



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Virginia Employment Commission
VAC Chapter Number:	16 VAC 5-32
Regulation Title:	Required Records and Reports
Action Title:	Final
Date:	August 5, 2002

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

The proposal would codify in regulation current state and federal policies regarding the records employers may be required to produce in order to verify income reporting. The amendment would also lay the groundwork to allow employers to submit required wage reports electronically. The amendments also include technical changes.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On June 28, 2002, the Commissioner of the Virginia Employment Commission approved the publication of final regulations for 16 VAC 5-32, Required Records and Reports.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

The Virginia Employment Commission (VEC) is authorized to promulgate regulations in 60.2-111.A of the Code of Virginia. This provision provides broad-based authority for the agency to “adopt, amend, or rescind such rules and regulations...as it deems necessary or suitable to that end.” Written assurance from the Office of the Attorney General that the Virginia Employment Commission possesses, and has not exceeded, its statutory authority to promulgate the proposed amendments is attached.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

While the amendments are not essential to protect the health, safety or welfare of the citizens of the Commonwealth, they are intended to make technical changes, codify current agency practice with respect to record-keeping, and to pave the way for employers to submit quarterly wage reports electronically.

Currently, state law provides, in § 60.2-114, that “[t]he commission may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the Commission deems necessary for the effective administration or this title.” The commission typically uses certain records in order to verify wage reports in the event of an audit. The

provisions in 16 VAC 5-32-10.B enumerate the documents that employers should keep in order to document wages have been accurately reported and that taxes or refunds have been correctly computed and paid. The amendment does not increase the records employers are required to keep, but should help put employers on notice of the types of documents already required and will assist the commission's auditors by providing more specific references than are contained in state statute.

Amendments in 16 VAC 5-32-20 changing a reference from "forms" to "format" is a first step in developing electronic filing for wage and tax reports. Currently such reports are prepared and submitted in paper format. By establishing electronic transmission of required reports, the agency hopes to make filing more convenient and reduce mailing costs and transmission time for employers and the commission.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

The amendment to 16 VAC 5-32-10.A on page one is technical in nature and simply adopts wording used in the agency's authorizing statute to maintain consistency. The amendment to 16 VAC 5-32-10.A.7.a (p. 2) is technical and changes a reference in the regulation to the term used in the agency's definitions contained in 16 VAC 5-10-10. The amendment on page 3 to 16 VAC 5-32-10.B codifies the agency's current practice, authorized by state law, of requiring certain documentation if it is necessary to ensure that wages have been accurately reported and taxes and refunds correctly computed and paid. The intent of codifying current requirements is to advise employers of the types of records that they should maintain in order to document quarterly wage reports. The amendment to 16 VAC 5-32-20.B requires that reports be made in a prescribed format rather than requiring such reports to be made on a specific form. This change prepares for the introduction of electronic wage reporting.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the 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 include a sentence to that effect.

The issues associated with the proposed amendments are as follows:

1. The primary advantages to the public of enumerating the types of documents the Commission may require is that the regulation better-informs employers of the documents that may be necessary in the event of an audit. The primary advantage of establishing electronic filing of

required reports is that filing such reports electronically eliminates postage costs and transmission time. Reducing transmission times should reduce fines for late reporting. The commission has not identified any disadvantages to the public in these amendments.

2. The primary advantage to the commission and the Commonwealth of enumerating the types of records employers must keep is that it will eliminate uncertainty among employers about the types of records that may be requested. The primary advantages to the commission and the Commonwealth from establishing electronic report filing is a reduction in postage costs and transmission times associated with reporting. Electronic filing may also encourage more timely reporting. The commission has not identified any disadvantages to the Commonwealth in these amendments.

Statement of Changes Made Since the Proposed Stage

Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.

No changes have been made to the text of the proposed regulation since its publication at the “Proposed” stage.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

No public comment was received regarding this regulation.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

The amendment to 16 VAC 5-32-10.A is technical in nature and simply adopts wording used in the agency’s authorizing statute to maintain consistency. The amendment to 16 VAC 5-32-10.A.7.a is technical and changes a reference in the regulation to the term used in the agency’s definitions contained in 16 VAC 5-10-10. The amendment to 16 VAC 5-32-10.B codifies the agency’s current practice, authorized by state law, of requiring certain documentation if it is necessary to ensure that wages have been accurately reported and taxes and refunds correctly computed and paid. The intent of codifying current requirements is to advise employers of the

types of records that they should maintain in order to document quarterly wage reports and taxes paid. The amendment to 16 VAC 5-32-20.B requires that reports be made in a prescribed format rather than requiring such reports to be made on a specific form. This change prepares for the introduction of electronic wage reporting.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which 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.

The commission does not anticipate that the proposed amendments will have any effect on the institution of the family or family stability, either positive or negative.