



## Proposed Regulation Agency Background Document

<b>Agency name</b>	State Board of Social Services
<b>Virginia Administrative Code (VAC) citation</b>	22 VAC 40-880
<b>Regulation title</b>	Child Support Enforcement Program
<b>Action title</b>	Incorporate 2003 and 2004 Code of Virginia amendments and clarify selected regulation sections
<b>Document preparation date</b>	August 17, 2008

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.*

The regulation encompasses all functions of the child support enforcement program including application, eligibility for services, location, paternity establishment, order establishment, enforcement, collection, distribution and case closure. The regulation is being amended to accurately reflect the current mandates of the child support enforcement program. The proposed changes are necessary to incorporate the 2003 and 2004 Code of Virginia amendments and to amplify selected sections to ensure global comprehension.

### 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.*

Title 63.2 Welfare (Social Services) of the Code of Virginia places the responsibility for providing child support enforcement services with the Department of Social Services. The State Board of Social Services is given the authority to make rules and regulations in §63.2-217 of the Code of Virginia.

**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 and the problems the proposal is intended to solve.*

The purpose of the proposed action is to update the current child support regulation impacted by 2003 and 2004 state legislation, and to amplify selected sections of the existing regulation. Collection of child support debt protects all citizens of Virginia, particularly its children. The increase in financial support to families enhances the quality of life through better health care, improved housing, and reduced stress. Further, collection of delinquent child support in public assistance cases results in a reduction of legal debts to the state, thus contributing to the General Fund.

**Substance**

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

The amendments to the regulation are essential to protect the health and welfare of children and their families, and are intended to improve the effectiveness of the child support enforcement program. Collection of child support debts benefits the citizens of the Commonwealth, particularly its children. Further, collection of delinquent child support in public assistance cases results in a reduction of legal debts to the state, thus contributing to the General Fund. Proposed changes being considered include the following:

1. Outdated code cites will be updated. Outdated references to the noncustodial & custodial parents will be updated.
2. 22VAC40-880-200. Determining the amount of the child support obligation.

Proposed changes to the regulation will outline DCSE requirements for consideration of self-employment tax paid in the computation of a support obligation. Parents must provide tax returns.

3. 22VAC40-880-250. Periodic reviews of the child support obligation.

Proposed changes to the regulation will conform state regulation to state law. Topic is the treatment of unreimbursed medical/dental expenses.

4. 22VAC40-880-270. Withholding of income.

Proposed changes to the regulation will conform state regulation to state law. Topic is income withholding.

- 5. 22VAC40-880-350. Distraint, seizure and sale.

The proposed regulation will allow the Department to negotiate for payment in full from the noncustodial parent before seized property is returned to the noncustodial parent.

- 6. 22VAC40-880-620. Disbursement of Payments.

The proposed change to the regulation will give authority to the Department to not issue refund checks for less than one dollar. This provides greater cost effectiveness for the Department.

## 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 so indicate.*

The primary advantages to the public include a clearer, more concise administrative code that is in alignment with state law. This will ensure the continuation of equitable and efficient services to the citizens to Virginia from the Commonwealth’s employees, local employers and financial institutions. The amplification of the regulation will benefit the agency and Commonwealth by improving the collection of child support debt. There are no disadvantages to the public, agency, or Commonwealth as a result of the changes made to this regulation.

## Economic impact

*Please identify the anticipated economic impact of the proposed regulation.*

<b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b>	There is no projected cost to the state.
<b>Projected cost of the regulation on localities</b>	There is no projected cost to the localities.
<b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b>	This regulation affects custodial and noncustodial parents and their children, and employers of the Commonwealth.
<b>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.</b> 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.	As of May 31, 2005, the Division of Child Support Enforcement caseload totaled 362,822.  As of the 3 <sup>rd</sup> quarter of 2004, there were 204,423 employment establishments per the Virginia Employment Commission.

<p><b>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</b></p>	<p>Negligible cost to individuals (i.e. copying fee and postage to mail Schedule H of federal tax return)</p>
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**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.*

It is the desire of the State Board of Social Services to improve delivery of child support services without making it overly burdensome. These amendments are necessary to amplify existing regulations and to update the current policy to reflect the 2003 and 2004 state legislation.

**Public comment**

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

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
<p>Eileen Grey</p>	<p>Received via e-mail</p> <p>The placement of the rules governing payment of support for juveniles in the custody of the Department of Juvenile Justice (DJJ) within one identifiable section, making the rules and documents consistent, and the solicitation of the community for review and comment concerning the program</p>	<p>Response via e-mail</p> <p>Initial response (5-17-05): Our aim in modifying our regulation is to make them as clear and concise as possible to insure quality and equitable services to our customers. We will confer with the appropriate staff within our Division, including our legal personnel and assess the necessity and feasibility of the implementation of your request. A response will be forthcoming in approximately 90 days.</p> <p>Follow-up Response(7-8-05):</p> <p>The Division serves many populations throughout the Commonwealth of Virginia, and has several distinct case types - Foster care (FC), Temporary Assistance to Needy Families (TANF), and non-public assistance (NTANF) to name a few. It is not feasible to reformat the entire regulation to place the rules governing payment of support for juveniles in the care of the Department of Juvenile Justice (DJJ) within one identifiable section. Our regulations are not separated according to case type, but rather generally apply to all types of cases for which we are responsible. We have determined that the Code of Virginia and the</p>

		Virginia Administrative Code are clear on how child support is established, including DJJ child support cases, and that the current format does not compromise the integrity and clarity of the text.
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**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability.*

The promulgation of the proposed regulations will enhance the Department’s ability to collect child support owed to families. Increased child support collections through various enforcement remedies reduce families’ reliance on public assistance. By making parents, not the State, responsible for their children, the Department, through its enforcement program, promotes cohesiveness to the family structure through dual participation of the parents, and provides greater stability and autonomy for families striving to be self-sufficient.

**Detail of changes**

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

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

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
200	n/a	<i>Gives the Department the ability to request financial information for the purpose of establishing a child support order</i>	<p><i>We would like the self-employed parent to provide proof of the amount of self-employed tax paid by submitting schedule H of the most recent federal tax return</i></p> <p>Rationale: An amendment to section 20.108.2 of the Code of Virginia in 2002 mandates that a self-employed parent be given credit for ½ of all self-employment tax paid by that parent when calculation their gross monthly income. In order to provide this credit for self-employed parents, DCSE needs their most recent tax return to determine the amount. <b>This change amplifies the code.</b></p>
250	n/a	<i>Extraordinary medical expenses can currently be cited as a reason to request a financial review</i>	<i>Reference to extraordinary medical expenses must be deleted. A Provision regarding sharing of medical expenses exceeding \$250 per child per year must</i>

		<i>of a child support obligation.</i>	<i>be added to the code.</i>  Rationale: Current regulation does not reflect Virginia law effective 7-1-04. Change is necessary to 22VAC40-880-250 due to passage of SB208/HB511, effective 7-1-04.
270	n/a	<i>Code states that the employer must send a copy of the income withholding order to the noncustodial parent by certified mail.</i>	<i>Change text to state that copy of income withholding order may be sent to the noncustodial parent by first-class mail.</i>  Rationale: Update due to SB 1157, effective 7-1-03 which adds first-class mail as one of the service options for income withholding orders. Will delete section in 22VAC40-880-270 that pertains to the method of service, as this is addressed in the State Code.
350	n/a	<i>The current regulation allows a delinquent noncustodial parent to pay as little as \$500 and have the seized property returned.</i>	<i>Change to the code states we will ask for payment in full FIRST, and if unsuccessful, negotiate the currently established settlement (5% of the arrearage owed, or \$500, whichever is greater).</i>  Rationale: The current regulation does not allow DCSE much flexibility in negotiating a settlement. The proposed language gives DCSE more room for negotiation for a larger lump sum payment from the NCP once property has been seized.
620	n/a	<i>Not currently addressed in the code.</i>	<i>New text gives the Department the ability to not issue refunds less than \$1, except by written request.</i>  Rationale: Adding item D to this section regulates the cost effective practice of not refunding amounts less than one dollar. However, our computer system currently does not generate a check for amounts less than a dollar. Refunds less than one dollar will be manually generated upon written request.