



Proposed Regulation Agency Background Document

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| Agency name | The Department (Board) of Juvenile Justice |
| Virginia Administrative Code (VAC) citation | 6VAC35-20 |
| Regulation title | Regulations Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs (the "Certification Regulation") |
| Action title | Comprehensive review of the Certification Regulation |
| Date this document prepared | May 10, 2011 |

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

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

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."

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

Board means the Board of Juvenile Justice.

Certification Regulation means the Regulation Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs.

CSU means court service unit.

DJJ or Department means the Department of Juvenile Justice.

JCC means juvenile correctional center.

VJCCCA means the Virginia Juvenile Community Crime Control Act.

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 number(s), if applicable, and (2) promulgating entity, i.e., the agency, board or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

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 require 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 by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, 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 (iii) 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.

There are no known environmental benefits.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)

The following changes have been proposed for the Regulation Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs (the "Certification Regulation"):

1. Section 10 (Definitions): Update the definitions and terms for clarity and consistency with other regulations promulgated by the board and current standards of practice. Delete several definitions considered unnecessary in the regulation or not needing to be defined due to the common usage of the term. Add other definitions for clarity and consistency in usage throughout the regulation. Amend other definitions to conform:
 - Delete 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.
 - Add 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, and (xv) Written.
2. Section 30 (Purpose):
 - Amend to include all Code of Virginia citations providing for the monitoring, approval, and certification of programs and facilities.
 - Clearly distinguish between the certification of CSUs and facilities and monitoring of VJCCCA programs and offices on youth.
 - State the Board's role in reviewing certification audit reports when a CSU or facility is in noncompliance with a regulatory requirement.
3. Section 35 (Guidance documents):
 - Incorporate technical changes to conform with other changes in the regulation.
4. Section 36 (Program or facility relationship to regulatory authority):
 - Incorporate the basic components of 6VAC35-51-230 (Relationship to regulatory authority) in the board's Regulation Governing Residential Programs as they are recommended for deletion in the pending overhaul of the residential regulations.
5. Section 36.1 (Department response to reports of health, welfare, or safety violations):
 - Insert the current provisions, with technical amendments, of 6VAC35-20-65. This is recommended because placement in this section is chronologically logical.
6. Section 37 (Director's authority to take immediate administrative action):
 - Make technical changes.
 - Add the ability for notifications to be by mail, electronic mail, or hand delivery.
7. Section 50 (Preaudit process for certification audits):
 - Rework the provision regarding notice to the CSU or facility administrator to reflect current practice.
 - Delete the provision relating to an administrative review audit as these audits are never performed.
8. Section 60 (Monitoring of programs and facilities):
 - Reduce the number of required on-site monitoring visits from two (one announced, one unannounced) to one scheduled per year.

- Allow additional monitoring visits to be conducted at the request of the board, the department, or a program or facility administrator.
9. Section 61 (Self-audit of programs and facilities subject to the certification audit):
 - Add a requirement for CSUs and facilities to complete self-audits each year, except in the year subject to a certification audit.
 10. Section 63 (Reports of monitoring visits):
 - Delete this section. The department must report to the board any health, welfare, and safety violation (per 6VAC35-20-36.1).
 11. Section 65 (Reports required of life, health, and safety violations):
 - Move subsection A to 6VAC35-20-36.1.
 - Delete subsection B. The board's ability to decertify is provided for in 6VAC35-20-115.
 12. Section 67 (Disputes of noncompliance findings):
 - Move section to 6VAC35-20-90 (C).
 13. 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.
 14. Section 75 (Certification of individual programs or facilities):
 - Designate the director or designee as the individual responsible for issuing certificates.
 - Move provisions relating to post-certification action to and insert certificate action provisions currently provided for in 6VAC35-20-100.
 15. Section 80 (Certification audit procedures):
 - Clarify the burden of proof requirements.
 - Incorporate the requirement for the certification audit to include a personal visit to the program or facility.
 16. Section 85 (Determining compliance with individual regulatory requirements):
 - Create a new section specifically addressing the determination of compliance with individual regulatory requirements.
 - Incorporate the standards for compliance currently utilized by the Department of Corrections.
 17. 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.

18. Section 91 (Corrective action plans and certification audit reports):
 - Create a separate section containing 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.
19. Section 92 (Variance request):
 - Include a requirement that any variance requested as a result of a finding of noncompliance in an audit must be submitted with the corrective action plan to be implemented if the variance is denied.
20. Section 93 (Waivers):
 - Clearly delineate circumstances when a waiver may be granted.
21. Section 94 (Appeal process):
 - Amend the time frames for submission and response.
 - Add components currently provided for in department procedures.
 - Include a requirement that any appeal of a finding of noncompliance does not negate the requirement to submit a corrective action plan.
22. Section 100 (Certification action):
 - Require 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.
 - State 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.
 - Set specific criteria and parameters regarding issuance of certificates depending on level, duration, and frequency of noncompliance.
23. Section 110 (Notice of certification action):
 - Delete the requirement for facilities to post the certificate. This is recommended for incorporation in the pending residential regulation overhaul.
 - Move the requirement to provide variance documentation to 6VAC35-20-80.
24. Section 115 (Board review of programs and facilities found in noncompliance):
 - Create a new section 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.
25. 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.
26. Section 150 (Critical regulatory requirements for juvenile residential facilities):
 - Delete reference to outdated "mandatory requirements" and require the board to separately define critical regulatory requirements.

- 27. Section 200 (Monitoring of VJCCCA programs or offices on youth):
 - Require the department to set a schedule for monitoring VJCCCA programs and offices on youth.
- 28. Section 210 (VJCCCA programs and offices on youth self-evaluations):
 - Require VJCCCA programs and offices on youth to complete self-assessments.
- 29. Section 220 (VJCCCA program and office on youth audits):
 - Set criteria for VJCCCA program and office on youth audits.
- 30. Section 230 (VJCCCA program and office on youth audit findings):
 - Require the department to provide audit findings to the program contact with a copy to the program's supervisory authority.
 - Allow for program appeals of a finding of noncompliance.
 - Require the department to monitor the progress of any program found in noncompliance.
- 31. Section 240 (Effect of VJCCCA program or office on youth noncompliance):
 - State the specific effects of a finding of noncompliance.

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.

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.

The proposed amendments have been vetted through an advisory committee consisting of individuals who would be affected by the changes. The proposed amendments would streamline the reporting requirements and would not affect the quality of services provided. The proposed amendments do not pose any disadvantages to the public or the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable

federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are neither applicable federal requirements nor requirements contained in the proposed regulation that exceed applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No localities will be particularly affected by the proposed regulatory action as the requirements apply equally to all regulated programs and residential facilities (group homes, halfway houses, secure detention centers, and JCCs).

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

The department is seeking comments on the intended regulatory action, including but not limited to: 1) ideas to assist in the development of a proposal; 2) the costs and benefits of the alternatives stated in this background document or other alternatives; and 3) potential impacts of the regulation. The department is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: 1) projected reporting, recordkeeping, and other administrative costs; 2) probable effect of the regulation on affected small businesses; and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Townhall website, www.townhall.virginia.gov. The Department contact is **Janet Van Cuyk, Legislative and Regulatory Coordinator** at (804) 371-4097 or by mail (P.O. Box 1110, Richmond, VA 23218-1110), email (janet.vancuyk@djj.virginia.gov), or fax (804) 371-0773. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period.

In addition, DJJ is seeking information on: (1) the continued need for the regulation; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

A public hearing will not be held.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirements create the anticipated economic impact.

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| <p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</p> | <p>There are no new or additional costs to the state to implement and enforce the proposed regulation. The certification process currently exists and is implemented by the department's Certification Unit (funded via general fund appropriations). The proposed change would add the additional responsibility to the department that the director issue certifications. Any costs associated with this duty can be absorbed into the existing funding stream.</p> <p>Costs may be incurred if a state-operated JCC is not in compliance with the board's regulatory requirements and standards. To bring it into compliance may involve costs associated with necessary repairs or structural/environmental changes to satisfy certification requirements. Such expenses would be borne by the department's budget for maintenance of the JCCs. Whether the expenditure is one-time versus on-going would depend upon the deficiency and certification requirement. Additional costs relating to the proposed regulation are not anticipated.</p> |
| <p>Projected cost of the new regulations or changes to existing regulations on localities.</p> | <p>Any costs to the localities due to the changes to the existing regulation are anticipated to be de minimis.</p> <p>Programs and facilities subject to the Certification Regulation are funded, at least in part, through VJCCCA. Each is currently subject to monitoring, approval, and certification.</p> <p>Costs may be incurred if a program or facility in the locality is not in compliance with its required regulatory requirements. To bring the local facility into compliance may involve costs associated with necessary repairs or structural/environmental changes to satisfy certification requirements. Additional costs relating to the proposed regulation are not anticipated.</p> |
| <p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p> | <p>The regulation affects the 24 locally or commission-operated juvenile secure detention centers, two halfway houses, numerous group homes, local programs, six state JCCs, 32 state-operated CSUs, and three locally-operated CSUs.</p> |

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| | <p>Thus, it will affect the facilities' administrations, staff and any contract service providers, in addition to the residents in each facility.</p> <p>Additionally, the monitoring and auditing functions provided for in the regulation are completed by the department's Certification Unit.</p> <p>Each affected individual or entity will need to adapt their practices to those provided for in the new regulation.</p> |
| <p>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p> | <p>There are 24 locally or commission-operated detention centers, two halfway houses, numerous group homes, local programs, and three locally-operated CSUs. Each facility program or facility may contract with different groups for services, which may fall under the definition of a small business. These service and program providers may be publicly or privately operated, and it is unknown how many meet the criteria for small businesses.</p> |
| <p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p> | <p>Nominal. The substantive changes to the regulation, while requiring the implementation of some additional procedures, will require minimal, if any, costs for the affected individuals, businesses, or other entities. The overall purpose of this revision was to streamline the regulation. It is projected that there will be an overall positive impact from the proposed changes. There are no specific costs relating to the development of real estate.</p> |
| <p>Beneficial impact the regulation is designed to produce.</p> | <p>Having clear, concise, and consistent requirements across facilities promotes the health, safety, and welfare of citizens by ensuring consistency in services throughout the Commonwealth. The proposed amendments would streamline the reporting and compliance requirements and would not affect the quality of services provided by the facilities and the administrators or the ability of the department and the board to oversee such functioning.</p> |

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

Initially, retaining the regulation in its current form was considered. However, given changes in terminology, the evolvement of practices, and amendments in the supporting regulatory scheme since the last review of this chapter, the department determined that a comprehensive review and updating of the regulation is essential to improving the process.

The department then considered whether the necessary revisions, changes, clarifications, or updates could be accomplished through procedures, guidance documents, or training rather than revising the regulatory provisions. However, this chapter directly affects JCCs, group homes and halfway houses, juvenile secure detention centers, CSUs, and program and service providers under contract or funded through the department. Because many of the affected facilities and programs are not directly operated by the department or required to follow department procedure, this option was eliminated.

Thus, the conclusion was reached that reviewing and amending the current Certification Regulation is the only practicable alternative for addressing certain issues relating to this regulation.

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.

Certification audits are required by the Code of Virginia. The department found no alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that would accomplish the objectives of applicable law while minimizing the adverse impact on small businesses.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

No public comment was received at the NORIA stage of the regulatory process.

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.

The anticipated amendments are not expected to have a direct impact on the institution of the family and family stability. Although delinquent children and children in need of supervision may be (i) housed in

facilities, (ii) under the supervision of CSUs, or (iii) receive services from program or service providers certified by this regulation, the regulation itself governs the process of monitoring and certifying such programs. To the extent that this chapter strengthens the integrity of programs and facilities, juveniles receiving services and their families may benefit from being served by programs and facilities with higher integrity.

It is not anticipated that this regulation would (i) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; (ii) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children or elderly parents; (iii) strengthen or erode the marital commitment; or (iv) increase or decrease disposable family income.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if implemented in each section. Please describe the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

The major changes throughout the proposed regulation include:

1. Separating the requirements for the auditing and certification of CSUs and facilities and the auditing of VJCCCA programs and offices on youth;
2. 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;
3. Reducing the number of required on-site monitoring visits from two (one announced, one unannounced) to one scheduled per year;
4. Adding a requirement for CSUs and facilities to perform self audits;
5. Clarifying pre-audit, audit, and post-audit procedures, including setting specific time frames;
6. Incorporating the requirements for corrective action plans and certification audit reports by including some requirements from the existing procedures and practices;
7. Setting specific criteria and parameters regarding issuance of certificates depending on level, duration, and frequency of noncompliance;
8. Adding a requirement for the program's or facility's supervisory or governing authority to be provided with notice of the certification action;

9. Incorporating the parameters for the board's review of programs and facilities found in noncompliance;
10. Reworking the section regarding actions following decertification to track statutory authority; and
11. Removing the outdated list of "mandatory standards" and authorizing the board to establish these separate from the regulation.

| Current section number | Proposed new section number, if applicable | Current requirement | Proposed change, rationale, and consequences |
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| 10 | | Definitions | Updates the definitions and terms for clarity and consistency with other regulations promulgated by the board and current standards of practice. Deletes several definitions considered unnecessary in the regulation or not needing to be defined due to the common usage of the term. Adds other definitions for clarity and consistency in usage throughout the regulation. Amends other definitions to conform with other regulations. |
| 10 | | Definitions | Deletes 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. |
| 10 | | Definitions | Adds 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, and (xv) Written. |
| 30 | | Sets parameters for the applicability of the regulation. | Includes all Code of Virginia citations providing for the monitoring, approval, and certification of programs and facilities. Recognizes process differences between CSUs and facilities and VJCCCA programs and offices on youth. Establishes |

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| | | | the department as the certifying authority and the board as the oversight authority (when a program or facility is found to be non-complaint with a regulatory requirement). |
| 35 | | Requires the department to prepare guidance documents. | Removes reference to board policies as these are not subject to auditing. |
| | 36 | | Incorporates the basic components of 6VAC35-51-230 (Relationship to regulatory authority) in the board's Regulation Governing Residential Programs. |
| | 36.1 | | Moves provisions from current section 65. |
| 37 | | Establishes the process for the director's ability to summarily suspend a facility's certification when there is a health, welfare, or safety violation. | Makes technical changes (removes reference to licensure; conforms with the requirements of § 66-24 of the Code of Virginia). Adds (1) two requirements to provide notice to the board of department actions and (2) the ability for notifications to be by mail, electronic mail, or hand delivery. |
| 50 | | Sets requirements for preaudit process for certification audits. | Reworks the provision regarding notice to the CSU or facility administrator to reflect current practice. Changes team membership provisions to reflect current practice. Deletes the provision relating to an administrative review audit as these audits are never performed. |
| 60 | | Sets requirements for non-audit monitoring of programs and facilities. | Reduces the number of required on-site monitoring visits from two (one announced, one unannounced) to one scheduled per year. Allows additional monitoring visits to be conducted at the request of the board, the department, or a program or facility administrator. |
| | 61 | | Adds a requirement for programs and facilities to complete a self-audit during each non-audit year. This section was added at the specific request of a board member. |
| 63 | | Repeals this section. | This section is no longer necessary as the provisions are required by proposed section 36.1. |
| 65 | | Repeals this section. | Section was moved, in part, to proposed Section 36 for consistency. Subsection B |

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| | | | is deleted as the board's ability to decertify is provided for in section 115. |
| 67 | | Repeals this section. | Section was moved to proposed section 90. |
| 69 | | Establishes certification requirements for newly opened facilities and new construction, expansion, or renovation of residential facilities. | Adds a requirement for the potential facility administrator to request a review for conditional certification. Cross-references the applicable substantive regulations for facilities and the certification actions in section 100. Adds subsection D to provide deadline certainty for facilities. |
| 75 | | Sets for the process and parameters for the certification of individual programs or facilities. | Designates the director or designee as the individual responsible for issuing certificates. Deletes the requirement for scheduling and conducting certification audits as this is presumptive in the audit calendaring required by section 50. Moves provisions relating to post-certification action to and inserts certification action provisions currently provided for in 6VAC35-20-100. Moves the requirement to report audit findings to section 90. Moves the requirements relating to appeal to section 94. Moves the ability for the certification to change during the certificate period from section 100. Moves the requirement relating to corrective action plans to section 91. Moves the requirement relating to variances to section 92. Adds the requirements for certificate transferability and when a program ceases to operate from the Standards Governing the Interim Regulation of Children's Residential Facilities (6VAC35-51). |
| 80 | | Establishes audit procedures relating to burden of proof and acceptable documentation relating to establishing compliance. | Clarifies the burden of proof requirements. Incorporates the requirement for the certification audit to include a personal visit to the program or facility. |
| | 85 | | Creates a new section specifically addressing the determination of compliance with individual regulatory requirements. Incorporates the standards for compliance |

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| | | | <p>currently utilized by the Department of Corrections.</p> <p>Incorporates formerly definitional components and certain provisions from existing procedures.</p> |
| 90 | | <p>Details the requirements for audit findings, certification audit reports, and corrective action plans.</p> | <p>Separates the reporting of immediate findings after completion of the audit and the formal audit reports.</p> <p>Requires notice of the findings to the program administrator, the program's or facility's supervisory or governing authority, and the director or designee.</p> <p>Incorporates the post-audit actions currently provided in 6VAC35-20-67 and 6VAC35-20-75.</p> <p>Moves subsections relating to the corrective action plans and certification audit reports to section 91.</p> |
| | 91 | | <p>Separates the requirements for corrective action plans and certification audit reports (components moved from sections 90 and 91).</p> <p>Adds procedural components from existing practice.</p> <p>Changes the requirement to submit the corrective action plan from 15 to 30 days after receipt of the audit findings.</p> <p>Adds a requirement that the program or facility administrator submit to the audit team leader, upon completion of the corrective action plan, documentation confirming all corrective action plans have been fully executed.</p> <p>Includes provision currently provided for in section 75.</p> |
| 92 | | <p>Establishes requirements for variance requests.</p> | <p>Includes a requirement that any variance requested as a result of a finding of noncompliance in an audit must be submitted with the corrective action plan to be implemented if the variance is denied.</p> <p>Includes provision currently provided for in section 75.</p> |
| 93 | | <p>Establishes requirements for requesting and issuing waivers.</p> | <p>Clearly delineates circumstances when a waiver may be granted.</p> |
| 94 | | <p>Details process for appealing a finding of noncompliance</p> | <p>Incorporates time frames for the appellate process.</p> |

| Current section number | Proposed new section number, if applicable | Current requirement | Proposed change, rationale, and consequences |
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| | | on an individual regulatory requirement. | Adds current procedural components relating to steps in resolving appeals. Includes a requirement that any appeal of a finding of noncompliance does not negate the requirement to submit a corrective action plan. Includes provision currently provided for in section 75. |
| 100 | | Establishes criteria for certification actions. | 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. |
| 110 | | Requires notice of certification action to the program, sponsoring locality, department, and other authorities within two weeks of certification action. | Deletes the requirement for facilities to post the certificate as this is recommended for incorporation in the pending residential regulation overhaul. Moves the requirement to provide variance documentation to 6VAC35-20-80. Amends the parties to whom notice of the certification action to reflect current terms and appropriate chain-of-command. |
| | 115 | | Creates a new section 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. |
| 120 | | Details required actions to be taken after a program or facility is decertified. | Clarifies actions to be taken after a program or facility is decertified or denied certification. Specifies the provisions relating to department-operated and local, |

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| | | | regional, and privately operated facilities. |
| 150 | | Establishes mandatory regulatory requirements for which 100% compliance is required. | Deletes reference to outdated "mandatory requirements." Requires the board to separately define critical regulatory requirements. |
| | 200 | | Requires the department to set a schedule for monitoring VJCCCA programs and offices on youth. |
| | 210 | | Requires VJCCCA programs and offices on youth to complete self-assessments. |
| | 220 | | Sets criteria for VJCCCA program and office on youth audits. |
| | 230 | | Requires the department to provide audit findings to the program contact with a copy to the program's supervisory authority for VJCCCA programs and offices on youth. Allows for program appeals of a finding of noncompliance. Requires the department to monitor the progress of any program found in noncompliance. |
| | 240 | | States the specific effects of a finding of noncompliance for VJCCCA programs and offices on youth. |