agency notifies applicants of incomplete applications as soon as possible and does not currently return applications to applicants. The agency will abide by the record retention requirements set by the Library of Virginia.</p> <p>Subsection C has been removed. The agency does not think it should disadvantage applicants who submit an application within 60 days of a planned opening if the agency can process the application quickly. Moreover, the applicant cannot begin operations until a license is issued.</p> <p>Subsection D has been removed since the agency cannot force an applicant to complete an application and application fees are nonrefundable under both the current regulations and the proposed regulations.</p>
<p>820-150</p>	<p>821-50</p>	<p>The section states that a valid certificate of occupancy is a prerequisite for licensure and requires that the department approve functional design features and procedures for approval. The procedures require the following:</p> <ul style="list-style-type: none"> • the applicant shall submit floor plans to the agency; • the agency will request additional information if necessary; • the agency will issue a preliminary 	<p>The proposed section 821-50 has been restated so as to focus upon requirements that the applicant is required to meet—namely, compliance with applicable building requirements and functional design requirements.</p> <p>The proposed subsection A has removed the certificate of occupancy requirement in favor of broader language that buildings be classified by and meet the specifications for the proper Use Group as required by the Virginia Uniform Statewide Building Code. The rationale is that in many jurisdictions, building officials issue building evaluations instead of certificates of occupancy. This is typically done with older buildings.</p>

		<p>approval statement or disapproval statement;</p> <ul style="list-style-type: none"> the agency will forward a copy of the preliminary approval statement to appropriate building officials; and the agency will make on-site inspections to determine compliance. 	<p>The procedures set by the current 820-150 have proved largely impractical. Agency staff is not fully equipped to read building plans, and functional design requirements are determined by factors beyond what can be seen on building plans such as the placement of furniture or cabinets. Moreover, building officials do not wait for approvals from the agency in going about their business. Instead, applicants are encouraged to consult with staff as early as possible in order to avoid noncompliance. Further, the agency already makes inspections to evaluate compliance as part of the process for issuing licenses, modifications, and variances.</p>
<p>820-160</p>	<p>821-40 E; 821-110; 821-260; 821-270 M</p>	<p>Subsection A states the investigative responsibilities of the superintendent.</p> <p>Subsection B states the licensee’s responsibility to provide inspection reports from appropriate fire and health agencies in order to determine compliance with applicable regulations.</p> <p>Subsection C states that the agency will inspect the proposed facility.</p> <p>Subsection D requires the applicant or licensee to afford the agency’s representatives reasonable opportunity to inspect buildings, books, and records.</p> <p>Subsection E requires the applicant or licensee to allow the agency’s representatives to interview agents, employees, participants, and any person under its custody, control, direction, or supervision.</p> <p>Subsection F provides information on the communication of findings of the investigation.</p>	<p>Subsection A has been removed as informational language that is not needed as regulatory text. The superintendent’s responsibilities to conduct investigations are stated in § 22.1-289.013 of the Code of Virginia.</p> <p>Subsection B has been removed since compliance with fire and health agencies is part of the licensing standards to which licensees are subject.</p> <p>Subsection C has been removed as informational language that is not needed as regulatory text. The superintendent’s responsibilities are already stated in statute (§ 22.1-289.013).</p> <p>Subsection D has been restated in the proposed 821-110 F, 821-260, and 821-270 M</p> <p>Subsection E has been restated in the proposed 821-40 E, 821-110 G, and 821-270 M.</p> <p>Subsection F has been removed as informational language that is not needed as regulatory text.</p> <p>Subsection G has been removed as informational, though the process for requesting variances has been restated and clarified in the proposed 821-70.</p>

		Subsection G states that the applicant or licensee may request an allowable variance.	
820-170	821-90; 821-120	<p>Subsection A states that the agency will notify the applicant of its decision regarding the issuance of a license.</p> <p>Subsection B requires the department to state its reasons for denying a license.</p>	Subsection A and B have been removed as informational and duplicative of sound administrative process. The agency is under a statutory obligation to take final action upon an application for license within 60 days after the application is made and notify the applicant (§ 22.1-289.053).
820-180	821-240	<p>Subsection A informs licensees that the agency will make announced and unannounced visits. Subsection A also requires the licensee to correct areas of noncompliance found during inspections.</p> <p>Subsection B requires that all licensed child day programs and family day systems shall be inspected at least twice a year, one of which shall be unannounced.</p> <p>Subsection C informs licensees of the agency's inspection authority, which includes "any homes or facilities that are approved by the licensee for the care of children as one of the licensed services of the" licensee.</p> <p>Subsection D states that the agency may perform other announced or unannounced inspections.</p>	<p>Subsection A and B have been restated and clarified in the proposed 821-240 A. The requirement that a licensee correct areas of noncompliance found during inspections is now found in the proposed 821-240 B.</p> <p>Subsection C and D has been removed as merely a restatement of the authority the agency has under § 22.1-289.018.</p>
820-190	821-60	<p>Subsection A states that a licensee may request a modification of the terms of the licensee at any time during the period of the license.</p> <p>Subsection B states that a modified license will be issued if a modification can be granted.</p>	The proposed section 821-60 offers a substantially similar set of requirements. However, information that was deemed informational has been removed.

<p>820-200</p>	<p>821-80 C; 821-130 C</p>	<p>Subsection A provides for the voiding of a provisional license when (1) an applicant is in compliance with all standards; (2) such compliance has been verified by the department; and (3) all terms of the license remain the same.</p> <p>Subsection B requires the licensee to make a written request before a provisional or conditional license can be replaced by a regular license.</p> <p>Subsection C states that the effective date of the regular license will be the same as the beginning date of the voided license and requires denial to be confirmed in writing.</p> <p>Subsection D states that early compliance shall not be considered once a facility or agency has filed a renewal application.</p>	<p>The early compliance provisions in 820-200 have been largely removed in favor of a more simple process in 821-80 C and 821-130 C. In those proposed sections, a conditional or provisional license may be voided and a license issued when an applicant meets the qualifications for a license. Determination of compliance is always at the discretion of the agency, so the subdivisions (1) and (2) of the current 820-200 A have no logical distinction. Subdivision (3) has been removed as irrelevant to a final determination of compliance (i.e., if a term can be changed under a modification, then to do so should not stop the issuance of a license).</p> <p>Subsection B has been removed. Anecdotal evidence from agency staff is that licensing inspectors are often in a better position to know when the qualifications for licensure have been met and so there is not sufficient justification to wait for an applicant to make a written request for early compliance. Rather, if the licensing inspector can determine that the qualifications have been met, the license should be immediately issued. However, if an applicant believes that compliance with licensing standards has been obtained, the applicant will remain welcome to request verification of such compliance from the agency.</p> <p>Subsection C has been removed. The agency will not collect fees to issue either a conditional or provisional license, but will consider each as part of either the initial licensing application or the renewal application. Instead, a license will be issued with an effective date that reflects the determination of compliance, which ultimately benefits the applicant.</p> <p>Subsection D has been removed as inconsistent with the new policy rationale that an applicant should be issued a license upon a determination of compliance.</p>
<p>820-210</p>	<p>821-100; 821-110; 821-120; 821-130</p>	<p>Subsection A provided that the agency will send a renewal application to the licensee prior to the licensee's expiration date.</p>	<p>Subsection A's requirement for the agency to send the licensee a renewal application has been removed. The renewal application is available on the agency's website.</p>

		<p>The licensee is also required to submit a completed renewal application.</p> <p>Subsection B directs the agency not to process a renewal application when the application is not complete or when the licensee is being denied or revoked in accordance with the Administrative Process Act.</p> <p>Subsection C states that a current license shall remain in effect while a renewal application is being processed provided that the application was complete prior to expiration of the current license.</p> <p>Subsection D states that the agency will follow previously outlined procedures for investigations.</p>	<p>Subsection B has been removed because a licensee should not be prevented from renewing if the licensee can show that the qualifications for renewal have been met. Moreover, the agency would not process a renewal application if it has denied the renewal, and the agency would deny renewal of a licensee it thought had fallen below licensing standards to the point that it felt the license should be revoked. The agency retains the option to issue a provisional license to bridge the gap (821-130).</p> <p>Subsection C has been removed as redundant to common principles of fair play. An agency should never fault an applicant or licensee for a situation that the agency created, such as not being able to process a renewal application timely.</p> <p>Subsection D has been removed as informational language, but the requirement is retained in part in the proposed 821-110 G.</p> <p>Proposed sections 821-100, 821-110, 821-120, and 821-130 comprise a new Part III that offers a more linear account of the renewal process. Qualifications for renewal are more explicitly stated, as are the processes for refusal or issuance of a provisional license.</p>
<p>820-220</p>		<p>The section states the circumstances in which an applicant or licensee may request an allowable variance.</p>	<p>The agency has opted to use the term “variance” since the modifier “allowable” is part of the determination being made. A new definition of variance is provided in 821-10.</p> <p>This section has been removed as largely restating the definition.</p>
<p>820-230</p>	<p>821-70</p>	<p>Subsection A requires a written request for consideration of a variance. The licensee must describe special hardship to the program that will result from enforcement of regulatory requirements, propose alternatives to the requirement, and obtain the opinions of professionals when required by the</p>	<p>The requirements have been restated clarity but remain largely the same. Subsection B has been removed as largely informational language.</p>

		<p>department. The process requirements of subsection A also states that a variance may only be granted for the department’s licensing standards.</p> <p>Subsection B states that the department’s representative will notify the applicant or licensee of the decision.</p> <p>Subsection C states that the department may attach conditions to the granting of a variance, that a variance is limited to the conditions upon which it was granted (including the specific location), and that variance’s must be reviewed annually.</p>	
<p>820-240; 820-250; 820-260; 820-270</p>	<p>821-280</p>	<p>Sections 240 through 270 set the procedure for “problem solving conferences.” The current regulations set procedures for requesting a conference (820-240), first-step review (820-250), and second-step review (820-260). Section 820-270 also includes a disclaimer that the problem-solving conference process does not prohibit the department from enforcing regulations.</p>	<p>The process for initiating a violation review—previously a “problem solving conference”—remains largely the same: the applicant or licensee requests one from the agency.</p> <p>The two-step review process has shortened to a single review because reports from licensees and agency staff led to significant questions as to the value of the first step. The primary problem is that the first-step review is with the licensing administrator of the local office that oversaw the inspection. Often times, this administrator was closely involved in the decision to find a violation in a particular case, which undermined the value for “problem solving.” The superintendent will continue to encourage communication between inspectors and licensees/applicants in order to explain fully the requirements of licensing standards.</p> <p>In the proposed regulations, the agency imagines instead a single review that occurs in coordination with the central office. The central office will receive a request for a violation review and have a licensing administrator <i>in a different jurisdiction</i> review the case file before communicating results with the central office. This will allow the agency greater opportunity to ensure equal application of licensing standards, provide new training</p>

			<p>opportunities and oversight for agency staff, and also allow a case to be heard by someone not involved in the initial process of finding a violation.</p> <p>The new process will still require the request within writing, but will now require the request within five business days of receiving a notice of violation. The agency has an interest in swift resolution to review requests and has found that the current regulations allow enforcement to be hampered by too many review processes. The new process envisioned by the agency requires additional rules in order to ensure the process is not hindering the agency's ability to keep children safe.</p> <p>The agency continues to reserve the right to move forward with enforcement proceedings during the violation review process. However, a one-step process will allow the agency to make a good faith effort, within a reasonable time period, to resolve problems before initiating such proceedings.</p>
820-280		The section states that complaints may be received in written or oral form and may be anonymous.	This section has been removed because the agency's authority to receive complaints is statutory and does not require regulatory text. The section appears to be largely informational. The agency will continue to provide appropriate information to applicants and licensees through other means.
820-290		The section states the agency's responsibility to investigate complaints of licensing standards.	This section has been removed because the agency's responsibility to investigate complaints is statutory and does not require regulatory text. The section appears to be largely informational. The agency will continue to provide appropriate information to applicants and licensees through other means.
820-300		The section states that a licensee will be notified of the findings of the investigation.	This section has been removed as largely informational. The agency will communicate with licensees as appropriate.
820-310	821-240 B	The section states that a licensee is responsible for correcting any areas of noncompliance found during complaint investigation.	Licensees remain under an obligation to correct areas of noncompliance, regardless of how the noncompliance is discovered.
820-320	821-290; 821-270	Subsection A and B state the reasons for which the agency may impose sanctions.	The proposed regulations default to the authority specifically granted to the agency in statute.

			The provisions in subsection B are reorganized in the proposed 821-270.
820-330	821-290		The proposed 821-290 provide notice of the agency's ability to impose administrative sanctions. The text is derived from § 22.1-289.023 of the Code of Virginia.
820-340	821-310		The proposed 821-310 provides notice of the agency's ability to pursue a summary suspension. The text is derived from § 22.1-289.022 of the Code of Virginia.
820-350			This section has been removed, as the agency will default to the procedures set forth in the Administrative Process Act. If the agency agrees to an administrative hearing, the process will be communicated to the licensee as required by and in accordance with applicable laws.
820-360	821-120 A; 821-270 N	Subsection A allows the agency to assess late fees, reduce the duration of the license period, or deny renewal if civil penalties are overdue at specified thresholds.	The agency proposes abandoning the provisions of the current 820-360 in favor of action against the license (i.e., denial of renewal or initiating a separate action).
820-370 ; 820-380 ; 820-390 ; 820-400 ; 820-420 ; 820-430 ; 820-440 ; 820-450 ; 820-460 ; 820-470 ; 820-480 ; 820-490 ; 820-500	821-330	These sections collectively set the procedures for all appeals to adverse actions taken on a license by the agency. The regulations set forth the statutory basis for the appeal process, the duties of the hearing coordinator, information about the informal conference, acknowledgment of request for an administrative hearing, continuances, recesses and postponements, prehearing conferences, conduct of hearing, rules of evidence, the record at hearing, and recommendations of the hearing officer.	These sections has been removed. The agency will default to the procedures set forth in the Administrative Process Act. If an applicant or licensee is entitled to an administrative hearing, the procedures for the hearing will be communicated to the licensee in consultation with the Office of the Attorney General and in accordance with applicable laws. The proposed 821-330 provides notice of the appeal rights as set forth in statute. The text is derived from §§ 22.1-289.024 and 22.1-289.025 of the Code of Virginia.
820-410	821-320	Subsection A authorizes consent agreements to resolve adverse actions. Subsection B sets required elements of a consent agreement. Subsection C states that the agency will make inspections	The proposed 821-320 modifies the requirements of 820-410 A so that a consent agreement may be proposed by either the agency or the licensee/applicant. Further, the proposed regulation changes the required elements so as to broaden the use of consent agreements beyond situations where a license is being

		to determine if the terms of the consent agreement are being met.	denied or revoked. The agency believes this will allow for a more efficient resolution to violations of licensing standards.
	821-20		The proposed 821-20 states the necessity for license and is derived from § 22.1-289.011 B.
	821-40		<p>The proposed 821-40 sets out the qualifications for licensure in a single location in order to provide greater direction and clarity to applicants. The regulation states what information must be included in the application, the qualifications for licensure, and requirements for the application process.</p> <p>The proposed 821-40 C largely mirrors the current requirements for determining qualifications for license. Proposed section 821-40 C 3 has been added because such information is essential to the agency's ability to determine character and reputation and financial responsibility as required by § 22.1-289.013. The requested information is a standard question for professional licenses across disciplines and the appropriate to the protection of children and families. The addition of this question should not impose any additional costs on applicants, as most documentation for items that would require disclosure is public record or should already be in the possession of the applicant.</p>
	821-140; 821-150		<p>The agency feels that the addition of Part IV outlining application fees will help serve applicants and licensees by keeping related requirements within a single chapter. Application fees are currently provided in a separate chapter (8VAC20-830). When the current action moves to a final stage, the agency will initiate a fast-track action to repeal 8VAC20-830. Such action will be noncontroversial because the proposed 821-140 and 821-150 will make 8VAC20-830 redundant.</p> <p>The proposed 821-140 includes additional clarifications of process. For instance, the proposed regulations clearly state that the date the application fee is received by the superintendent shall be the date that the application is received. This direction aligns with the</p>

			<p>current movement toward electronic application submission, where payment of fee will be the final step. The proposed regulation also imposes a six month time period for completion of an application. This allows for agency to have finality with respect to application decisions and will encourage applicants to submit all required material in a timely manner.</p> <p>The proposed 821-150 imposes a consistent two-year licensing fee that does not raise costs for applicants.</p>
	<p>821-160; 821-170; 821-180; 821-190; 821-200; 821-210; 821-220; 821-230</p>		<p>The agency currently has an action (5879) to repeal and replace 8VAC20-770, which provides directions for background checks for child day programs and family day systems. The NOIRA for Action 5879 regarding 8VAC20-770 was published on January 31, 2022, along with the NOIRA for this action. In the process of developing new regulations, the agency determined that it would be best to combine the chapters for ease of use. The current chapter on background checks (8VAC20-770) is repetitive and, at points, conflicts with state law.</p> <p>While the agency has found that directions regarding background checks should be in regulation, it has opted to default to the process set by statute as often as possible. Accordingly, 821-160 and 821-170 state that Part V applies to anyone required to have a background check by Chapter 14.1 of Title 22.1 of the Code of Virginia and requires them to follow the provisions announced there. The proposed 821-170 B retains the requirement in 8VAC20-770-40 that 14 year olds residing in a home must have a central registry check, but shortens the time frame from 30 to seven days. The agency feels that this is a reasonable amount of time and important for the protection of other children in the home. In order to aid in the application of this regulation, the agency has added a definition of “living in” as “staying at a child day center or family day home for more than 30 days out of a 45-day period.”</p> <p>Subsection A and B of 821-180 are derived from § 22.1-289.035 A and G,</p>

			<p>respectively. Subsection C and D of 821-180 are derived from § 22.1-289.036 C and E, respectively. Subsection E of 821-180 is consistent with §§ 22.1-289.035 E and 22.1-289.036 H.</p> <p>The proposed 821-190 sets procedures for those who must obtain out-of-state child abuse and neglect registry and criminal history record searches. The agency is proposing these procedures in order to accommodate those who can document that another state has been non-responsive in providing background check results. Any documentation obtained pursuant to 821-190 must be maintained as part of the background check record.</p> <p>The proposed 821-200 allows for a child day program, family day system, the department, or a registering or approving authority to require a new background check if there is reason to suspect that a person required to have a background check has a disqualifying background.</p> <p>The proposed 821-210 is a revision of 8VAC20-770-70. The revision removes redundant language and sets a consistent set of expectations for all entities. The proposed subsection B of 821-210 provides additional guidance as to how background check records must be stored and who may have access to such records. The “principle of least privilege” is meant to limit staff who have access to background check records to those who have business reasons for such access.</p> <p>The proposed 821-220 is derived from and required by § 22.1-289.038. Subsections D, E, F, G, H, and I are added as directions to help implement § 22.1-289.038.</p> <p>The proposed 821-230 is derived from and meant to implement § 22.1-289.038 A. Subsection B removes an ambiguity as to whether the notification must be only to current parents or also future parents. The agency has resolved the ambiguity in favor of disclosure to current and future parents, which the agency</p>
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			feels is consistent with the policy behind the statute.
	821-250		<p>The proposed 821-250 A requires licensees to keep the superintendent informed of its current mailing address, telephone number, and email address. These items are essential to maintaining contact with licensees, and the lack of a clear directive to do so imposes administrative burdens upon the agency.</p> <p>The proposed 821-250 B requires that the superintendent be notified immediately upon changes to the ownership or business formation of the licensee. This is an especially important requirement since such changes may require a new license or additional background checks.</p>
	821-260		The proposed 821-260 requires licensees to produce records during inspections. Licensees often fail to produce records in a timely manner and the proposed regulation offers a clear directive for the agency to enforce.
	821-270		<p>The proposed 821-270 offers a clear set of prohibited acts for which applicants and licensees may be subject to enforcement or sanction. The list of prohibited acts includes the following:</p> <ul style="list-style-type: none"> A. Furnishing substantially inaccurate or incomplete information to the superintendent in obtaining, renewing, reinstating, or maintaining a license; B. Making any materially false or misleading statement to the superintendent with respect to the operation of any child day program or family day system; C. Failure to operate within the terms of a license or variance; E. Failure to obtain from the superintendent a modification pursuant to 8VAC20-821-60 or variance pursuant to 8VAC20-821-70 prior to making programmatic or operational changes for which a modification or variance is required; F. Failure to obtain a background check in accordance with Chapter 14.1 of Title 22.1 of the Code of Virginia;

			<p>F. Failure to post the following documents in a conspicuous location on the premises of each facility:</p> <ol style="list-style-type: none">1. The most recently issued license. Any conditional or provisional license shall be posted at each public entrance of the facility and a notice shall be prominently displayed next to the license that states that a description of specific violations of licensing standards to be corrected and the deadline for completion of such corrections is available for inspection at the facility or on the facility's website, if applicable;2. Notice of the superintendent's intent to revoke or deny renewal of the license of a child day program or family day system. Such notice will be provided by the department and shall be posted in a prominent place at each public entrance of the facility to advise consumers of serious or persistent violations;3. A copy of any final order of summary suspension of all or part of a license for a child day program or family day system operated by an agency of the Commonwealth shall be prominently displayed by the provider at each public entrance of the facility, or the provider may display a written statement summarizing the terms of the order, printed in clear and legible size and typeface, in a prominent location and identifying the location within the facility where the final order of summary suspension may be reviewed;4. Any notice of the superintendent's intent to take any of the actions enumerated in subdivisions B 1 through B 6 of § 22.1-289.023 of the Code of Virginia. Such notice will be provided by the department, and a copy of the notice shall be posted in a prominent place at each public entrance of the facility
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			<p>to advise consumers of serious or persistent violations;</p> <p>5. A copy of any special order issued by the department shall be posted in a prominent place at each public entrance of the licensed premises to advise consumers of serious or persistent violations;</p> <p>6. Any other documents required by the superintendent;</p> <p>G. Failure to correct any area of noncompliance found during any inspection;</p> <p>H. Permitting, aiding, or abetting the commission of any illegal act in the licensed facility or agency;</p> <p>I. A licensee being convicted of any barrier crime as defined in § 19.2-392.02 of the Code of Virginia or being the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;</p> <p>J. Hiring for compensated employment, continuing, to employ, or permitting to serve as a volunteer who will be alone with, in control of, or supervising children any person who (i) has been convicted of any barrier crime as defined in § 19.2-392.02 of the Code of Virginia or (ii) is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;</p> <p>K. Failure to notify the superintendent that anyone required to have a background check under § 22.1-289.036 of the Code of Virginia has been convicted of a barrier crime as defined in § 19.2-392.02 of the Code of Virginia or is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;</p> <p>L. Engaging in conduct or practices that are in violation of laws or regulations relating to abuse, neglect, or exploitation of children;</p> <p>M. Interfering with the superintendent in the discharge of the superintendent's licensing duties, which includes forbidding the superintendent access to a location when at least one child is in care; and</p> <p>N. Failure to comply with the terms of an order issued by the superintendent.</p>
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