



Final Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22 VAC 40-201
Regulation title	Permanency Services – Prevention, Foster Care, Adoption and Independent Living
Action title	Establish New Permanency Services Regulation
Date this document prepared	June 16, 2010

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 is a joint action to repeal eight regulations and replace them with one comprehensive new Permanency Services regulation that will encompass the full range of services for providing a child with a safe home with his family, or in the most family-like setting while maintaining family connections. The regulation includes provisions describing how local departments of social services provide services to prevent children from coming into foster care. It also describes the process for assessing children entering foster care, establishing goals for those children, engaging in concurrent planning, and ensuring children are in the most appropriate and least restrictive placement. The regulation addresses development of service plans, service delivery, court hearings and case reviews, the provision of independent living services and the closing of foster care cases. The regulation includes provisions addressing adoption processes, adoption assistance, and the putative father registry. In addition, the regulation requires local departments of social services workers and supervisors to attend training in accordance with Virginia Department of Social Services (DSS) guidance.

Most changes between the proposed and final regulation clarify language. Two new definitions were added and three were deleted; two because they were not used, and one because the definition was spelled out in the regulation and not needed. The definition of “child with special needs” was modified, as

was 22 VAC 40-201-160, to ensure compliance with changes to the Code of Virginia (Code) that will become effective July 1, 2010. Language was removed from 22 VAC 40-201-70 concerning a priority in goal selection for children in foster care and to emphasize three goals for children in foster care that are recognized by the federal Administration for Children and Families. This revision requires that if one of the three goals recognized by the Administration for Children and Families is not selected there must be documentation explaining why one of those three goals is not appropriate.

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 taking the action, and (3) the title of the regulation.

The State Board of Social Services approved this regulation on June 16, 2010.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The state's legal basis for this action is §§ 63.2-217 and 63.2-319. These statutes provide the authority for the State Board of Social Services to adopt regulations as may be necessary to carry out the mandated purposes of DSS. Section 63.2-319 directs local departments of social services to provide child welfare services. This regulatory action will provide a comprehensive structure for the provision of those services.

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.

This is a joint action to repeal eight regulations and replace them with one comprehensive new Permanency Services regulation that will encompass the full range of services for providing a child with a safe and secure living situation that supports family connections. Currently, regulations addressing permanency services for children are contained in eight different regulations which were promulgated at different times. Combining these regulations into one comprehensive regulation will ensure consistency in definitions and language and will limit the number of regulations individuals must use when addressing issues related to permanency services for children. Avoiding confusion in the rules that apply to children and families in the child welfare system is essential in protecting the health, safety and welfare of these children. The comprehensive Permanency Services regulation is integral to Virginia's compliance with federal child and family services program goals.

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.

One of the first sections of this regulation addresses the importance of providing services to prevent a child from having to enter the foster care system. It emphasizes inclusion of the child, birth parents, and significant individuals in the child's life in the decision making process, including the initial assessment and development of goals and service plan. The regulation supports a concurrent planning process to help ensure timely permanence for a child if an initial goal, such as return home, cannot be achieved. The regulation requires an assessment of the child and the effectiveness of services provided to him and his birth parents or prior custodian in three months if the child's goal is return home. This is a change from current practice, which provides for assessment of children in foster care every six months. The regulation includes language requiring visits to children in foster care at least once each calendar month; this complies with a federal mandate. The regulation requires initial and annual in-service training for foster care and adoption workers and supervisors. DSS has offered training for foster care service workers for more than ten years through contracts with Virginia Commonwealth University and through other venues. While training has been mandated for child protective services workers, it has not been mandated for foster care and adoptive workers until now.

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.*
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The primary advantages of this regulation are that it provides one comprehensive regulation that keeps children from coming into the foster care system and supports returning children to their homes or finding another permanent home for them as quickly and safely as possible. Currently, regulations addressing permanency services for children are contained in eight different regulations which were promulgated at different times. Combining these regulations into one comprehensive regulation will ensure consistency and will limit the number of regulations individuals must use when addressing issues related to permanency services for children.

The regulation supports practices that address children's health, safety, and need for family connections while they are in foster care. It also supports a well trained workforce. There are no disadvantages to the public posed by this regulation. Of interest to the local departments of social services are the costs associated with visiting children monthly, increasing the number of individuals participating in the planning process, and increasing the number of assessments for some children.

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		Added definition of Administrative Panel Review.	Response to comment citing need for definition.
10	Definition of adoption assistance agreement.	Last sentence in definition deleted. This did not change meaning.	Sentence did not add to definition and combined funding source and types of agreements.
10*	Definition of child with special needs.	Rewrote this section to refer to and be compliant with §§ 63.2-1300 and 63.2-1301, which are effective July 1, 2010.	The Adoption Assistance section of the Code has been rewritten to ensure federal compliance. It will become effective July 1, 2010.
10	Definition of foster care.	Deleted sentence about where placements may be made.	The sentence was procedural and is covered later in the regulation. It did not contribute to the definition of foster care.
10	Definition of foster care maintenance payments.	Added reasonable travel for child's visits to relatives or to remain in previous school to expenses allowed as part of maintenance.	Added to be consistent with federally allowable expenses.
10	Definition of foster family placement.	Deleted this definition.	Was almost identical to the more frequently used "foster care placement."
10	Definition of Interstate Compact on the Placement of Children.	Added Puerto Rico to list of those who have enacted the compact.	Omission in proposed regulation.
10	Definition of nonrecurring expenses.	Added words "or other" to the list of fees and added "licensed" to describe the type of agency fees that could be covered.	Amended to be consistent with changes to adoption assistance in the Code that will be effective July 1, 2010.
10		Added definition of Putative Father Registry.	Omission in proposed regulation.
10	Definition of Reassessment.	Deleted definition.	It was determined that the term could be misleading and suggest a different process. Assessment is an ongoing process through the life of a foster care case.
10	Definition of Special service payment.	Deleted.	This term is defined in the adoption assistance section 160 E 3 so the definition is not necessary.
20 B	Requires local department to work with birth parents or custodians to locate and assess relatives to support child remaining in home or as possible placement.	Deleted language "work with parents or custodians" and added "make diligent efforts."	Agencies may perceive the language "work with parents or guardians" as limiting who they can contact or work with in their search for relatives.

20 C	States that services shall be available to an eligible child and family to prevent the need for foster care.	Made it clear that the available services are foster care services and reorganized sentence.	Clarified sentence – did not change meaning.
20 H*		Added new subsection stating that within 30 days from removing the child from his home the local agency must make diligent efforts to notify relatives.	This is a requirement of the federal Fostering Connections Act – 2008 impacting Title IV-E of the Social Security Act section 471 (a) (29).
30 A	Lists how children enter foster care.	Adds that a child ending a commitment with the Department of Juvenile Justice (DJJ) re-enters foster care.	Omission in proposed regulation.
30 B 3	Explains purpose and types of entrustment agreements.	Adds language stating that a local department shall submit petitions for approval of entrustment agreements to the Juvenile and Domestic Relations (J&DR) court.	This is a current Code requirement and practice; DSS determined it should be included in this section for clarity and completeness.
40 A 3	Provides that the local department should attempt to place child close to prior home to facilitate visitation.	Added language that addresses providing educational stability as well.	Omission in proposed.
40 A 7	Addresses local department responsibilities when placing children of Native American heritage.	Changed language to state that if child is of Virginia Indian heritage the local department may contact the Council on Indians for assistance and shall consider the tribal culture in placement and care decisions.	Clarifying changes. The Virginia Council on Indians does not have authority over children but may be helpful.
50 D 1	Addresses efforts to keep a child in their current school if it is in the child’s best interest.	Rewrote D and D1 to be clearer.	Clarifying changes.
60 E	Discusses assessments of the services offered to child and birth or foster family or prior custodian.	Changed word reassessment to assessment.	It was determined that the term could be misleading and suggest a different process. Assessment is an ongoing process through the life of a foster care case.
70 A*	Identifies foster care goals in priority order.	Changed the language to state that the first three goals listed are those that are recognized in federal legislation and there must be documentation as to why one of these three goals was not selected if a goal other than one of the first three is selected.	Local departments have worked with the understanding that the goals are listed in priority order. However, federal ACF does not recognize permanent foster care, independent living or another planned permanent living arrangement as permanent goals and these goals are contained

			in the lists in the Code. The Code does not indicate a priority. The intent of this change is to support local departments in selecting goals for children that result in permanency for the child and to ensure that if a goal other than one of the first three is selected there is a good and documented reason for that selection.
100 G	Describes the restoration of independent living services to a young person who has chosen to discontinue services.	Rewrote the subsection for clarity.	This section of the Code has been addressed by legislation every year for the past several General Assembly sessions. Referencing the Code section, rather than putting a specific time frame in this section, will ensure the accuracy of the language.
130 A	Addresses when foster care cases are closed or transferred to another service category.	Added commitment to DJJ as a circumstance under which a foster care case is closed.	Omission in proposed regulation.
150 A	Describes the services provided by the Adoption Resource Exchange of Virginia.	Changed language from “distributing” a photo-listing of children to “posting” the listing and changed references on technical assistance to indicate it is child specific assistance.	This reflects changes in the technology used by Adoption Resource Exchange of Virginia (AREVA) and the focus on assistance needed to recruit families for specific children.
160*	This section covers the types of adoption assistance payments that can be received and the eligibility requirements.	Changes were made throughout this section to make it consistent with changes to the Code which will become effective July 1, 2010.	Virginia made significant changes to §§ 63.2-1300 through 63.2-1303 to ensure compliance with Title IV-E of the Social Security Act.
B 1 – 3	Lists the additional criteria a child with special needs must meet to be eligible for adoption assistance	Added language that child must meet requirements of Title IV-E or be under 18 and in the care and placement of a child-placing agency and placed in an adoptive placement. Also combined number 2 and 3 for clarity.	Provided consistency with Code changes to be effective July 1, 2010.
C 2-3	Lists the types of adoption assistance for which a child	Combined number 2 and 3	Conditional is a type of agreement and state

<p>E 2</p>	<p>may be eligible.</p> <p>States that maintenance payments shall not exceed the maximum foster care board rate as established by the appropriation act.</p>	<p>Deleted language referring to a maximum board rate. Rewrote to increase clarity and to state that the maintenance payment cannot exceed the maintenance payment the child would have received during the period if the child had been in a foster family home.</p>	<p>funds are used for payments. It should not be listed separately.</p> <p>The maintenance payment a child receives in foster care may contain more than the board rate which is an outdated term. The new language is consistent with that in Section 473 of Title IV-E of the Social Security Act.</p>
<p>E 3</p>	<p>Describes special service payments and states that they shall be directly related to a child’s special needs or day care.</p>	<p>Deleted “day care” from the sentence.</p>	<p>Day care should only be considered if it is a special need. Listed separately implies that any type of day care may be considered.</p>
<p>G</p>	<p>Provides that the procedures for a child whose eligibility is established after finalization is the same as those established before except that the application shall be submitted within one year of diagnosis of the condition which establishes the child as a child with special needs.</p>	<p>Added language stating that the child must meet the eligibility requirements of Section 160 B 2.</p>	<p>This language was added to ensure that only those children who would have met the eligibility requirements had they been determined to be a child with special needs at the time of the finalization be considered eligible under this section.</p>
<p>190</p>	<p>Describes use of the Virginia Putative Father Registry.</p>	<p>Added a new section D, stating that DSS may request additional information from an individual who has requested a search of the registry to ensure the individual is eligible under the Code to request registry information.</p>	<p>Only certain individuals are allowed by Code to request information from the registry. This allows DSS to be assured that information is released only to those individuals allowed by Code.</p>
		<p>Throughout this regulation changes were made to correct spelling, grammar or incorrect Code cites.</p>	

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
Linda Nisbet Interim Director Franklin County, DSS	22 VAC 201-10 Three definitions need to be added to definitions section: “approved case worker,” “administrative panel,” and “prevention.”	DSS does not agree with the need to define approved case worker. A definition for Administrative Panel Review was added. There is a definition for Foster Care Prevention. The term prevention alone is too global for a separate definition.
Culpeper Human Services Culpeper VA	22 VAC 40-201-20 Sections C and D state that services <u>shall</u> be available to birth parents or custodians to prevent need for foster care. Culpeper’s Comprehensive Services Act (CSA) team does not fund services provided to parents – this appears to be an unfunded mandate and if required, should be funded.	Section 63.2-905 states that foster care services are available to a child and his family to prevent foster care.
Culpeper Human Services Culpeper VA	22 VAC 40-201-30 Section C states that local departments of social services shall enter into a noncustodial foster care agreement at the request of the birth parent or custodian when it is in the best interest of the child – This appears to require local departments of social services to enter into noncustodial agreements. Are they needed anymore? The addition of child in need of services (CHINS) as a mandate has eliminated the need.	Non-custodial agreements may be appropriate in some situations. Parents have a choice and may wish to place their child in foster care.
Culpeper Human Services Culpeper VA	22 VAC 40-201-40 The wording of section C is confusing. Section E refers to local departments of social services notifying an agency if they are going to place a child in one of their approved homes. In Northern Virginia, agencies approve homes in Culpeper that they are unaware of until notified by a school when the child is acting out. Section H states that a local department may petition to transfer custody to another agency when the birth parent or custodian has moved to that locality. This is already an option and frequent custody transfers of kids may occur if parents move around. This could undermine permanency efforts.	DSS does not feel the language in section C is confusing, but will ensure that guidance addresses this in more detail. This regulation addresses the placement of children. 22 VAC 40-211 and the guidance for approving homes is the appropriate place to address notification by agencies when approving a home in another jurisdiction. The issue will be addressed in developing or modifying guidance for approving family homes. This is a permissive statement and DSS agrees that agencies should always work in the best interest of the children in their custody.

	Would rather see a regulation that advises jurisdictions to work together on these issues..	
Culpeper Human Services Culpeper VA	<p>22 VAC 40-201-50 Section D1 states that the child’s desire to stay in same school setting be considered in decision making. Is this in local departments of social services control at all times? Who pays for transportation?</p> <p>Section D 2 states that the service worker in coordination with birth parents, prior custodians, foster care providers and others shall coordinate school placement – Same questions as above – who pays.</p>	<p>While the child is in the custody of the local departments of social services, the decision is made by a group considering the best interest of the child. This is a federal requirement and as expected federal guidance comes out DSS will update its own guidance.</p> <p>The funding questions for this are beyond the scope of this regulation – DSS will contact Culpeper directly to talk about funding. Transportation to remain in current school placement is included in the maintenance payment.</p>
Linda Nisbet Interim Director Franklin County, DSS	<p>22 VAC 40-201-60 The section states the local departments of social services shall complete the Permanency Planning Indicator. This form is not listed in the Foster Care Manual. Please use uniform terminology and place copies of forms in manual.</p>	This is a guidance manual issue. The form will be included in the manual. Links will be provided to forms.
Culpeper Human Services Culpeper VA	<p>22 VAC 40201-90 Section E requires monthly visits with all children in foster care in accordance with the foster care manual and Chapter C of the Adoption Manual –</p> <p>Does this mean monthly visits are required after adoption?</p>	No – monthly visits are not required after adoption.
Linda Nisbet Interim Director Franklin County, DSS	<p>22 VAC 40-201-90 Section F 1 requires monthly visits by an approved case worker. The Town Hall document points out the costs associated with monthly visits. I believe that this regulation could harm children in foster care and DSS should hold this regulation until funding is available to support local departments of social services staff to accomplish these visits.</p>	Monthly visits are a federal requirement. This has been a requirement for several years and most agencies are in compliance.
Linda Nisbet Interim Director Franklin County, DSS	<p>22 VAC 40-201-100 The terminology for independent living services states that foster care youth and his family and care providers <u>shall</u> identify needed services but local departments of social services <u>may</u> provide services.</p>	It is important to know what services are needed by youth and endeavor to provide them or help them connect with other individuals or agencies that can provide them. Section 63.2-905.1 states that local departments of social services may provide services.

<p>Linda Nisbet Interim Director Franklin County, DSS</p>	<p>22 VAC 40-201-110 C It would be useful to have a template for the invitation to parents and other concerned in the administrative panel review, and a better description of what it entails than is in current manual.</p>	<p>This is a guidance manual issue – we will address it there.</p>
<p>Linda Nisbet Interim Director Franklin County, DSS</p>	<p>22 VAC 40-201-120 E This section requires social workers to provide the eligibility worker information to determine eligibility. DSS could solve communication problems between eligibility workers and social workers with an electronic bridge between the computer systems. Given the IV-E funding requirements, this would seem a high priority for information technology services.</p>	<p>This is beyond the scope of the regulation but the suggestion is appreciated and has been forwarded to our data unit.</p>
<p>Culpeper Human Services Culpeper VA</p>	<p>22 VAC 40-201-140 This section requires a local department of social services to maintain a connection with a child who has left foster care to a placement with DJJ. Why and how often?</p>	<p>If the child is under 18 when released from DJJ custody he will be returned to foster care. This requirement is written with the intent that maintaining a connection is in the best interest of the child. More detail will be in the foster care guidance manual.</p>
<p>Linda Nisbet Interim Director Franklin County, DSS</p>	<p>22 VAC 40-201-140 C This section states that an employee of a local department, including a relative, cannot serve as a foster, adoptive or resource parent for a child in the custody of that local department. I completely disagree with the prohibition of placement of children with relatives who work for the agency that has custody. This should be handled by asking a neighboring agency to manage the case. The neighboring agency could be asked to do the home study and management. In general I agree that employees should not parent children in the agency's custody, however I feel an exception should be made in the case of relatives where it is in the best interest of the child.</p>	<p>Section 2.2-3109 prohibits any employee of a local government from having a personal interest in a contract with an agency of which he is an employee. Transfer of custody of the child to a neighboring jurisdiction is an alternative.</p>
<p>Culpeper Human Services Culpeper VA</p>	<p>22 VAC 40-201-160 This section requires local departments of social services to use the adoption assistance</p>	<p>DSS mandates many forms, processes and procedures in the programs for which it has oversight and responsibility.</p>

	<p>agreement developed by DSS. How can DSS require that we use their form if they are not party to the agreement. How can DSS mandate entry into a contract they have no say over?</p> <p>For maintenance and special service payments, perhaps negotiations should be done by someone other than the social workers with a personal interest in the case and using clearly established guidelines.</p>	<p>While the concerns and suggestions are beyond the scope of this regulation, DSS is aware of them.</p>
<p>Culpeper Human Services Culpeper VA</p>	<p>22 VAC 40-201-170 The Department of Planning and Budget (DPB) analysis cites substantial costs associated with the implementation of the regulations including hiring more staff to carry out mandates. Why would DSS implement regulations that require local agencies handle non-agency adoptive placements when DBP clearly states local agencies are understaffed and there are private child placing agencies that can manage these types of adoptions?</p> <p>Maybe, as in other states, state personnel handle some of these responsibilities.</p>	<p>This is not a change in current practice. Local departments of social services currently respond to requests from the court for home studies or investigations related to non-agency adoptions.</p>
<p>Culpeper Human Services Culpeper VA</p>	<p>Staff Training The purpose of the training is not clear.</p>	<p>Additional information on training is in foster care and adoption guidance.</p>
<p>Linda Nisbet Interim Director Franklin County, DSS</p>	<p>General Comment Although I completely agree with the intent of the proposed regulations, there are not the resources available to implement them. Going forward carries risks of revolt among local departments of social service , also burn-out of social workers, supervisors and local directors. State should not mandate best practice without funding it.</p>	<p>DSS is aware of the concerns all agencies have during times of limited resources and works to provide as much assistance as possible. DSS believes that local departments of social services are demonstrating that changing our practice can be cost effective and children and families in the Commonwealth will be better off as a result.</p>

Enter any other statement here

All changes made in this regulatory action

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

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale

This is a new regulation that replaces 8 others.

Section 10: Definitions of terms used in the regulation.

Section 20: Foster care prevention services – This section requires local departments to provide services to prevent the need for children to enter the foster care system. It states that any services available to a child in foster care shall also be available to a child and his birth parents or custodians to prevent foster care placements. It requires that services shall be provided based on an assessment of needs and that documentation shall be maintained on the services provided and the reasons such support and services were not sufficient to maintain the child in his home. The section requires that within 30 days from removing the child from his home, the local agency must make diligent efforts to locate and notify relatives.

Section 30: Entering foster care – This section describes how a child may enter the foster care system through a court commitment, entrustment agreement, non-custodial foster care agreement or when a child who was in foster care completes a DJJ commitment and returns to foster care. It provides details on entrustment agreements and non-custodial foster care agreements. This includes: that the entrustment agreement shall specify the rights and obligations of the child, birth parent or custodian, and the child-placing agency and that entrustments shall not be used for educational purposes, to make the child eligible for Medicaid or to obtain mental health treatment. It also states that a temporary entrustment agreement may be revoked by the birth parent, custodian or child-placing agency prior to the court’s approval of the agreement and that a permanent entrustment agreement shall only be entered into when, after counseling about alternatives to permanent relinquishment, the parties all agree that voluntary relinquishment of the parental rights and placement of the child for adoption are in the child’s best interest. The regulation requires that when a child-placing agency has accepted a child through a permanent entrustment agreement, the agency will make diligent efforts to ensure the timely finalization of the adoption. The regulation covers how a child may be placed in foster care through a non-custodial agreement where the birth parent or custodian retains custody while the local department assumes care and placement responsibilities for the child. This agreement is at the request of the parent or custodian when there is agreement that it is in the child’s best interest and the permanency goal is return home. This type of agreement is subject to the cooperation of the birth parent or custodian and the child. A non-custodial agreement must be submitted to the court within 60 days of the child’s entry into foster care and all foster care requirements must be met.

Section 40: Foster care placements - This section requires the local department to ensure children are placed in licensed or approved homes or facilities that comply with all federal and state requirements for safety, and that these placements are made in accordance with § 63.2-901.1. It lists the requirements that must be met when placing a child in a licensed or approved facility: the local department shall make diligent efforts to locate and assess relatives as foster homes; the child shall be placed in the least restrictive, most family-like setting consistent with the child’s needs; and, diligent efforts shall be made to place a child with siblings. The regulation requires that local departments attempt to place the child close

to his prior home to facilitate visitation with the birth parents or custodian, provide educational stability and provide continuity of connections for the child. The regulation prohibits denying or delaying placement based on race, color or national origin. It provides that local departments, when placing a child of Native American heritage, follow federal laws if the child is a member of a federally recognized tribe. It allows local departments of social services to contact the Virginia Council on Indians for assistance in locating a Virginia tribe and requires local departments to consider tribal culture and connections if the child is of Virginia Indian heritage. The regulation requires that the service worker visit a home prior to placing a child to make sure the placement will be safe and meet the needs of the child and allows the visit to take place on the same day as the placement in an emergency. The regulation requires that family homes meet standards established by the State Board of Social Services and be approved by a child-placing agency. It requires group homes or residential facilities to be licensed and requires that the licensure status of the facility be verified before a child is placed. There are requirements that local departments notify and consult with other local departments if a child is being placed or moving to a neighboring jurisdiction. It requires approval by DSS' Office of Interstate Compact on the Placement of Children when a child is being placed out of state. The regulation addresses decision making related to changes in the placement of a child to ensure that there is input from relevant parties and notification of changes to relevant parties where such input and notification is in the best interest of the child.

Section 50: Initial foster care placement activities - This section requires that information on every child in foster care be entered into DSS' automated child welfare system. It also requires that the child be referred for all financial benefits for which he may be eligible and that the child also receive a medical examination within 30 days of the initial placement. The regulation provides that if conditions indicate, a medical exam should be provided within 72 hours. As relates to school attendance, the regulation requires that the service worker enroll the child in school as soon as possible but no more than 72 hours after placement and the child's desire to remain in his previous school shall be considered and allowed when it is in the child's best interest. The service worker, in cooperation with relevant parties, is required to coordinate the school placement.

Section 60: Assessment - This section requires that an initial assessment of a child be conducted within guidelines developed by DSS but shall not exceed 30 calendar days of acceptance of the child into foster care. It requires that the assessment be conducted in a manner that respectfully involves the child and birth parents or prior custodians, giving them a say in what happens to them. It requires that decision making shall include input from children, birth parents or prior custodians and other interested individuals. The regulation requires the use of the permanency planning indicator tool during the initial assessment to assist in determining if a concurrent goal should be selected. It requires that when a child was removed from his home due to abuse or neglect, the initial assessment shall include a summary of the Child Protective Services' safety and risk assessments. Other components of the initial assessment are: a comprehensive social history, a financial assessment, and a determination of the service needs of the child, birth parents or prior custodians and other interested individuals. The regulation requires the service worker to enter the appropriate information into the DSS automated child welfare system and refer relevant individuals for appropriate services. The regulation requires that there be an assessment and determination of the effectiveness of the services or need for additional services at least every three months for a child whose goal is to return home and at least every six months for as long a child remains in foster care.

Section 70: Foster care goals – This section addresses the foster care goals which are established to assure permanency planning for children. The regulation lists the goals and requires that documentation of any other than one of the three federally recognized permanency goals must explain why those goals were not selected. The goals listed are: return custody to parent or prior custodian; transfer custody to a relative other than prior family; adoption; permanent foster care; independent living; and, another planned permanent living arrangement. The regulation requires that when the permanency goal is changed to adoption, the local department shall file petitions with the court 30 days prior to the hearing to approve the new plan changing the goal to adoption and to terminate parental rights. The regulation provides that the goal of permanent foster care only be considered for children 14 and older in accordance with DSS guidance and when the goal is transition to independent living, the local department shall provide services

pursuant to DSS guidance. It also provides that the goal of another planned permanent living arrangement may be chosen when the court has found the child to have a profound and chronic emotional, physical or neurological disabling condition and will require long-term residential care for the condition. The regulation provides that the permanency goals be considered and addressed from the beginning of placement and continuously evaluated.

Section 80: Service plans – This section requires that there be a current service plan for every child in foster care and that the plan have been developed through a shared decision-making process between the local department; the child; the birth parents or prior custodians; the foster, adoptive or resource parents and any other interested individuals, with a focus on safety and permanence for the child. It requires the plan to specify the assessed permanency goal and, when appropriate, the concurrent permanency goal. The regulation requires the service plan to be written in a timely manner after the completion of the assessment and to directly reference how the strengths identified in the foster care assessment will support the plan and the identified needs including the concurrent permanency goal. The regulation also requires that a plan for visitation with the birth parents or prior custodians, siblings, grandparents, or other interested individuals be developed and presented to the court as part of the service plan unless such visitation is not in the best interest of the child.

Section 90: Service Delivery – This section requires that permanency planning services to children and birth parents or prior custodians be delivered as part of a total system with cooperation, coordination, and collaboration occurring among children and youth, birth parents or prior custodians, service providers, the legal community and other interested individuals. It also requires timely notification and full disclosure to parents, birth parents, and prior custodians of the establishment of a concurrent permanency goal when indicated and the implications of concurrent planning. The regulation further requires timely notification of placement changes, meetings and assessments, and responsiveness to the requests of the child and birth parents or prior custodians to ensure all parties understand what is happening and why and to ensure their participation in decision making. The regulation requires that services be provided until an assessment indicates they are no longer necessary and that the services provided to achieve concurrent planning shall be provided to support achievement of both goals. It also provides that services may be provided to extended family and other interested individuals. The regulation addresses monthly visits by workers to children in foster care to ensure compliance with federal legislation. It requires that all children in foster care have a monthly face-to-face contact with an approved case worker at least once per calendar month and that the majority of the visits be in the child's place of residency. The regulation requires that supportive services be provided to foster, adoptive and resource parents and that the local department shall enter into a placement agreement developed by DSS that includes, at a minimum, a code of ethics and mutual responsibilities for all parties. Foster, adoptive and resource parents shall be given full factual information about the child and shall be contacted by a service worker as often as needed but at least monthly and shall also be given appropriate sections of the foster care service plan. The regulation provides that, if needed, services to stabilize the placement may be provided on an emergency or planned basis. The regulation also states that DSS shall make a contingency fund available to provide reimbursement to foster and resource parent for damages caused by the foster child contingent on the availability of funds.

Section 100: Providing independent living services - This section provides that a youth in foster care (working with a team that the youth helped assemble) shall have input into identifying needed services. The regulation provides that independent living services may be provided to all youth ages 14 to 18 and may be provided until the youth reaches age 21. The regulation identifies types of services that may be provided including education, vocational training, employment, mental and physical health services, transportation, housing, financial support, daily living skills, counseling and development of permanent connections with adults. The regulation requires the local department to assess the youth's skills and incorporate the assessment results into the youth's service plan. The regulation provides that a youth who was placed in foster care prior to the age of 18 may continue to receive services until 21 if he participates in developing a service agreement with the local department and signs the service agreement; the local department approves the youth's living arrangement; the youth cooperates with all services; and, the youth is making progress in an educational or vocational program, has employment, or

is in a treatment or training program; or, is in permanent foster care. The regulation provides that a youth, age 16 or older is eligible to live in an independent living arrangement and may receive an independent living stipend pursuant to guidance developed by DSS. It also states that any person who was committed or entrusted to a child-placing agency and who chose to discontinue independent living services after age 18 but prior to age 21, may request a resumption of those services in accordance with § 63.2-905.1. The regulation requires local departments to assist eligible youth in applying for educational and vocational financial assistance and that the local department review the service plans for youth over 18 who are receiving independent living services every six months to assure the effectiveness of the services.

Section 110: Court hearings and case reviews – This section requires local departments to file petitions in accordance with the type of hearing and to obtain and consider the child's input as to who should be included, and explain to the child in a manner consistent with the child's developmental and psychological status, the reasons someone they suggested may not be present. The regulation requires an explanation to the court on the reasonable efforts that have been made to achieve concurrent permanency goals in those cases where a concurrent goal has been identified. The regulation also requires an administrative panel review be held six months after a permanency planning hearing when the goals of adoption, permanent foster care, or independent living have been approved by the court unless the court requires more frequent hearings. It requires the child to have administrative panel reviews or review hearings every six months until a final order of adoption is issued or the child turns 18. The regulation requires all relevant parties be invited as appropriate and that the recommendations made during the review be considered in planning services. It also requires that all interested parties, including those not in attendance, be given a copy of the results of the review. The regulation requires that a supervisory review is required every six months for youth ages 18 to 21.

Section 120: Funding – This section states that it is the responsibility of the local department to establish a foster child's eligibility for federal, state or other funding and that state pool funds shall be used for a child's maintenance and service needs when other funding sources are not available. It also states that the assessment and provision of services to the child and birth parents or prior custodians shall be made without regard to the funding source. The regulation states that local departments shall reimburse foster or resource parents for expenses paid by them when pre-authorized or if not pre-authorized, if the local department deems the expenses are appropriate. It requires that eligibility for Title IV-E funding shall be re-determined upon a change in situation in accordance with federal law and DSS guidance. It also states that the service worker is responsible for providing the eligibility worker information required for the annual re-determination of Medicaid eligibility and information related to the child's situation.

Section 130: Closing the foster care case – This section provides that the foster care case is closed when the child turns 18, when the court releases the child from custody prior to age 18, when a child is committed to DJJ, when a voluntary entrustment agreement has expired, been revoked, or has been terminated by the court, or when the final order of adoption is issued. When the case is closed, the record is retained in accordance with the record retention schedules of the Library of Virginia. The regulation also provides that any youth who has reached age 18 has the right to request information from his records.

Section 140: Other foster care requirements – This section addresses several requirements not relevant to previous sections but related to foster care. The regulation provides that a director of a local department may grant approval for a child to travel out-of-state and out-of-country and that the approval must be in writing and maintained in the child's file. It provides that a foster or resource parent may consent to a marriage or entry into the military if the child was placed with them through a permanent foster care agreement which has been approved by the court. The regulation states that an employee of a local department, including a relative, cannot serve as a foster, adoptive or resource parent for a child in the custody of that local department. The employee can be a foster, adoptive or resource parent for another local department or the child's custody may be transferred to another local department. The regulation also provides that the child of a foster child remains the responsibility of his parent unless custody has been removed by the court; however the needs and safety of the child shall be considered

and documented in the service plan of his parent. It provides that the child of the foster child is eligible for maintenance payments, services, Medicaid and child support services in accordance with federal law and guidance developed by DSS. The regulation provides that when a child in foster care is committed to DJJ, the local department no longer has custody or placement and care responsibility for the child. As long as the discharge or release plan for the child is to return to the local department prior to reaching age 18, the local department shall maintain a connection with the child in accordance with DSS guidance.

Section 150: Adoption Resource Exchange of Virginia (AREVA) – This section describes the purpose and services provided by AREVA. The purpose is to increase opportunities for children to be adopted by providing services to child-placing agencies having custody of these children. The services provided include maintaining registries of children awaiting adoption and approved parents waiting to adopt; preparing and posting photo-registries of children with special needs waiting to be adopted and potential parents awaiting placement of a child with special needs; providing information and referral services to adoption resources; providing on-going child-specific adoptive parent recruitment efforts; providing consultation and technical assistance to child-placing agencies; and, monitoring local departments' compliance with legal requirements, guidance and policy on registering children and parents. The regulation states that child-placing agencies shall comply with all of the AREVA requirements.

Section 160: Adoption assistance – This section requires that an adoption assistance agreement be executed for a child who has been determined eligible for adoption assistance and that the local department use the form developed by DSS. The regulation states that for a child to be eligible for adoption assistance he must meet the definition of a child with special needs (set out in definitions in section 10) and meet the following criteria: be under 18 years of age and meet the requirements of § 473 of Title IV-E of the Social Security Act; or, be under 18 and in the placement and care of a child-placing agency at the time the petition for adoption is filed, and, be placed by a child-placing agency with the prospective adoptive parents for the purpose of adoption, except for those situations in which the child has resided for 18 months with the foster or resource parents who file a petition for adoption under § 63.2-1229. The regulation sets out the types of adoption assistance for which a child may be eligible. These are Title IV-E or State adoption assistance. It addresses conditional adoption assistance agreements, used when payments and services are not needed at the time of adoption but may be needed later, and the child's foster care expenses were paid from state funds. The regulation provides that adoption assistance payments shall be negotiated with the adoptive parents, taking into consideration the needs of the child and the circumstances of the family; however, income shall not be the sole factor and family and community resources shall be explored to help defray the costs of adoption assistance. The regulation sets out the three types of payments which shall be made on behalf of an eligible child. Those include a payment for nonrecurring expenses which are based on actual costs, not to exceed \$2,000; a maintenance payment (except for those children for whom conditional assistance will be provided); and, a special service payment. The regulation provides that maintenance payments cannot exceed the foster care maintenance payment the child would have received during the same period if the child had been in a foster family home and that the payment cannot be reduced below the initial amount specified without the concurrence of the adoptive parents or a reduction in the statewide foster care rate. Increases to maintenance payments shall be made when the child is receiving the maximum allowable foster care maintenance rate and either the child reaches a higher age grouping or statewide increases are approved. The regulation states that a special services payment is used to help meet the child's physical, mental, emotional or non-routine dental needs, and must be directly related to the child's special needs. Special service payments shall be time limited and based on the needs of the child. The regulation requires that the special service payments be negotiated with the family and be contained in a separate agreement. The regulation provides that when a child is determined eligible for adoption assistance prior to the adoption being finalized, the agreement shall be executed within 90 days of receipt of the application, shall specify the amount of payment, and shall be signed before the final order of adoption. The agreement shall remain in effect regardless of the state to which the adoptive parents may relocate. This regulation requires that procedures for the child whose eligibility for adoption assistance is established after the finalization of the adoption are the same as those which are established prior to a finalization, except that the application shall be submitted within one year of the diagnosis of the condition that establishes the child as a child with special needs and the child otherwise

meets the requirements of section 160 B 2. The regulation also requires adoptive parents to annually submit an adoption assistance affidavit. The local department is responsible for notifying the adoptive parents that the affidavit is due. The regulation states that adoption assistance is terminated when the child reaches the age of 18 unless the child has a condition which warrants the continuation. In such cases, adoption assistance may continue until age 21. The regulation provides that adoption assistance may not be terminated prior to the child's 18th birthday without the consent of the parents unless it is determined the child is no longer receiving financial support from the adoptive parents or the adoptive parents are no longer legally responsible for the child. The regulation states that local departments are responsible for informing adoptive parents, in writing, of their appeal rights, which include failure of the child-placing agency to provide full factual information regarding the child prior to adoption finalization; failure of the local department to inform the adoptive parents of the child's eligibility for adoption assistance; and decisions made by the child-placing agency related to the child's eligibility for adoption assistance, adoption assistance payments, services and changing or terminating adoption assistance.

Section 170: Child-placing agency's responsibilities for consent in non-agency adoptive placements – This section provides that, at the request of the juvenile court, the child-placing agency shall conduct a home study that includes the elements in § 63.2-1231 and provide the court with a written report of the home study. It requires that the child-placing agency make a recommendation to the court regarding the suitability of the parents to adopt. The regulation requires that if the child-placing agency suspects there has been an exchange of property, money, services, or any other thing of value in violation of law in the placement or adoption of the child, they shall report such findings to the Commissioner of DSS for investigation.

Section 180: Fees for court services – This section provides that the local department, in accordance with guidance provided by DSS shall charge fees for court ordered custody investigations, adoption searches, non-agency placement adoptions, investigations and reports, and visitation and reports.

Section 190: Virginia Putative Father Registry – This section provides that DSS shall establish and maintain a putative father registry. It also states that a search of the Putative Father Registry shall be conducted for all adoptions, except when the child has been adopted according to the laws of a foreign country or when the child was placed in Virginia from a foreign country for the purpose of adoption. The regulation requires that any petitioner who files a petition for termination of parental rights or for an adoption proceeding shall request a search of the Putative Father Registry and that the certificate of search and finding must be filed with the court before an adoption or termination of parental rights proceeding can be concluded. The section allows DSS to request additional information to verify that the individual requesting a search is eligible under the Code to request such a search.

Section 200: Training – This section requires that local department foster care and adoption workers and supervisory staff shall attend and complete initial and annual in-service training in accordance with guidance developed by DSS and that those staff shall complete an individual training needs assessment using a method developed by DSS.

Regulatory flexibility analysis

Please 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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.

This regulation does not impact small businesses. It provides guidance for local departments of social services in addressing the needs of children and families who have come into contact with the child welfare system.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulation is intended to provide rules for local departments in addressing the needs of children and families who come into contact with the foster care and adoption programs of the child welfare system. The local department of social services first makes reasonable efforts to keep a child in his home by providing needed services to the family or custodian. The regulation addresses the provision of those prevention services, and when the health and safety concerns for a child have resulted in the removal of a child from his home, the regulation provides requirements for the provision of services to strengthen the capacity of the family to care for their child so the child can be returned home. The regulation also addresses provision of services to children and families when the children were not removed from their homes, but were entrusted by their parents or custodians to local departments of social services. This regulation provides the rules for local departments of social services to follow when trying to keep families intact and for addressing the needs of children to have a permanent, safe and loving home when returning to their family is not in their best interest. The regulation supports the child's lifelong connections to family and/or other caring adults, maintaining the authority and rights of parents whenever possible and creating less reliance on government supports.