



Final Regulation Agency Background Document

Agency name	Department of Juvenile Justice
Virginia Administrative Code (VAC) citation	6 VAC35-20
Regulation title	REGULATIONS GOVERNING THE MONITORING, APPROVAL, AND CERTIFICATION OF JUVENILE JUSTICE PROGRAMS
Action title	Please summarize what this regulatory action is expected to change about a regulation. Be as specific and as descriptive as possible.
Date this document prepared	January 16, 2013

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

This regulation describes how the State Board of Juvenile Justice (Board) and the Department of Juvenile Justice (DJJ) will monitor and approve residential and nonresidential programs operated or regulated by the DJJ. This regulation was last reviewed in 2003, and, since then, a number of administrative changes have occurred. This regulation was reviewed in light of current practices by an advisory committee consisting of representatives from (1) juvenile correctional centers; (2) juvenile secure detention centers; (3) juvenile group homes; (4) juvenile halfway houses; (5) locally operated court service units; (6) state-operated court service units; (7) the Department of Juvenile Justice's Certification Unit; (8) the Board of Juvenile Justice; and (9) the Department of Juvenile Justice's Central Office.

The comprehensive review resulted in numerous proposed changes to the regulation. The major changes include (i) separating the requirements for the certification of court service units and facilities and the auditing of VJCCCA programs and offices on youth; (ii) making the director or designee responsible for issuing certifications, with oversight by the board, when a program or facility is found in noncompliance with applicable regulatory requirements; (iii) reducing the number of required on-site monitoring visits from two (one announced, one unannounced) to one scheduled per year; (iv) adding a requirement for court service units and facilities to perform self audits; (v) clarifying pre-audit, audit, and post-audit procedures, including setting specific time frames; (vi) incorporating the requirements for corrective action plans and certification audit reports by including some requirements from the existing procedures and practices; (vii) setting specific criteria and parameters regarding issuance of certificates depending on level, duration, and frequency of noncompliance; (viii) adding a requirement for the program's or facility's supervisory or governing authority to be provided with notice of the certification action; (ix) incorporating the parameters for the board's review of programs and facilities found in noncompliance; (x) reworking the section regarding actions following decertification to track statutory authority; and (xi) removing the outdated list of "mandatory standards."

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency or board taking the action, and (3) the title of the regulation.

On January 8, 2013, the State Board of Juvenile Justice voted to advance the proposed Regulation Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs (6VAC-35-20) as amended to the final states of the regulatory process.

Legal basis

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

The Board is entrusted with general authority to promulgate regulations by § 66-10 of the Code of Virginia, which states the board may "promulgate such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by the Director or the Department" and "develop and establish programmatic and fiscal policies governing the operation of programs and facilities for which the Department is responsible under this law."

The board also establishes the substantive standards for juvenile CSUs (§§ 16.1-233, 16.1-234, 16.1-235, and 16.1-309.9), juvenile secure detention centers (§§ 16.1-249, 16.1-284.1, 16.1-291, 16.1-322.7, 16.1-309.9, and 16.1-309.10), juvenile group homes funded through VJCCCA (§§ 16.1-309.9 and 16.1-309.10), juvenile halfway houses (§ 66-24), and JCCs, including juvenile books camps (§ 66-13) and privately managed JCCs (§ 66-25.3).

The department is vested with the duty to ensure compliance with standards set by the board.
Section

16.1-249 of the Code of Virginia requires juvenile secure detention centers, group homes, and any other residential placement wherein any alleged delinquent juveniles are placed pursuant to an order by the court to be "approved by" DJJ. Additionally, post-dispositional detention centers in juvenile secure detention centers must be certified pursuant to § 66-25.4; and § 66-24 requires residential facilities utilized for the care of juveniles in direct state care to be certified. Moreover, §16.1-309.9 of the Code of

Virginia authorizes the board to "prohibit, by its order, the placement of juveniles in any place of residence which does not comply with the minimum standards. It may limit the number of juveniles to be detained or housed in a detention home or other facility and may designate some other place of detention or housing for juveniles who would otherwise be held therein."

Additionally, the following sections of the Code of Virginia require the board to promulgate regulations for specific juvenile justice programs:

§ 16.1-233 requires the board to regulate CSU staff, including their appointment and function, with the goal of establishing, as much as practicable, uniform services for juvenile and domestic relations courts throughout the Commonwealth.

§ 16.1-234 requires the director to ensure that the minimum standards established by the board for

CSUs are adhered to by state-operated CSUs.

§ 16.1-309.9 requires the board to regulate the "development, implementation, operation, and evaluation of the range of community-based programs, services, and facilities authorized" by VJCCCA. This section also requires the department to "periodically review all services established and annually review expenditures."

§ 16.1-309.10 authorizes the board to visit, inspect, and regulate detention centers, group homes, and other residential care facilities "for children in need of services or delinquent, or alleged delinquent established by a county, city, or any combination thereof."

§ 16.1-322.7 requires the board to "make, adopt and promulgate regulation" governing the operation of local or regional detention centers. This section also requires a regulation to cover the "methods of monitoring contractor-operated" facilities "by an appropriate state or local governmental entity or entities."

§ 66-13 allows the department "to establish, staff and maintain facilities for the rehabilitation, training and confinement" of juveniles committed to the department. This section also requires the board to set standards for boot camps.

§ 66-24 establishes the board as the licensing agency for "group homes or residential facilities providing care of juveniles in direct state care" and requires the board to "promulgate regulations for licensure or certification of community group homes or other

residential care facilities that contract with or are rented for the care of juveniles in direct state care."
§ 66-25.4 authorizes the board to promulgate regulations governing privately operated JCCs.

Several of the aforementioned regulations require the board to promulgate specific regulations; however, none specifically requires the board to issue regulations governing the regulatory process generally. Thus, the enactment of the Certification Regulation is permissive. Nevertheless, the board and the department have followed a Certification Regulation since 1992 (before DJJ separated from the Department of Corrections). While there is no specific requirement for a Certification Regulation, the board and the department have continued this regulatory chapter as it is important to have clear, concise, and consistent rules, rights, and responsibilities for the involved parties throughout the Commonwealth, particularly in light of the fact that over 20 juvenile group homes, 24 juvenile secure detention centers, and three CSUs are locally or commission-operated. Having such a regulation is essential to protect the safety of juveniles participating in programs, receiving services from, and residing in juvenile residential facilities or nonresidential juvenile justice programs.

The Board of Juvenile Justice is the promulgating entity. The authority is discretionary.

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 it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The Regulations Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs (the "Certification Regulation") sets forth the process by which the department and the board monitor compliance with the regulatory provisions applicable to residential facilities (local and state-operated), CSUs, and nonresidential programs and services in Virginia's juvenile justice system. It establishes (i) how the board will measure compliance with its regulations; (ii) thresholds for various regulatory actions available to the board; and (ii) minimum requirements for the department, as the board's regulatory agent, to monitor programs and report its findings. The regulation also provides for scheduled audits and unscheduled visits to ensure compliance with applicable regulations; an administrative review of audits; an appeals process in cases of disagreement with audit findings; and the issuance of variances under certain conditions.

Per the requirements in §§ 2.2-4017 and 2-2-4007.1 of the Code of Virginia and Executive Order 36

(2006), the department is required to conduct a "periodic review." The purpose of this review is to determine (1) whether the regulation is supported by statutory authority (as determined by the Office of the Attorney General) and (2) that the regulation is (a) necessary for the protection of public health, safety, and welfare; and (b) clearly written and easily understandable. This review

must be completed every four years. The last comprehensive review of the Certification Regulation was completed in September 2003. Thus, the regulation must be reviewed in order to maintain compliance with the applicable statutes and Executive Order.

Additionally, the board is currently revamping its regulatory scheme relating to the requirements for residential programs regulated by the board (JCCs, juvenile secure detention centers, and juvenile group homes and halfway houses). The primary intent of this residential regulatory overhaul is to reduce confusion in applying the regulatory requirements in each type of facility. The existing regulatory provisions have been examined to determine whether each was (1) appropriate for the type of facility; (2) clear in its intent and effect; and (3) necessary for the proper management of the facility. Amendments were recommended to accommodate the type of facility's specific needs and to enhance program and service requirements to best provide for the residents. These regulations (6VAC35-71 for JCCs; 6VAC35-101 for juvenile secure detention centers; and 6VAC35-41 for juvenile group homes and halfway houses) are currently undergoing the Executive Branch review at the proposed stage of the regulatory process.

One of the changes approved by the board in the residential regulatory overhaul was to draft each regulation (one for each "type" of facility regulated) with the requirements for each facility, facility administrator, provider, or governing authority. In so doing, any responsibilities of the department, the regulatory authority, or the board currently included in the existing regulatory scheme (the Standards for Juvenile Residential Facilities [6VAC35-140] and the Standards for the Interim Regulation of Children's Residential Facilities [6VAC35-51]) are proposed to be removed (i.e., issuance of licenses/certification and sanction). It was determined that any appropriate provisions relating to the certification and licensure process should be contained in the Certification Regulation as it governs the process of regulating and certifying these facilities. Thus, the Certification Regulation must be amended to incorporate the necessary provisions currently provided for in other regulations. Since the Certification Regulation is (1) scheduled for its required periodic review and (2) should be amended to incorporate those provisions deleted from the residential regulations applicable to the department and the board, the regulation will undergo a comprehensive review of each provision for appropriateness, effectiveness, clarity in intent and effect, and will be modified to provide for all regulatory duties and responsibilities of the department and the board in the residential and nonresidential certification processes.

Finally, under the current regulation, the department conducts monitoring visits and audits of programs and facilities regulated by the board and the board makes the determination of whether a program or facility should be certified and, if so, the duration of the certification. In the current Certification Regulation, Section 100 details the actions that may be taken by the board regarding a program's or facility's certification status. What action may be taken is dependent upon any findings of noncompliance determined during the audit completed by department personnel.

Since the last review of the regulation, the authority to approve and certify a facility was reexamined to determine whether the certification function was administrative in nature and should be managed and whether certificates should be issued by the department rather than the board. The following sections of the Code of Virginia were examined: §§ 16.1-234, 16.1-235, 16.1-249, 16.1-278.4, 16.1-278.8, 16.1-284.1, 16.1-291, 16.1-309.9, 16.1-309.10, 66-10, 66-13, 66-24, and 66-25.1:3. After consultation with the Office of the Attorney General and Secretary of Public Safety, it was determined that (1) there is no general certification requirement (however, certification is required by the Department of Social Services and the Comprehensive Services Act for placement of juveniles in group homes and other certifications are required as stated in the "legal basis" section); (2) the board establishes the substantive standards on which the programs and facilities are audited; (3) the department ensures that the programs and facilities meet the board's standards; and (4) the board monitors the activities and effectiveness of the department and may prohibit placement or limit the number of juveniles placed in a facility that does not comply with its standards. The proposed language reflects this interpretation of the certification authority of the department, with oversight by the board.

Having programs and facilities in compliance with their regulatory requirements is essential to the health, safety, and welfare of juveniles served by or placed in the programs or facilities and staff employed therein. The Certification Regulation and proposed changes strengthen the process for monitoring, approving, and certifying programs and facilities in the juvenile justice system. The proposed changes establish clear, concise, and consistent rules, rights, and responsibilities for the involved parties throughout the Commonwealth, particularly in light of the fact that over 20 juvenile group homes, 24 juvenile secure detention centers, and three CSUs are locally or commission-operated. Having such a regulation is essential to protect the safety of juveniles participating in programs, receiving services from, and residing in juvenile residential facilities or nonresidential juvenile justice programs.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

Section 10 (Definitions):

Deleted the following definitions:

- (i) Administrative probation; (ii) Administrative review; (iii) Certified; (iv) Mandatory standards; (v) Plan of action; (vi) Random sampling; (vii) Substantial compliance; (viii) Systemic deficiency; and (ix) Unresolved life, health, or safety violation.

Added or updated the following definitions:

- (i) Audit team leader, (ii) Certification audit, (iii) Compliance documentation, (iv) Conditional certification, (v) Corrective action plan, (vi) Critical regulatory requirements, (vii) Juvenile residential facility or facility, (viii) Monitoring review, (ix) Office on

Youth, (x) Regulatory requirement, (xi) Summary suspension order, (xii) VJCCCA program, (xiii) VJCCCA program or office on youth audit, (xiv) VJCCCA program or office on youth audit report, (xv) Written, (xvi) Preliminary Summary Suspension Order, and (xvii) Status report.

Section 30 (Purpose):

Amend to include all Code of Virginia citations providing for the monitoring, approval, and certification of programs and facilities. 16.1-249, 66-24, 66-25.1:3
Removes the Board's role in certifying facilities, the Board's responsibility is to review the certification audit reports when programs and facilities are not compliant. The Department will be responsible for auditing and certifying facilities

Section 35 (Guidance documents):

Adds language referencing facilities and monitoring reviews. Strikes the terms "standards" and "policies" and amends the language to "regulatory requirements".
Adds language that requires the DJJ to post guidance documents on the Department website.

Section 36 (Program or facility relationship to regulatory authority):

New section added which incorporates language from 6VAC35-51-230
Programs and facilities are required to provide and maintain documentation establishing compliance with the regulations.
Program and facility administrators must notify the Director of the Department within five business days of any significant changes in administrative structure. Additionally program and facility administrators must notify the Director of the Department of serious incidents, lawsuits, and criminal charges or reports of suspected child abuse or neglect.

Section 36.1 (Department response to reports of health, welfare, or safety violations):

This is a new section, which utilizes existing language from 6VAC35-20-65. The language was moved to this section to draft the regulations in chronological order.
Language requires the Department to take immediate action to correct violations of health, welfare and safety and to report to Board the action taken.

Section 37 (Director's authority to take immediate administrative action):

Strikes the phrase "board approved standards and policies" and amends the language to "regulatory requirements".
Adds language, which authorizes the Director of the Department to issue a preliminary summary order of suspension.
Adds language allowing notifications to be by mail, electronic mail, or hand delivery.
Requires the chair of the Board be notified of preliminary suspension orders

Section 50 (Preaudit process for certification audits):

Requires the Department notify programs and facilities of the name of the audit team leader six months in advance of the audit.

Strikes language requiring the list of audit team members is provided to program administrators.
Adds language, which permits the Director of the Department to approve audits scheduled after the expiration of the certification.

Deletes the language relating to an administrative review audit as these audits are never performed.

Section 60 (Monitoring of programs and facilities):

Strikes language requiring the Department to submit a monitoring plan to the Board
Strikes language requiring unannounced visits and reduces the number of required on-site monitoring visits from two a year to one scheduled visit per year.
Adds language allowing additional monitoring visits to be conducted at the request of the board, the department, or a program or facility administrator.

Section 61 (Self-audit of programs and facilities subject to the certification audit):

New section added

Adds language requiring all programs and facilities to complete self-audits each year, except in the year subject to a certification audit.

Section 63 (Reports of monitoring visits):

This section requiring the Department to report life health welfare and safety violations to the Boar has been deleted.

Language in 6VAC35-20-36.1 requires the Department report any health, welfare, and safety violation to the Board.

Section 65 (Reports required of life, health, and safety violations):

Subsection A mandating the Department take immediate corrective action upon becoming aware of any life, health, or safety violation has been moved to 6VAC35-20-36.1.

Subsection B has been deleted. This subsection authorizes the Board to take certification action up to and including decertifying a facility. Pursuant to § 16.1-309.9 of the Code of Virginia and 6VAC35-20-115 of the Virginia Administrative Code the board has the authority to enter order prohibiting or limiting the placement of juveniles in any facility that does not comply with minimum standards.

Section 67 (Disputes of noncompliance findings):

This section has been incorporated into 6VAC35-20-90 (C).The section permits programs to request a variance or appeal a finding.

Section 69 (Newly opened facilities and new construction, expansion, or renovation of residential facilities):

Add a requirement for the potential facility administrator to request a review for conditional certification.

Cross-reference the applicable substantive regulations for facilities and the certification actions in 6VAC35-20-100.

Adds language requiring the Director to consider the request for certification within 60 days of receiving the request and report on the audit findings.

Section 75 (Certification of individual programs or facilities):

Removes the Board’s authority to certify juvenile residential facilities, court service units and offices on youth.

Authorizes the Director to certify juvenile residential facilities, court service units.

Permits the Director to extend a certification pending an audit

Adds language stating a certificate is non transferable and conditions under which it expires and requires administrators of programs and facilities no longer operating to return the certificate to the Director.

Section 80 (Certification audit procedures):

Adds language requiring the audit team to visit the program or facility to conduct the audit.

Adds language requiring programs and facilities to provide documentation of approved variances and waivers to the audit team.

Clarifies proof of compliance is collected through reviewing documentation, interviews and audit team observations.

Section 85 (Determining compliance with individual regulatory requirements):

A new section is added specifically addressing the determination of compliance with individual regulatory requirements.

The term “critical and non critical regulatory requirement” is used. Programs and facilities must demonstrate 100% compliance with critical regulatory requirements. The audit team will determine compliance with non critical regulatory requirements based on a percentage of compliance for regulatory requirements with multiple elements additionally there must not be systemic noncompliance in a single element.

Section 90 (Certification audit findings):

Move requirements relating to certification audit reports and corrective action plans (in subsection C) to 6VAC35-20-91.

Require notice of the findings to the program administrator, the program's or facility's supervisory or governing authority, and the director or designee.

Incorporate the post-audit actions currently provided in 6VAC35-20-67 and 6VAC35-20-75.

Section 91 (Corrective action plans and certification audit reports):

A new section is added which contains all provisions relating to corrective action plans and certification audit reports.

Add components currently provided for in department procedures relating to timelines and required report components.

Section 92 (Variance request):

Adds language requiring that the program or facility requesting the variance subsequent to a finding of noncompliance do so within 10 days of receiving the written report.
Adds language stating that variance requests can only be made for noncritical regulatory requirements
Clarifies requested variances cannot be implemented prior to receiving Board approval.

Section 93 (Waivers):

Adds language stating a waiver can only be granted for noncritical regulatory requirements and only in emergency conditions or in cases when compliance is impossible or impractical.

Section 94 (Appeal process):

Amends the time frames for submitting an appeal. Program administrators now have 10 days to file an appeal. The original language provided for 15 days.
Amends the time frames for resolving an appeal. The manager of the certification team now has 10 days to attempt to resolve the appeal. The original language provided for 15 days.
Strikes language that authorizes the Board to review the appeal.
Language is added that authorizes the Director to issue a decision on an appeal within 15 days.
Adds language making it clear that any appeal of a finding of noncompliance does not negate the requirement to submit a corrective action plan.

Section 100 (Certification action):

The term “critical and non critical regulatory requirement” is used in place of the terms “mandatory” and “non mandatory standards”
Adds language requiring the Department to notify the program or facility administrator of the audit team's recommended certification action and the time, date, and location when certification action will be taken and states the facility administrator has the right to attend the director's or designee's review of the certification audit report and determination of certification action.
Adds language setting specific criteria and parameters regarding issuance of certificates depending on level, duration, and frequency of noncompliance.
Amends the language from “will be decertified” to “may be decertified” giving the Director discretion to decertify a program or facility based on specifics of a situation rather than on the broad categories listed.

Section 110 (Notice of certification action):

Strikes the language requiring facilities to post the certificate.
The requirement to provide variance documentation has been moved to 6VAC35-20-80.

Section 115 (Board review of programs and facilities found in noncompliance):

A new section has been added providing for the board's authority to review audit reports and to take appropriate action when a program or facility is found to be in noncompliance with a regulatory requirement.

Section 120 (Actions following decertification or denial of certification):

Clarify actions to be taken after a program or facility is decertified or denied certification; specifically, the provisions relating to department-operated and local, regional, and privately operated facilities.

Section 150 (Critical regulatory requirements for juvenile residential facilities):

Strike all language referencing "mandatory requirements" and add language requiring the Board to define critical regulatory requirements.

Section 200 (Monitoring of VJCCCA programs or offices on youth):

This is a new section requiring the department to set a schedule for conducting a minimum of one on-site monitoring visit to VJCCCA programs and offices on youth every two years.

Section 210 (VJCCCA programs and offices on youth self-evaluations):

This is a new section requiring Require VJCCCA programs and offices on youth to complete self-evaluations annually. The added language requires the Department to review the self evaluations and provide feedback.

Section 220 (VJCCCA program and office on youth audits):

This is a new section requiring VJCCCA program and office on youth audits comply with statutes, the approved plan, regulations, and department procedures and manuals.

Section 230 (VJCCCA program and office on youth audit findings):

This is a new section requiring the Department to provide audit findings to the program contact with a copy to the program's supervisory authority and allows for program appeals of a finding of noncompliance. Additionally the language requires the department to monitor the progress of any program found in noncompliance.

Section 240 (Effect of VJCCCA program or office on youth noncompliance):

This is a new section stating the effects of a finding of noncompliance, which includes suspending all, or a portion of the funding. Additionally, the Department is required to notify programs of the intent and rationale for withholding funds. The program may appeal the withholding of funds to the Director within ten business days.

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.*

The Certification Regulation and proposed changes strengthen the process for monitoring, approving, and certifying programs and facilities in the juvenile justice system. The proposed changes establish clear, concise, and consistent rules, rights, and responsibilities for the involved parties throughout the Commonwealth, particularly in light of the fact that over 20 juvenile group homes, 24 juvenile secure detention centers, and three CSUs are locally or commission-operated. Additionally, authorizing the DJJ director to certify or decertify a facility allows for noncompliance with regulatory standards to be addressed quickly and is not dependent on the State Board of Juvenile Justice’s meeting schedule. Having such a regulation is essential to protect the safety of juveniles participating in programs, receiving services from, and residing in juvenile residential facilities or nonresidential juvenile justice programs.

There are no disadvantages to the public or the Commonwealth.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
10*	The terms were used in the document at the proposed stage but were not defined.	Two terms and definitions were added (1) Preliminary Summary Suspension Order, and (2) Status report.	The terms needed to be defined
35	Use of the word ‘will’ Guidance documents referenced	The term ‘will’ was changed to ‘shall’ The agency is required to post guidance documents on the website	A decision was made to change the word ‘will’ to ‘shall’ throughout the document Posting the guidance document will be beneficial to the agencies and programs that are regulated by the DJJ
36.1	“The department shall report”	The sentence structure was changed “Reporting”	The new sentence structure matches the rest of section 36.1
37	1. A preliminary order of summary suspension	1. Word order was changed preliminary summary suspension order	1. Corrected a typo

	2. Number of days were listed but the days were not classified as business or calendar days	2. Language was added to clarify if the number of days listed were business or calendar days	2. clarification and consistency in application
50	Number of days were listed but the days were not classified as business or calendar days	Language was added to clarify if the number of days listed were business or calendar days	clarification and consistency in application
69	Number of days were listed but the days were not classified as business or calendar days	Language was added to clarify if the number of days listed were business or calendar days	clarification and consistency in application
75	The director or designee shall individually certify all juvenile residential facilities and court service units	The word ‘individual’ was removed, ‘all’ was changed to ‘each’, ‘Facilities’ was changed to ‘facility’ and ‘units’ was changed to ‘unit’	Technical changes
80	Required Substantial compliance and compliance documentation be collected	Struck the words substantial , documentation, and collected	The term substantial was determined to be subjective and the word documentation was used repeated twice in the same sentence. The word collected was not broad enough.
85	Compliance will be required or an acceptable percentage of compliance with any single element	Language was added to clarify Compliance shall require an acceptable percentage of compliance with any single element or the entire regulatory requirement	Clarified compliance requirements for regulatory requirements with multiple elements
90	Required the audit report be submitted to the supervisory or governing authority over the program or facility administrator	Removes the requirement that the audit report be submitted to the supervisory or governing authority over the program or facility administrator	The language was unnecessary. Facilities and programs submit audit reports up their existing chain of command structures.
91	<ol style="list-style-type: none"> 1. Number of days were listed but the days were not classified as business or calendar days 2. Audit teams are required to 	<ol style="list-style-type: none"> 1. Language was added to clarify if the number of days listed were business or calendar days 2. The language requiring audit teams to submit a recommendation was struck. 	<ol style="list-style-type: none"> 1. clarification and consistency in application 1. Audit teams will no longer submit recommendations they will only

	submit a recommendation		document compliance or noncompliance
92	<p>1. Number of days were listed but the days were not classified as business or calendar days</p> <p>2. The department is required to submit a recommendation</p>	<p>1. Language was added to clarify if the number of days listed were business or calendar days</p> <p>2. The language requiring department to submit a recommendation was struck.</p>	<p>1. clarification and consistency in application</p> <p>2. The State Board is responsible for approving or disapproving a request for a variance.</p>
93	<p>The director is required to promptly notify the Board by first class mail if a waiver is granted</p>	<p>The director is required to promptly notify the Board Chair in writing if a waiver is granted</p>	<p>It can be a challenge to immediately contact all the Board members and limiting the notification to first class mail is antiquated.</p>
94	<p>1. Section heading: Appeal for a finding of noncompliance with an individual regulatory requirement</p> <p>2. Number of days were listed but the days were not classified as business or calendar days</p> <p>3. If the appeal is granted the finding of noncompliance is removed</p>	<p>1. Section heading amended to read: Appeal for a finding of noncompliance</p> <p>2. Language was added to clarify if the number of days listed were business or calendar days</p> <p>3. Language was added to clarify the finding must be overruled to have the finding of noncompliance removed</p>	<p>1. The additional language was unnecessary</p> <p>2. clarification and consistency in application</p> <p>3. The additional language clarified what was necessary to remove a finding of noncompliance</p>

<p>100 *</p>	<p>Requires the department to notify the program or facility administrator of the audit team's recommended certification action and the time, date, and location when certification action will be taken. Includes notice requirements provided for in the Administrative Process Act. States that the facility administrator has the right to attend the director's or designee's review of the certification audit report and determination of certification action. Sets specific criteria and parameters regarding issuance of certificates depending on level, duration, and frequency of noncompliance (providing for grades of certification to include decertification, probationary certification, and certification up to three years). Moves requirements relating to terms of the certificate to section 75.</p>	<p>Adds language that requires the notice of the right to appear at the hearing be provided 10 days prior to the director's consideration of the audit report, a distinction is made between critical and non critical regulatory requirements the consequences for failing to comply with each type. When a program or facility is in less than 100% compliance with the critical regulatory requirement and or less than 90% compliance with non critical regulatory requirements or is placed on probation, a status report is required to be completed prior to the expiration of the certification period or probationary period Facilities that pose no immediate or substantial threat to the health, welfare, or safety of residents that are in noncompliance after a status review but have an acceptable corrective action plan will be certified for a period of time up to one year and a second status report will be required prior to the expiration of the certification. Language was struck that authorized the director to change a facility's or program's certification upon any notification of compliance. Language was added that requires an illegal act to result in a conviction to warrant the consideration of decertification and language that permits the director to issue certification decisions outside of the stated guidelines after reviewing any</p>	<p>The additional language further clarified the levels of certification and provided the director the ability to consider relevant factors and make an informed decision to place a facility on probation or decertify should the facts warrant the facility or program be granted an exception to the general requirements.</p>
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		<p>aggravating or mitigating circumstances affecting the facts that resulted in a finding of noncompliance and considering if the facility had control over and knowledge of the circumstance and took appropriate steps to immediately rectify the situation.</p>	
<p>120*</p>	<p>1. The language authorized the department to close a decertified facility or relocate the residents</p> <p>2. Number of days were listed but the days were not classified as business or calendar days</p> <p>3. Used the term ‘sponsor’</p> <p>4. The department may not utilize facilities that re decertified.</p>	<p>1. Language was added to require the department to take remedial action in addition to closing a decertified facility or relocating the residents.</p> <p>2. Language was added to clarify if the number of days listed were business or calendar days</p> <p>3. the language was amended to ‘facility supervisory and governing authority’</p> <p>4. Language was changed from ‘may not’ to ‘shall not’ as was the term ‘residential placement’</p>	<p>1. The additional language ensures the department addresses the issue that resulted in decertification in addition to closing or relocating residents.</p> <p>2. clarification and consistency in application</p> <p>3. The term sponsor is not used anywhere else in the document.</p> <p>4. The language was revised to clarify that housing juveniles in a decertified facility is not discretionary and to clarify the department may use the building for activities that do not include residential placements</p>

150*	The Board designates which regulatory requirements will be defined as critical.	Additional language was added to clarify the timeline and process for reviewing and amending the critical regulatory requirements. Additional language was added that allows anyone at any time to request the Board review the critical regulatory requirements and a requirement that the critical regulatory requirements be posted on the Department’s website	The additional language describes the process and timeline for amending the critical regulatory requirements to ensure the process is implemented in a consisted manner
210	Typo: use of the word ‘of’	Typo corrected changed to ‘or’	typo
240	Permitted the department to suspend VJCCCA funding if there was not ‘substantial compliance’	Removes the word ‘substantial’	The word substantial is subjective and the proposed language in 6VAC35-20-100 outlines acceptable percentages of compliance.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response

No public comment was received.

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10		<p>The following definitions are defined: Administrative probation; Administrative review; Appeal; Board; Certification; Certification audit, report or audit report; Certification Status Certified; Compliance; Decertified; Deficiency and noncompliance; Life, health or safety violation; Mandatory standards; Monitoring visit, Newly opened facility; Plan of action; Probation; Program; Program administrator; Random sampling; Substantial compliance; Systemic deficiency; Unresolved life, health, or safety violation; variance;</p>	<p>The following definitions were deleted because they were no longer relevant: Administrative probation; Administrative review; Certified; Mandatory standards; Plan of action; Random sampling; Substantial compliance; Systemic deficiency; and Unresolved life, health, or safety violation</p> <p>The following definitions were added or revised to ensure all terms used within the document were defined and the definitions were clear: Appeal of finding of noncompliance; Audit team leader; Certification; Certification action; Certification audit; Certification audit report; Compliance documentation; Conditional certification; Corrective action plan; Critical regulatory requirements; Decertified; Deficiency and noncompliance; Health, welfare or safety violation; Juvenile residential facility or facility; Monitoring review; Monitoring visit; Office on Youth; Regulatory requirement; Preliminary Summary Suspension Order; Probationary certification, Program; Summary suspension order; Program or facility administrator; Variance; VJCCCA program; VJCCCA program or office on youth audit; VJCCCA program or office on youth audit report; Written; Preliminary Summary Suspension Order, and; Status report.</p>
30		<p>The Board will monitor and approve residential facilities and</p>	<p>Amend to include all Code of Virginia citations providing for the monitoring, approval, and</p>

		nonresidential programs that are part of the Commonwealth's juvenile justice system.	certification of programs and facilities. 16.1-249, 66-24, 66-25.1:3 Removes the Board's role in certifying facilities, the Board's responsibility is to review the certification audit reports when programs and facilities are not compliant. The Department will be responsible for auditing and certifying facilities. This change will allow issues of noncompliance to be addressed in an expeditious manner.
35		The department is required to prepare guidance documents that will serve as the basis for monitoring visits and certification audits.	The agency is required to post guidance documents on the website Posting the guidance document will be beneficial to the agencies and programs that are regulated by the DJJ
	36		New section added which incorporates language from the 6VAC35-51-230 moving this section here made the process flow in chronological order. Programs and facilities are required to provide and maintain documentation establishing compliance with the regulations. Program and facility administrators must notify the Director of the Department within five business days of any significant changes in administrative structure. Additionally program and facility administrators must notify the Director of the Department of serious incidents, lawsuits, and criminal charges or reports of suspected child abuse or neglect.
	36.1		This is a new section which utilizes language from 6VAC35-20-65. The language was moved to this section to draft the regulations in chronological order. Language requires the Department to

			take immediate action to correct violations of health, welfare and safety and to report to Board the action taken.
37		Authorizes the director to place a program not in compliance to withhold funds, place the program on probation, or issue a summary order of suspension of the certificate when there is evidence of any life, health, or safety violation, or a program is not in substantial compliance with the approved local plan.	<p>Strikes the phrase “board approved standards and policies” and amends the language to “regulatory requirements”.</p> <p>Adds language, which authorizes the Director of the Department to issue a preliminary summary order of suspension. This additional language clarifies that the suspension is preliminary and subject to due process.</p> <p>Adds language allowing notifications to be by mail, electronic mail, or hand delivery.</p> <p>Requires the chair of the Board be notified of preliminary suspension orders</p> <p>Language was added to clarify if the number of days listed were business or calendar days</p>
50		Requires department personnel to notify a program of the scheduled audit dated and to identify audit team members. Permits the program administrator to request the audit be rescheduled 90 days before the scheduled audit.	<p>Requires the Department notify programs and facilities of the name of the audit team leader six months in advance of the audit.</p> <p>Strikes language requiring the list of audit team members be provided to program administrators.</p> <p>Adds language, which permits the Director of the Department to approve audits scheduled after the expiration of the certification to allow for flexibility if the audit is unable to occur as scheduled.</p> <p>Deletes the language relating to an administrative review audit, as these audits are never performed.</p> <p>Language was added to clarify if the number of days listed were business or calendar days</p>
60		Requires programs	All visits will be scheduled and

		regulated by the Board to have one announced monitoring visit and one unannounced monitoring visit per year. Non residential programs shall be reviewed at least once every two years and at least one nonresidential program from each plan must receive a monitoring visit.	reduces the number of required on-site monitoring visits from two a year to one scheduled visit per year. Adds language allowing additional monitoring visits to be conducted at the request of the board, the department, or a program or facility administrator. The proposed language gives the Board, the director and the facility administration more flexibility to request monitoring visits or reviews.
	61		All programs and facilities subject to audits shall conduct an annual self audit except the year the program is subject to a certification audit. Self audits require the program and facility to identify and address deficiencies.
63		The department shall report to the board any significant deficiencies identified through monitoring visits or other means if the program has failed to take corrective action.	This section requiring the Department to report life health welfare and safety violations to the Boar has been repealed. Existing language in 6VAC35-20-36.1 requires the Department report any health, welfare, and safety violation to the Board.
65		Mandates the Department take immediate corrective action upon becoming aware of any life, health, or safety violation and authorizes the Board to take certification action up to and including decertifying a facility	This section requiring the Department to report life health welfare and safety violations to the Board has been repealed. Subsection A mandating the Department take immediate corrective action upon becoming aware of any life, health, or safety violation has been moved to 6VAC35-20-36.1 to allow the process to flow in chronological order. The language in subsection B has been struck. This subsection authorizes the Board to take certification action up to and including decertifying a facility. Pursuant to § 16.1-309.9 of the Code of Virginia and 6VAC35-20-115 of the Virginia Administrative Code the

			board has the authority to enter an order prohibiting or limiting the placement of juveniles in any facility that does not comply with minimum standards.
67		The section permits programs to request a variance or appeal a finding.	This section has been repealed because the language has been incorporated into 6VAC35-20-90 (C).
69		Required new construction, or expansion of juvenile residential programs meet the regulatory requirements outlined in 6VAC35-71, 6VAC35-101, 6VAC35-41, and 6VAC35-30.	Adds a requirement for the potential facility administrator to request a review for conditional certification. Cross-reference the applicable substantive regulations for facilities and the certification actions in 6VAC35-20-100. Adds language requiring the Director to consider the request for certification within 60 days of receiving the request and report on the audit findings. Language was added to clarify if the number of days listed were business or calendar days
75		The Board shall individually certify all juvenile residential facilities and court service units. The program administrator may appeal any of the certification audit findings.	Removes the Board’s authority to certify juvenile residential facilities, court service units and offices on youth. Authorizes the Director to certify juvenile residential facilities, court service units. The directly can address noncompliance in an expeditious manner and is not required to wait to address the issue at a Board meeting. Strikes the language describing the appeal process. The language addressing appeals can be found in 6VAC35-20-94. Permits the Director to extend a certification pending an audit Adds language stating a certificate is non transferable and conditions under which it expires and requires

			administrators of programs and facilities no longer operating to return the certificate to the Director to ensure facilities are not operated without proper authority.
80		States the burden of providing proof of compliance rests with the program staff and that once the audit is concluded, any changes made by the agency will not change the compliance determination for a given standard.	Adds language requiring the audit team to visit the program or facility to conduct the audit. Adds language requiring programs and facilities to provide documentation of approved variances and waivers to the audit team. Clarifies proof of compliance is collected through reviewing documentation, interviews and audit team observations.
	85		Section heading: Determining compliance with individual regulatory requirements. Programs and facilities must demonstrate 100% compliance with critical regulatory requirements. The audit team will determine compliance with non critical regulatory requirements based on a percentage of compliance for regulatory requirements with multiple elements or the entire regulatory requirement. Additionally there must not be systemic noncompliance in a single element. Compliance shall require an acceptable percentage of compliance with any single element or the entire regulatory requirement Clarified compliance requirements for regulatory requirements with multiple elements
90		A report of audit findings shall be submitted to the	Move requirements relating to certification audit reports and corrective action plans (in subsection

		<p>program administrator within 10 days of the certification audit. The program administrator shall develop and submit a corrective action plan within in 15 days of receipt of the report. A 30 day extension may be granted to develop the corrective action plan. Lists what is required to be in each certification audit report and states a corrective action plan is required.</p>	<p>C) to 6VAC35-20-91. Require notice of the findings to the program administrator, and the director or designee. Incorporate the post-audit actions currently provided in 6VAC35-20-67 and 6VAC35-20-75.</p>
	91		<p>A new section is added to provide the field with clarity related to what is required for corrective action plans and certification audit reports. Adds components currently provided for in department procedures relating to timelines and required report components. Language was added to clarify if the number of days listed were business or calendar days</p>
92		<p>Requires any request for a variance be submitted in writing and lists the information to be included in the request.</p>	<p>Clarifies the State Board is responsible for approving or disapproving a request for a variance. Language was added to clarify if the number of days listed were business or calendar days</p>
93		<p>Authorizes the director to consider granting a waiver to excuse a program from meeting the requirements of regulation. The director is required to promptly notify the Board by first class mail if a waiver is granted</p>	<p>A waiver may be granted only when the program or facility is presented with emergency conditions or circumstances that make compliance impossible or impractical. The director is required to promptly notify the Board Chair in writing if a waiver is granted. It can be a challenge to immediately contact all the Board members and limiting the notification to first class mail is</p>

94		<p>Requires the program administrator to attach the appeal request to a plan of action and submit it to department personnel. Language authorizes the Board to review the appeal</p>	<p>antiquated.</p> <p>Amends the time frames for submitting an appeal to ensure appeals are submitted and addressed in a timely manner. Program administrators now have 10 days to file an appeal. The original language provided for 15 days.</p> <p>Amends the time frames for resolving an appeal The manager of the certification team now have 10 days to attempt to resolve the appeal. The original language provided for 15 days.</p> <p>Language is added that authorizes the Director to issue a decision on an appeal within 15 days.</p> <p>Adds language making it clear that any appeal of a finding of noncompliance does not negate the requirement to submit a corrective action plan.</p> <p>The program or facility administrator can appeal the director’s finding to the Board.</p> <p>Language was added to clarify if the number of days listed were business or calendar days.</p> <p>Language was added to clarify the finding must be overruled to have the finding of noncompliance removed</p>
100		<p>Requires the department to notify the program or facility administrator of the audit team's recommended certification action and the time, date, and location when certification action will be taken. Includes notice requirements provided for in the Administrative Process</p>	<p>Section heading: Certification action</p> <p>Adds language that requires the notice of the right to appear at the hearing be provided 10 days prior to the director’s consideration of the audit report, a distinction is made between critical and non critical regulatory requirements the consequences for failing to comply with each type.</p> <p>When a program or facility is in less than 100% compliance with the critical regulatory requirement and or less than 90% compliance with non critical regulatory requirements or is</p>

		<p>Act. States that the facility administrator has the right to attend the director's or designee's review of the certification audit report and determination of certification action. Sets specific criteria and parameters regarding issuance of certificates depending on level, duration, and frequency of noncompliance (providing for grades of certification to include decertification, probationary certification, and certification up to three years). Moves requirements relating to terms of the certificate to section 75.</p>	<p>placed on probation, a status report is required to be completed prior to the expiration of the certification period or probationary period Facilities that pose no immediate or substantial threat to the health, welfare, or safety of residents that are in noncompliance after a status review but have an acceptable corrective action plan will be certified for a period of time up to one year and a second status report will be required prior to the expiration of the certification. Language was struck that authorized the director to change a facility's or program's certification upon any notification of compliance. Language was added that requires an illegal act to result in a conviction to warrant the consideration of decertification and language that permits the director to issue certification decisions outside of the stated guidelines after reviewing any aggravating or mitigating circumstances affecting the facts that resulted in a finding of noncompliance and considering if the facility had control over and knowledge of the circumstance and took appropriate steps to immediately rectify the situation. The additional language further clarified the levels of certification and provided the director the ability to consider relevant factors and make an informed decision to place a facility on probation or decertify should the facts warrant the facility or program be granted an exception to the general requirements.</p>
110		<p>Requires the board or an agent of the Board to send notice of any certification action to the program</p>	<p>Requires the director or his designee to send notice of any certification action to the program or facility administrator, the program's or facility's supervisory or governing</p>

		<p>administrator, the program’s sponsoring locality or commission, and designated department personnel. The program is required to post the certificate or letter in a conspicuous place in program offices. Approved variances are required to be made available to the audit team.</p>	<p>authority, and other state and local authorities as appropriate</p> <p>The requirement to provide variance documentation has been moved to 6VAC35-20-80.</p>
	115		<p>A new section has been added providing for the board's authority to review audit reports and to take appropriate action when a program or facility is found to be in noncompliance with a regulatory requirement.</p>
120		<p>The language authorizes the department to close a decertified facility or relocate the residents. The department may not utilize facilities that are decertified. Lists the actions to be taken after a program or facility is decertified or denied certification; specifically, the provisions relating to department-operated and local, regional, and privately operated facilities.</p>	<p>The language clarifies the actions to be taken after a program or facility is decertified or denied certification; specifically, the provisions relating to department-operated and local, regional, and privately operated facilities.</p> <p>Language was added to require the department to take remedial action in addition to closing a decertified facility or relocating the residents. The additional language ensures the department addresses the issue that resulted in decertification in addition to closing or relocating residents. Language was added to clarify if the number of days listed were business or calendar days</p> <p>The language was revised to clarify that housing juveniles in a decertified facility is not discretionary and to clarify the department may use the</p>

			building for activities that do not include residential placements
150		Requires that all programs must be in 100% compliance with all mandatory standards and lists the code citations that identify mandatory standards.	<p>Strike all language and code citations referencing "mandatory requirements" The Board designates which regulatory requirements will be defined as critical.</p> <p>Additional language was added to clarify the timeline and process for reviewing and amending the critical regulatory requirements. Additional language was added that allows anyone at any time to request the Board review the critical regulatory requirements and a requirement that the critical regulatory requirements be posted on the Department's website</p> <p>The additional language describes the process and timeline for amending the critical regulatory requirements to ensure the process is implemented in a consistent manner.</p>
	200		This is a new section requiring the department to set a schedule for conducting a minimum of one on-site monitoring visit to VJCCCA programs and offices on youth every two years. This section was added to clarify the differences in the requirements for audits to VJCCCA programs and juvenile correctional centers and detention homes.
	210		This is a new section requiring VJCCCA programs and offices on youth to complete self-evaluations annually. The added language requires the Department to review the self evaluations and provide feedback. This section was added to clarify the differences in the requirements for audits to VJCCCA programs and juvenile correctional centers and detention homes

	220		This is a new section requiring VJCCCA program and office on youth audits comply with statutes, the approved plan, regulations, and department procedures and manuals. This section was added to clarify the differences in the requirements for audits to VJCCCA programs and juvenile correctional centers and detention homes
	230		This is a new section requiring the Department to provide audit findings to the program contact with a copy to the program's supervisory authority and allows for program appeals of a finding of noncompliance. Additionally the language requires the department to monitor the progress of any program found in noncompliance. This section was added to clarify the differences in the requirements for audits to VJCCCA programs and juvenile correctional centers and detention homes
	240		This is a new section stating the effects of a finding of noncompliance, which includes suspending all, or a portion of the funding. Additionally, the Department is required to notify programs of the intent and rationale for withholding funds. The program may appeal the withholding of funds to the Director within ten business days. This section was added to clarify the differences in the requirements for audits to VJCCCA programs and juvenile correctional centers and detention homes

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