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Proposed Regulation
Agency Background Document

Agency name	Department (Board) of Juvenile Justice
Virginia Administrative Code (VAC) Chapter citation(s)	6VAC35-20
VAC Chapter title(s)	Regulation Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs and Facilities
Action title	Periodic Review of the Regulation Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs and Facilities
Date this document prepared	November 20, 2025; updated August 7, 2026; updated August 17, 2026; updated August 19, 2026

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The provisions in 6VAC35-20 pertain to the department's responsibility to monitor and audit juvenile residential facilities and programs, Virginia Juvenile Community Crime Control Act (VJCCCA) programs, and offices on youth and to certify residential facilities and state-operated and local court service units that are part of Virginia's juvenile justice system. The regulation also describes the various methods by which the department measures and enforces compliance with its regulations governing those facilities and programs.

The changes proposed in this action seek to clarify vague and hard-to-follow language in the regulation, correct areas of the regulation that violate the Virginia Code Commission's 2016 standards governing the

development of regulations, repeal or substantially reduce sections of the regulation that are procedural in nature and align terms and regulatory requirements with current practices in the field. The proposal also seeks to reduce areas where the regulatory text merely repeats what is required by the Code of Virginia.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

"CSU" means court service unit.
"JDC" means juvenile detention center.
"VJCCCA" means Virginia Juvenile Community Crime Control Act.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

On December 6, 2024, the board voted unanimously to authorize the department to file a Notice of Intended Regulatory Action (NOIRA) for 6VAC35-20. The NOIRA was published in the Virginia Register on April 21, 2025, and the public comment period began. The public comment period ended on May 21, 2025, and the department received no public comment. On October 27, 2025, the board voted unanimously to authorize the department to proceed with the proposed stage of the standard regulatory process.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The board is entrusted with general authority to promulgate regulations by § 66-10 of the Code of Virginia, which gives the board the authority to "promulgate such regulations as may be necessary to carry out the provisions of [these titles] and other laws of the Commonwealth" Further, § 16.1-233 requires, in part, that the State Board of Juvenile Justice "promulgate regulations pertaining to [court service staff] appointment and function." Section 16.1-309.10 gives the board or its agents the authority to visit, inspect, and regulate detention homes, group homes, and other residential care facilities. Finally, Section 16.1-309.9 of the Code of Virginia requires that the "State Board of Juvenile Justice shall develop, promulgate and approve standards for the development, implementation, operation and evaluation of the range of community-based programs, services and facilities authorized by [Article 12.1 Virginia Juvenile Community Crime Control Act]."

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

In 2019, the department conducted a periodic review of 6VAC35-20. The Periodic Review Report stated in part that "the regulation contains provisions that may violate the Virginia Code Commission's 2016 standards governing the development of regulations," and that, "there are areas of the regulation that are vague and require clarification." The report concluded that the regulation should be amended to address those issues as well as provisions impacted by board-issued regulations then under review. This action seeks to make those amendments and other changes identified by the work group assembled to complete a comprehensive review of this chapter.

This regulation is a tool to enforce the board's existing regulatory provisions, which themselves are intended to protect the health, safety, and welfare of residents, probationers, parolees, and other youth under the care or jurisdiction of the department and its regulated entities.

The proposed changes will make the chapter current with other regulatory changes and will align the chapter's provisions with current practice. They also will eliminate vague language that causes confusion and stands in the way of efficient and effective enforcement of the department's other regulatory chapters.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The proposed changes to the regulation fall into five areas:

1. **Amend the definitions in Section 10.** The department proposes that several of the definitions be rewritten for clarity, while updating others that do not accurately describe terms as they are commonly understood by the Certification team. The department also recommends replacing some entries with new terminology to align with department practice.
2. **Repeal Section 30.** Section 30 is a purpose statement, and the department recommends removing it from the regulation pursuant to 1VAC7-10-40.
3. **Add a new section pertaining to department responsibility.** The department recommends adding a new section to capture a portion of the language in Section 30, which is proposed for repeal, regarding the department's responsibility in auditing and certifying programs and facilities.
4. **Amend numerous sections.** Numerous sections of the regulation are vaguely or unclearly written, have provisions that are more appropriate to department procedures, or contain improper incorporations by reference. In addition, some sections contain unnecessary provisions (e.g. provisions already set out in the Code of Virginia). Finally, many sections require changes in grammar and style to bring them into compliance with the Registrar's style requirements. The department recommends revising all of these sections accordingly, including rewriting entire provisions when necessary.
5. **Repeal procedural sections.** The department recommends eliminating sections or portions of sections that are procedural in nature and do not belong in the regulation.

Issues

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

The proposed changes will benefit the agency by streamlining some provisions, clarifying others, and eliminating unnecessary requirements. If approved, these changes will make the regulation less cumbersome and easier to understand, not just for agency staff but also for regulated entities across the Commonwealth. In addition, the proposal will help eliminate confusion for the department and regulated entities by updating outdated language.

The department has identified no disadvantages for the public or the Commonwealth.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

The department has identified no requirements in this regulation that are more restrictive than federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

No other state agencies are particularly affected by the changes proposed to this regulation.

Localities Particularly Affected

This regulation affects all localities to one extent or another through the 32 court service units; 24 juvenile detention centers; 16 group homes, shelter care facilities, transitional and independent living programs; and the JCC.

Other Entities Particularly Affected

The department has identified no other entities that are particularly affected.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits) anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

For your agency: projected costs, savings, fees, or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources.	The department has not identified any quantifiable costs or benefits resulting from the proposed regulatory changes. The amendments are largely administrative in nature or provide clarification to the department and the regulated community.
For other state agencies: projected costs, savings, fees, or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	The department has not identified any economic costs to other state agencies, nor has it identified any economic savings or benefits. This regulation pertains only to the department and the entities it regulates.
For all agencies: Benefits the regulatory change is designed to produce.	At the state level, benefits of these changes will apply only to the department and will consist of a clearer and more streamlined regulation governing how the department assesses and certifies regulated entities.

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees, or revenues resulting from the regulatory change.	ORM EIF Table 2 (1)
Benefits the regulatory change is designed to produce.	ORM EIF Table 2 (5)

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	ORM EIF Tables 1a, 3, and 4
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:	ORM EIF Tables 1a, 3, and 4

a) is independently owned and operated, and; b) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million.	
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	ORM EIF Tables 1a, 3, and 4
Benefits the regulatory change is designed to produce.	ORM EIF 1a

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

ORM EIF 1c

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

Enter statement here: ORM EIF 1c

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in EO 19 and the ORM procedures, e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable. In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to the which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) 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. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

The changes proposed in this action help simplify and clarify this regulation that establishes requirements for monitoring compliance with the department's other regulations. Those regulations are designed to protect the health, welfare, and safety of residents in the department's care or at JDCs or group homes. This regulation does not have an economic impact on small businesses. Many of the proposed changes are intended to make the regulation clearer and more easily understandable.

The department has concluded that the regulation is necessary for the monitoring and certification of residential facilities and programs regulated by the board. The department has received no complaints or comments concerning the regulation, and the public comment period at the NOIRA stage yielded no comments. The regulation is not particularly complex, and the changes proposed in this action will further simplify the chapter's text. This chapter does not overlap, duplicate, or conflict with federal or state law or other regulations; in fact, this document is designed to support the department's other regulations. This regulation was last evaluated in 2019. Since that time, the department has availed itself of remote meeting technology to conduct some portions of its monitoring visits. The proposed language updates requirements where the use of such technology is permitted.

The board's decisions pertaining to this regulation will have no impact on small businesses.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency's response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

The department received no public comment during the Town Hall public comment period.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

The Department of Juvenile Justice is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, (iii) the potential impacts of the regulation, and (iv) the agency's regulatory flexibility analysis stated in that section of this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: https://townhall.virginia.gov. Comments may also be submitted by mail, email or fax to Ken Davis, 600 E. Main Street, Richmond, VA 23218, phone 804-807-0486, email kenneth.davis@djj.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of this stage of this regulatory action.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between the existing VAC Chapter(s) and the proposed regulation. If the existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
20-10		Section 10 is the definitions section. It contains the following definitions: Appeal of a finding of noncompliance means the action taken by a facility or program administrator after a certification audit when there is disagreement with a finding of noncompliance with an individual regulatory requirement; Audit team leader means the person designated by the director or designee to organize and facilitate the certification audit	The department proposes making changes to the following definitions: Appeal of a finding of noncompliance: The department proposes removing this definition because the term does not appear anywhere else in the regulation. Audit team leader: The department recommends changing the language to read "'Audit team leader' means the person designated by the director or designee to organize and facilitate *a regulatory* audit, the audit of a VJCCCA program or office on youth, *or any other audit or regulatory inquiry.*" These proposed changes were necessary to acknowledge that audits are not always

		or the audit of a VJCCCA program or office on youth; Board means the VA Board of Juvenile Justice; Certification or certified means the formal finding that a program or facility is approved to operate as provided for in 6VAC35-20-100; Certification action means the department's decision to issue or deny certification or to decertify a program or facility as provided for in 6VAC35-200-100 or the board's decision to take action pursuant to 6VAC35-20-115; Certification audit means the process by which designated personnel assess a program's or facility's compliance with applicable regulatory requirements, including an on-site visit, the results of which are reported in a certification audit report for certification action as provided for in 6VAC35-20-100. All facilities and CSUs regulated by the board are subject to certification audits; Certification audit report means the official report of certification audit findings prepared by the audit team leader as provided for in 6VAC35-20-90; Certification status means the type of certification issued to a program or facility, which includes the period of time specified in the certificate, during which the program or facility is approved to operate and must maintain compliance with its regulatory requirements and any corrective action plan; Compliance means meeting the requirements of a standard or an applicable board policy; Compliance documentation means specific documents or information including records,	conducted by the Certification Unit. For example, the VJCCCA team within the department conducts audits of VJCCCA programs. The added language about other audits or regulatory inquiries is necessary, the department believes, to leave flexibility for the department to conduct audits outside of the certification process, for example, if there is a report of a compliance issue at a program or facility. Certification or certified: The department proposes removing the words "for a specific period of time" and replacing them with "under specified conditions." This is to account for the fact that certificates include not only the time period for which a program or facility can operate but also other conditions such as the number of youth allowed in the program or facility. Certification action: Minor change for style. Certification audit: The department recommends removing the words "which includes an on site visit." Since the pandemic that began in 2020, the Certification Unit has begun using remote meeting technology to conduct some audits or portions of audits; therefore, a certification audit does not necessarily have to include an onsite visit. Certification status: The department recommends recrafting the definition to say "'Certification status' means the type of certification issued to a program or facility, as provided for in 6VAC35-20-75." The department believes this definition is cleaner and, by referring to § 75 of the chapter, includes more complete information than it previously did. Compliance: The department proposes changing the word "standard" to "regulation," and eliminating the language pertaining to board policies. The department has moved away from using the word "standard" in favor of the word "regulation," and, within the context of this regulation, the department assesses compliance only with regulations, not board policies. Corrective action plan: Non-substantive changes for style.

		reports, observations, and verbal responses to establish or confirm compliance with a regulatory requirement by a program or facility; Conditional certification means a temporary certification status issued to a new or newly opened facility as provided for in 6VAC35-20-100; Corrective action plan means a written document that, in accordance with 6VAC35-20-91, states what has been or will be done to bring all deficiencies into compliance with regulatory requirements; Critical regulatory requirements means those regulatory requirements for programs or facilities as defined by the board that must be maintained at 100% compliance. Critical regulatory requirements were previously termed "mandatory standards."; Decertified means a status imposed in accordance with 6VAC35-20-120 when it is determined that a program or facility has not met an acceptable percentage of compliance with its regulatory requirements as provided for in 6VAC35-20-85; Deficiency and noncompliance mean that the program or facility (1) does not meet or has not demonstrated that it meets regulatory requirements or (ii) does not comply with the VJCCCA local plan approved by the board; Department means the Department of Juvenile Justice; Director means the Director of the Department of Juvenile Justice; Health, welfare, or safety violation means any action or omission that causes an immediate and substantial threat to the health, welfare, or safety of the juveniles or staff in	Critical regulatory requirements: The department recommends making changes to the definition for style and removing the sentence "Critical regulatory requirements were previously termed "mandatory standards," as being unnecessary. Deficiency and noncompliance: Non-substantive changes for style. Juvenile residential facility or facility: Non-substantive change for style. Monitoring visit: The department recommends removing this definition in its entirety. The Certification Unit no longer uses this term as described in the definition. The work group replaced it with a new term, "regulatory inquiry," which is discussed below. Newly opened facility: The department recommends changing the phrase "an existing facility" to "an existing structure." This is a correction to the definition. Preliminary summary suspension order: The department proposes eliminating this definition. Section 66-24 (E and F) of the Code of Virginia, which pertain to summary suspension orders, do not contemplate a "preliminary" summary suspension order. In line with other changes in the regulation requiring that summary suspension orders follow the requirements of these subsections, the department found the term to have no practical meaning and to be potentially confusing. The proposal eliminates the term throughout the regulated and replaces it with "summary suspension order" as used in the relevant subsections of the Code. Program: One nonsubstantive change for style. Regulatory requirement: One nonsubstantive change for style. Status report: The department found this definition to be unclear and not entirely accurate as the Certification Unit understands the term, so the department proposes changing the definition to "'Status report' means a report summarizing a program's or facility's progress in completing their corrective action plan." VJCCCA program: This definition currently says a VJCCCA program is nonresidential. This is not always the case; some VJCCCA programs are

		juvenile residential facilities. Juvenile residential facility or facility means a publicly or privately operated facility or placement where 24-hour-per-day care is provided to residents who are separated from their legal guardians and that is certified pursuant to this chapter; Monitoring review means a review by designated department personnel assessing the program's or facility's compliance with regulatory requirements; Monitoring visit means an on site evaluation and inspection by designated personnel to assess a program's or facility's compliance with regulatory requirements; Newly opened facility means(i)a facility that is newly constructed or (ii) an existing facility that is being placed in service as a juvenile residential facility; Office on Youth means nonresidential programs funded via the Virginia Delinquency Prevention and Youth Development Act (Chapter 3 (§ 66-26 et seq.) of Title 66 of the Code of Virginia; Preliminary summary suspension order means an order issued by the director as provided in 6VAC35-20-37 taking immediate action against a program or facility when there is a known substantial health, welfare, or safety threat. This order is issued summarily prior to review by the board and is subject to due process protections after issuance; Probationary certification means the temporary status granted to a program or facility to provide a period of time in which to demonstrate compliance with regulatory requirements; Program means a court service unit or a	residential. The department proposes amending the definition to say, "'VJCCCA program' means a nonresidential program or a residential facility established under" the VJCCCA. VJCCCA program or office on youth audit: This definition currently states that these visits are onsite, but current practice combines onsite visits with virtual meetings; therefore, the department recommends changing the definition to indicate that a VJCCCA program or office on youth audit is a "visit by designated personnel, onsite or by electronic means…" Written: The department recommends updating this definition to align with § 1-257 of the Code of Virginia. This would make the definition "any representation of words, letters, symbols, numbers, or figures, whether (i) printed or inscribed on a tangible medium or (ii) stored in an electronic or other medium and retrievable in a perceivable form as defined in Chapter 2.1 (§ 1-27) of Title 1 of the Code of Virginia." The department also proposes adding the following definitions: Administrative probation "means the director places a program or facility on probationary certification status for up to six months pending review by the board pursuant to 6VAC35-20-115." Regulatory inquiry "means a review of applicable regulations conducted on-site or by electronic means following the report of a potential regulatory violation."

		nonresidential service subject to applicable regulatory requirements. For the purpose of this regulation, VJCCCA programs and offices on youth are not included in this definition; Program or facility administrator means the individual responsible for the operations of a program or facility subject to regulatory requirements; Regulatory requirement means a provision of a regulation promulgated by the board to which a program or facility must adhere. A section, subsection, or subdivision of a regulation may include multiple regulatory requirements as provided for in 6VAC35-20-85; Status report means a report that summarizes a review of the areas on which there was a finding of noncompliance and states the program's or facility's compliance standing indicated through the review. For a status report, the regulatory requirements are monitored at the same level of compliance as assessed in the certification audit; Summary suspension order means an order issued by the director in accordance with § 66-24 of the Code of Virginia and 6VAC35-20-37 temporarily suspending a program's or facility's certification; Variance means a board action that relieves a program or facility from having to meet a specific regulatory requirement or develop a corrective action plan for that regulatory requirement for a determined period of time; VJCCCA program means a nonresidential program established under the Virginia Juvenile Community Crime Control Act (Article	

		12.1 (§16.1-309.2 et seq.) of Chapter 11 of Title 16.1 of the Code of Virginia; VJCCCA program or office on youth audit means the on-sire visit by designated department personnel to assess a program funded through the Virginia Juvenile Community Crime Control Act (Article 12.1 (16.1-309.2 et seq.) of Chapter 11 of Title 16.1 of the Code of Virginia) for compliance with the regulatory requirements as provided for in 6VAC35-150 (Regulation for Nonresidential Services) and 6VAC35-60 (Minimum Standards for Virginia Delinquency Prevention and Youth Development Act Grant Programs), as applicable; VJCCCA program or office on youth audit report means an official report of a VJCCCA program or office on youth; Waiver means a formal statement from the department temporarily excusing a program or facility from meeting a noncritical regulatory requirement pending board action on a formal variance request; Written means the required information in communicated in writing. Such writing may be available in either hard copy or electronic form.	
20-30		Section 30 contains introductory language describing the regulation's purpose and citing the supporting Code of Virginia sections. A portion of Section 30, however, describes the department's responsibilities in monitoring and auditing juvenile justice programs and facilities, including VJCCCA programs and facilities and state-operated and locally operated court service units. The language also sets out the board's duty to review	Following guidance from the Registrar not to include purpose statements, the department proposes repealing Section 30 in its entirety and creating a new section with the catchline "Department responsibility" to capture the portion of Section 30 that deals with department and board responsibilities.

		certification audit reports of programs and facilities found in noncompliance with regulations.	
	20-31	N/A	The department proposes this new section with the catchline "Department responsibility." This section is proposed to capture the requirements that were contained in Section 30's purpose statement. Specifically, (i) the department will monitor and audit juvenile residential facilities, programs, VJCCCA programs, and offices on youth; (ii) the department will certify residential facilities and state-operated and local court service units that are part of the Commonwealth's juvenile justice system; and (iii) the board will review certification audit reports of all programs and facilities. The proposed section also cites §§ 16.1-234, 16.1-249, 16.1-309.9, 16.1-309.10, 66-10, 66-24, and 66-25.1:3 of the Code of Virginia as the statutory underpinnings of these requirements. The department consulted the Office of the Registrar about selecting the new section number.
20-35		This section has a catchline of "Guidance documents" and sets out the requirement that the department must prepare guidance documents compiling all regulatory requirements applicable to each type of program or facility subject to 6VAC35-20 and stating how compliance will be assessed. This section also requires that the guidance documents be placed on the department's website. The section also states that guidance documents shall serve as the basis for monitoring visits, monitoring reviews, certification audits, and VJCCCA program or offices on youth audits.	This proposal would change the catchline to "Compliance manuals" and replace every reference to guidance documents with "compliance manuals" within this section. The current language was composed prior to the General Assembly's action in 2018 to set out a process for managing guidance documents in § 2.2-4002.1 of the Code of Virginia. That section of the Code requires agencies to certify that documents conform to the definition of a guidance document in § 2.2-4101. Because not all of the department's compliance manuals meet the definition of guidance document laid out in § 2.2-4101, the department believes using the term "compliance manuals" in the regulation would correct this misalignment with the Code of Virginia. Compliance manuals that do meet the statutory definition will continue to be handled according to the requirements of § 2.2-4101. The department also recommends striking the requirement that the guidance documents (compliance manuals) serve as the basis for monitoring visits, monitoring reviews, certification audits, and VJCCCA

			program or offices on youth audits." The department deems this language problematic because the regulation itself should serve as the basis for these activities. The compliance manuals are a tool to make this task easier.
20-36.1		This section requires the department to take immediate action to correct the situation if it becomes aware of health, welfare, or safety violations in a program or facility. The department's actions may include: reporting the situation to child protective services, the VA state police, or the law enforcement agency with jurisdiction; taking any action authorized in 6VAC35-20-37; reporting to the board no later than is next regularly scheduled meeting (i) the nature and scope of the violation and (ii) the action taken by the department or the program or facility to correct the violation.	The department recommends minor changes for grammar and style. The proposal also changes the phrase "may include, but are not limited to" to simply "may include." This change complies with the direction in 1VAC7-10-30 that, "The word "includes" means "includes, but not limited to."
20-37		Section 37 is a long section that describes the director's authority to take immediate administrative action. Subsection A states that nothing in this regulation shall be construed to limit the director's authority to take immediate administrative action in accordance with law whenever (i) evidence is found of any health, welfare, or safety violation or (ii) a program or facility is not in compliance with regulatory requirements or the VJCCCA. It goes on to list actions that the director might take, including withholding funds, removing juveniles from the program or facility, placing the program or facility no probationary certification status for up to six months pending board review, or summarily suspending the certification pursuant to subsection B of this section.	The work group assembled to recommend amendments to the regulation discovered several problems with this section. First, the level of detail seemed excessive for a procedure the department has never used. Many of the requirements seemed arbitrary or unnecessarily procedural, and the workgroup believed they went far beyond the requirements contained in § 66-24 of the Code of Virginia, which deals, among other things, with the summary suspension orders discussed in this section. The existing regulatory text uses the term "preliminary suspension order," which is not contemplated in the applicable section of the Code of Virginia. Finally, the requirements were so confusing that the workgroup, which included the Certification Unit manager, could not reach consensus on what the text actually said about how a summary suspension order should be handled, despite the lengthy structure of the regulation. The workgroup recommended paring down the section by eliminating the excessive and confusing requirements and referring instead to the

		Further, it requires the department to notify in writing the program or facility administrator, the administrative entity to which the program or facility reports, and the board of the reason for the administrative action and the action the program or facility must take to correct the violation. Subsection B then goes on to discuss the requirements pertaining to the director issuing a summary suspension order. Subdivision 1 says that the director may issue a preliminary summary suspension order when conditions or practices exist in the facility that pose an immediate and substantial threat to health, welfare, or safety. It goes on to say that those immediate and substantial threats may include violations of any provision of applicable laws or regulations made pursuant to those laws; permitting, aiding, or abetting the commission of any illegal act in the regulated facility; engaging in conduct or practices that violate statutes related to the abuse or neglect of children; deviating significantly from the program or services for which a certificate was issued without obtaining prior written approval or failing to correct such deviations within a specified time or ; engaging in a willful action or gross negligence that jeopardizes a resident. Subdivision 2 requires that, upon the issuance of the preliminary summary suspension order, the director shall immediately notify the certificate holder (the program or facility) of the preliminary order verbally and in writing. It also requires	requirements found in subsections E and F of § 66-24 of the Code of Virginia. The department proposes rewriting the section in its entirety as follows: Subsection A will discuss the director's authority to take immediate administrative action when there is a health, welfare, or safety violation or when a program or facility is not in compliance with regulatory requirements or the VJCCA. Actions may include withholding funds, removing juveniles from the program or facility, placing the program or facility on administrative probation, or issuing a summary order of suspension of the certificate pursuant to subsection E of § 66-24 of the Code of Virginia. Importantly, this replaces "preliminary summary suspension order" with, simply, "summary order of suspension" or "summary suspension order" throughout the section. Subsection B will state that if the director issues a summary suspension order, the process shall be governed by subsection F of § 66-24 of the Code of Virginia. This eliminates the excessive procedural requirements related to a "preliminary suspension order" and says instead that the Code of Virgina will govern. Finally, subsection C requires the department to provide the program or facility administrator with a summary of the information used in taking administrative action pursuant to subsection A of this section. The department must withhold any information prohibited from being disclosed by state or federal law or regulations, and if information is withheld, the department shall advise the program or facility administrator of the general nature of the information and the reasons for withholding it. The department believes these changes will make the requirements clearer both to the department and to the regulated entities. The changes also eliminate questionable terminology and provide more clarity about how a summary suspension order will be handled.

		that the chair of the board receive immediate notification when the director issues a preliminary suspension order. And in accordance with Section 36.1 of this chapter, the director must report the action taken to the board no later than its next regularly scheduled meeting. This subdivision goes on to discuss the ability of the certificate holder to decline the opportunity for an appeal to the director and states that whenever an appeal is requested and a criminal charge is also filed against the appellant involving the same conduct, the appeal process shall be stayed until the criminal prosecution is complete. Subdivision 3 discusses a number of procedural items. For example, the certificate holder may appear before the director in person or by telephone. Any documents filed may be transmitted by facsimile and the facsimile and any signatures on it shall serve as an original document. It states that the director or designee shall preside over the appeal and that, with the exception of the director, no person whose regular duties include substantial involvement with the certification of facilities shall preside over the appeal. It states that the certificate holder may be represented by counsel and that they are entitled to present witness testimony. Finally, it states that upon request, the department shall provide the appellant a summary of the information used in making its determination. Information prohibited from being disclosed by state or federal law or regulation shall not be released, and in the case of	

		information being withheld, the certificate holder shall be advised of the general nature of the information and the reasons the information is being withheld. Subdivision 4 gives the director the authority to sustain, amend, or reverse the preliminary summary suspension order and requires the director to notify the certificate holder in writing of the results of the appeal and the right to appeal the final order to the appropriate circuit court with 10 business days of the decision. Notification of the results of the appeal must be sent by certified mail with a return receipt. The chair of the board also must be notified immediately when the director issues a final summary suspension order, and if the certificate holder is not satisfied, the certificate holder may dispute the noncompliance finding in accordance with Section 90 of this chapter.	
20-50		Section 50 discusses how audits will be scheduled and how audit teams will be assembled. Subsection A requires that the department notify each program or facility to be audited at least six months in advance of the scheduled audit date and the name of the designated audit team leader. Subsection B provides that at least 90 calendar days before the schedule audit, the program or facility administrator may request that the audit be rescheduled. Except as provided in 6VAC35-20-100, audits, even if rescheduled, must occur before the expiration of the current certification. Subsection C requires the audit team leader to provide the program or facility administrator with a	The department recommends repealing this section in its entirety. The workgroup was unanimous in its opinion that this section is procedural and should not be included in the regulation. Further, programs and facilities already are aware of the approximate timeframe of their audits based upon the date their then-current certification expires. This change will allow both the department and the regulated entities more flexibility in scheduling certification audits and selecting the audit team.

		list of audit team members as soon as practicable but no later than 10 business days before the scheduled certification audit. Upon notification of the audit team members, the program or facility administrator may request that one or more members of the audit team be replaced. Every reasonable effort must be made to comply with that request. Any subsequent addition or substitution of the audit team members shall be communicated to the program or facility administrator as soon as practicable and made subject to the mutual agreement of the audit team leader and program or facility administrator.	
20-60		This section sets requirements for the monitoring of programs and facilities and states that all programs or facilities subject to board regulations shall be subject to periodic, scheduled monitoring visits or monitoring reviews conducted in accordance with department procedures. It goes on to require the department to develop an annual plan for monitoring programs and facilities subject to certification audits and requires those plans to state that (i) all programs and facilities that are subject to certification audits must receive a minimum of one scheduled monitoring visit a year and that a certification audit satisfies the requirement of a scheduled monitoring visit and (ii) additional monitoring visits or monitoring reviews may be conducted at the request of the board, the department, or the program or facility administrator.	The department recommends a few substantive changes to this section. First, the department recommends removing the reference to department procedures as an improper incorporation by reference. In addition, the proposal strikes the term “monitoring visits,” which the department recommended for removal from the definitions section. Next, the department recommends removing the requirement that the department develop an annual plan for monitoring programs and facilities subject to certification audits. This requirement is unnecessary because the other requirements of this section require that programs and facilities subject to certification audits receive at least one *scheduled* monitoring review per year and that additional monitoring reviews may be conducted at the request of the board, the department, or the program or facility administrator. Removing the requirement provides more flexibility for the department’s Certification Unit to work with the regulated entities in scheduling these visits. Please note that the removal of the annual plan requirement does require the restructuring of this section’s subsections.

20-69		Section 69 deals with newly opened facilities and new construction, expansion, or renovation of residential facilities. Subsection A states that when a newly opened facility seeks certification to allow admission of residents, the facility administrator must contact the agency director to request a review of the facility for conditional certification. Subsection B requires the facility and the department to follow the requirements of this chapter and department procedures when reviewing a facility prior to admitting residents. Subsection B goes on to say that new construction, expansions, and renovations in all juvenile residential facilities shall conform to the governing provisions of 6VAC35-71, 6VAC35-101, 6VAC35-41, and 6VAC35-30. Subsection C requires newly constructed, expanded, or renovated facilities to obtain conditional certification as provided in 6VAC35-20-100 prior to the placement of residents in the new facility or portion of an existing facility subject to the expansion or renovation, except as provided for in subsection D of this section. Finally, Subsection D requires the director or designee to consider the request for certification within 60 days of receiving the request and report of the basic audit findings. Actions taken by the director or designee shall be governed by the provisions of 6VAC35-100.	The department proposes removing the reference to department procedures in subsection B as an improper incorporation by reference. The proposal also adds the phrase “as applicable” before the list of regulations to make clear that not every program or facility will be subject to every regulation listed. Finally, the work group recommended a change in subsection C for style and clarity. There is no change in substance.
20-75		Section 75 discusses certification of individual programs or facilities. Subsection A requires the director or designee to certify each juvenile residential facility and court service unit.	In subsection A, the department added community placement programs to the list of facilities and programs the director or designee must certify. This aligns with the new provisions in the JDC regulation pertaining to CPPS (Action 6433/Stage 10605). The department recommends

		Subsection B allows the director to extend a current certification for a specified period of time pending a certification audit and the completion of an administrative review, so long as the department is not aware of any health, welfare, or safety violations. Subsection C allows a program's or facility's certification status to continue until the director takes action if the program's or facility's certification expires prior to the director's consideration of the certification audit report. Subsection D allows the director or designee to modify the conditions of a certification relating to a program's or facility's program status or capacity, the residents' age range or sex, the facility's location, or changes to the services offered if the program or facility administrator or the department requests the modification during the term of the active certificate.	non-substantive changes to subsection D for clarity and readability.
20-80		Section 80 establishes the basic process for certification audits. Subsection A says that the program or facility shall demonstrate "compliance as required in this chapter" that it has no areas of noncompliance that pose an immediate and direct danger to residents. Subsection B requires the audit team to visit the program or facility and review and examine sufficient documentation to adequately determine compliance as provided in 6VAC35-20-85. Subsection B goes on to state that (i) the burden of providing proof of compliance rests with program or facility staff, (ii) a program or facility with an approved variance or	The department proposes rewriting subsection A to remove the extraneous "as required in this chapter." The change is not substantive. In subsection B the department has interpreted, "The audit team shall (i) visit the program or facility…" to mean the audit team must make an in-person visit to the program or facility. The use of technology to perform audits remotely during the COVID pandemic was successful, and the Certification Unit advocated for audit teams to have more control over which parts of their audits are in person and which parts are done remotely. In answer, the department proposes changing the language to, "…visit the program or facility, as necessary," thus allowing the audit team more flexibility in when to make in-person visits and when to use technology to accomplish an audit. Also, the

		waiver must provide documentation of the variance or waiver to the certification audit team, and (iii) it is permitted to provide additional documentation should the certification request it; however, the documentation must already exist when the audit begins. Compliance shall be determined through documentation, interview, and observation.	department proposes making changes for style and clarity to subdivisions 2 and 3 under subsection B. Finally, the proposal changes the section catchline to "Certification audit process." The workgroup decided this change was necessary because regulations should not establish procedures, and the existing catchline might create confusion with department procedures.
20-85		This section discusses the determination of compliance with individual regulatory requirements. Subdivision 1 and its subdivisions require that the program or facility demonstrate 100% compliance with all critical regulatory requirements. Further, for noncritical regulatory requirements with multiple elements, the certification audit team will make a determination of compliance as provided in department procedures. The subdivisions of 1 go on to say that those procedures must require an acceptable percentage of compliance with the entire regulatory requirement or any single element or, for all noncritical regulatory requirements, demonstrate an acceptable percentage of requirements as provided in department procedures. Subdivision 2 states that the facility or program shall not have (i) any circumstance or condition constituting a pattern of action that presents a concern for the health, welfare, or safety of resident, program participants, or staff or (ii) any circumstance or condition that presents an immediate threat to the health, welfare, or safety of residents, program	The department recommends several changes to Section 85. In subsection A, the department proposes removing subdivision 1 as well as the language leading into it: "To be found in compliance, the following shall be shown:". Subdivision 1a is redundant as that same requirement appears in Section 100. Subdivisions 1b and 1c establish requirements that are dependent upon department procedures, creating improper incorporations by reference. The proposal removes both in their entirety. The proposal turns subdivision A2 into subsection B and edits the language in the new B1 for style and clarity. The department then recommends making the original subsection B into subsection C and removing the original language in subsection C. The original (and now removed) subsection C was dependent upon department procedures and is removed as an improper incorporation by reference.

		participants, or staff. Subsection B requires that a determination of noncompliance must be a decision made by the entire certification team. And, in subsection C, the regulation states that, for purposes of calculating percentage of compliance, the determination of what constitutes individual regulatory requirements will be specified as provided in department procedures.	
20-90		Section 90 establishes requirements pertaining to certification audit findings. Subsection A directs the audit team leader to discuss the certification audit findings with the program's or facility's administrator or designee at the completion of the audit. Subsection B requires the submission of a written report of certification audit findings within 10 business days to the program or facility administrator and the director or designee. The subsection goes on to say that any program or facility that is cited for noncompliance may, within 10 business days of receiving the written report (i) request in writing a variance in accordance with 6VAC35-20-92 or (ii) appeal the finding of noncompliance in writing and in accordance with department procedures and 6VAC35-20-94.	The department proposes changes to subsection A for clarity and style. The proposal also makes changes to subsection B for clarity and style. Finally, the department recommends removing the reference to department procedures in B2.
20-91		Section 91 governs corrective action plans and audit reports. Subsection A and its subdivisions set out requirements for corrective action plans and require that, for each finding of noncompliance, the program or facility must submit a corrective action plan. The corrective action plan must be submitted to the department within 30 days of	In subdivision A1, the workgroup recommended removing references to the department so that corrective action plans must be submitted to the *audit team leader,* and the *Certification Manager* may grant a 30-calendar day extension for the development of the corrective action plan. The department recommends removing subdivision A2 as bordering on an improper incorporation by reference since it required the department to create guidelines which the regulated entities would then be

		receipt of the written certification audit findings. For good cause, the department may grant an extension of 30 days for the program or facility administrator to develop the corrective action plan. Additionally, the department must issue guidelines that provide for the format and process for the department's review and approval of corrective action plans. In addition, there is a list of things the corrective action plan must include: (i) a description of any extenuating or aggravating factors contributing to noncompliance, (ii) a description of each corrective action required to correct the deficiency and prevent its recurrence, (iii) the actual or proposed date of task completion, and (iv) the identification of the person responsible for oversight of each element of the implementation of the corrective action plan.	expected to follow. What was subdivision A3, then, would be changed to subdivision A2, and several changes are made to its subdivision. Subdivision b makes a change for style; subdivision c changes the "date of task completion" to "date of completion of the corrective actions"; and subdivision d removes the phrase "of each element" from the requirement that the person responsible for the oversight of the implementation of the corrective action plan be named. A floating paragraph following subdivision d would become A3 with no substantive changes. The department recommends removing the requirement in what would have been A4 that the program or facility administrator must be responsible for the development and implementation of the written corrective action plan. This requirement already appears in the main body of subsection A and does not need to be repeated. The following requirement (now A4) removes extraneous introductory language and simplifies the requirement. The next requirement (now A5) is a new requirement that the Certification Unit Manager must submit a certification audit report to the department director or designee and that the report should contain the program's or facility's corrective action plan if there was a finding of noncompliance. The next four requirements (now A7-A10) are recommended for removal. These are requirements now contained in a form and are unnecessary in the regulation. Beneath A10, there is a floating paragraph the workgroup recommended removing as too procedural for the regulation. Subsection B also is recommended for removal as a procedural matter now contained in the same form as the requirements in A7-A10.
20-92		Section 92 lays out the requirements for variance requests. Subsection A requires any request for a variance to be submitted in writing. If the request is submitted after a finding of noncompliance in a certification audit, the request must be submitted within 10	Most of the changes made to this section are for style and clarity. The first change the workgroup recommended is the change the catchline from "Variance request" to "Variance requests." The department recommends updating subsection A for style and adding the requirement that the program or facility administrator must be the one to submit the variance request. A recommended

		business day of receiving the written report of the certification audit findings. All variance requests must include (A1) the noncritical regulatory requirement for which the variance is requested, (A2) the justification for the request, (A3) any actions taken to "come into" compliance, (A4) the person responsible for such actions, (A5) the date at which time compliance is expected, and (A6) the specific time period requested for the variance. Subsection B requires that documentation of variance requests stemming from a finding of noncompliance in a certification audit must be submitted along with the corrective action plan "for correcting deficiencies cited during the certification audit" as provided for in 6VAC35-20-91. Subsection C states that a variance cannot be implemented prior to board approval. Subsection D requires variance requests to be placed on the agenda for the next regularly scheduled board meeting. Finally, subsection E says the board must specify the scope and duration of the variance.	change in subdivision A3 changed "come into compliance" to "achieve compliance." Subdivision A4 would remove the word "such" in accordance with the Registrar's style manual and instead say, "those actions." The workgroup recommended removing completely the requirement in A5 that the variance request include the date when compliance is expected. For some of the variances now in effect, there is no date of compliance because the facility cannot come into compliance without a regulatory change. This brings Section 92 into alignment with current practice. Subdivision A6 (new A5) simply makes a style change. The department recommends changes to subsection B for style and to remove the phrase "for correcting any deficiencies cited during the certification audit," following "corrective action plan." The words are not needed because they do nothing more than describe what a corrective action plan is, and that description is made in the definitions section. The department recommends rewriting subsection C for style and clarity, a change to subsection D for style, and a change to subsection E for style.
20-93		Section 93 pertains to waivers. It states in Subsection A that when a program or facility has submitted a formal variance request to the board, the director may grant a waiver, which temporarily excuses the program or facility from meeting the requirements of the regulation when (i) the regulatory requirement is not required by statute or by federal or state regulations other than those the board issues, (ii) noncompliance with the regulatory requirement will not result in	The department proposes making numerous changes to this section. The first proposed change is to eliminate the provision in A(iii) that one requirement for granting a waiver is that enforcing the regulatory requirement in question would create an undue hardship. The department does not feel this requirement is necessary because it is similar in spirit to the requirement in subsection B, which states that a waiver may be granted only when a program or facility is faced with emergency conditions or circumstances that make compliance with the regulatory requirement either impossible or impractical. In addition, the department recommends re-ordering the

		a threat to the health, welfare, or safety of residents, the community, or staff, (iii) enforcement will create an undue hardship, and (iv) juveniles' care or services will not be adversely affected. Subsection B says a waiver may be granted only when the program or facility is presented with emergency conditions or circumstances that make compliance with the regulatory requirement either impossible or impractical. Subsection C requires that the waiver shall be in effect only until the board acts on the variance request. The board is required to act on the matter at its first meeting following notice from the director or designee that a waiver has been granted. Subsection D states that the director or designee shall promptly notify the board chair in writing of waivers granted and the rationale for doing so. Finally, subsection E states that the program or facility will not be cited for noncompliance with the requirements of a regulatory requirement subject to a waiver during the time it operates pursuant to a waiver approved by the director or designee.	requirements in subsection A and moving the requirement in subsection B so that it is (iv) under subsection A. This also re-orders the remaining subsections so that C becomes B, D becomes C, etc. The department then recommends altering the provision in C (now B) to remove the requirement that the board act on the variance request at its first meeting following notice from the director or designee that a waiver has been granted. This change gives the board more discretion over when they act on the variance request. For example, if the first meeting after notification of the waiver is a special meeting called to discuss an urgent matter, adding the variance to that agenda may not be appropriate. The board may, instead, wish to discuss the variance at its next regularly scheduled meeting. The workgroup recommended rewriting the requirement in subsection D (now C) for clarity and style. Similarly, the proposal rewrites the requirements in subsection E (now D) for clarity and style. No substantive changes were made to either of those subsections.
20-94		This section establishes the parameters of the appeal process for findings of noncompliance with a regulatory requirement. Subsection A states that a program or facility administrator may appeal a finding of noncompliance during an audit by submitting the appeal to the agency director or designee within 10 business days of receiving the written notification of the finding of noncompliance. Subsection B then says the	The proposal makes numerous changes to this section. The overall rationale for the changes is that this section was in some ways confusing and unclear and did not provide adequate opportunities to resolve an appeal. First, in subsection A, the workgroup recommended adding that the finding of noncompliance may be during an audit, *a monitoring visit, or a regulatory inquiry*. This is important, because findings of noncompliance do not always happen pursuant to a certification audit. The proposal also requires that the appeal by the program or facility administrator shall be to the certification manager or designee instead

		certification unit manager or designee must contact the program or facility administrator to try to resolve the appeal within 10 business days of receiving the appeal. In subsection C, if department personnel and the program or facility administrator cannot resolve the appeal informally, the appeal must be forwarded by the manager of the certification unit or designee to the director as soon as practicable. Subdivisions under subsection C state that the director or designee shall issue a decision on the appeal within 15 business days of receipt and that the program or facility administrator shall be informed of the director's decision as soon as practicable but no later than the end of the next business day. Subsection D allows the program or facility administrator to appeal the director's decision to the board. If requested, the department shall place the appealed finding of noncompliance on the board's agenda for consideration at its next regularly scheduled meeting. Subsection E requires the finding of noncompliance to be removed from the certification audit report if the appeal (presumably to the board) is granted and the finding overruled. Finally, subsection F states that an appeal pursuant to this section does not negate the requirement in 6VAC35-20-91 to submit a corrective action plan on the disputed regulatory requirement.	of the director. This seems to be more efficient as the existing version of this section initially requires the director to refer the initial appeal to the certification manager anyway. The final change to this subsection is to change the phrase "of an audit" to "during an audit." Subsection B changes the phrase "manager for the certification team or designee" to "certification manager or designee" as a matter of style. The proposal also changes "department personnel" to "the certification manager or designee" to clarify accountability. The workgroup again proposed changing "manager for the certification team" to "certification manager" near the end of the next requirement and changed the requirement that the director receive the unresolved appeal as soon as practicable to say that the certification manager's direct supervisor should receive the unresolved appeal. Further, the certification manager's supervisor shall issue a decision on the appeal and notify the facility or program administrator within 15 business days of receipt. This creates an additional layer of review before the director must get involved. This gives the regulated entity an additional opportunity to resolve their appeal and keeps the director from having to decide matters that can be resolved at lower levels of the department. With this change, subsection B's two subdivisions are moved to a new subsection C, which picks up the thread and states that if the results of the appeal to the certification manager's supervisor are unsatisfactory, the program or facility administrator may make further appeal to the director within 15 business days of receipt of the decision. Further, the director shall issue a decision and notify the facility or program administrator within 15 business days of receiving the appeal, which gives the director more time to consider the matter. The proposal also grants the director the option of an additional 30 days to review information and organize a hearing on the appeal. The old subsection C becomes the new subsection D. It removes the words "exhaustion of" and "informal review and" to make the requirement read, "If the

			appealed finding of noncompliance remains unresolved after the appeal to the director or designee…" Since the term "informal review" is used nowhere else in this section, the workgroup decided it was confusing and instead chose to refer directly to the appeal to the director or designee. The subsection also adds a 30-day timeframe for the facility or program administrator to appeal the director's decision to the board. The previous language provided no timeframe, leaving the matter open-ended. The workgroup felt a defined timeframe would benefit all parties. This subsection also includes a change of "Upon request" to "If the appeal to the board is requested…" This again is to provide clarity to these provisions. The old subsection D becomes subsection E, and the only change the workgroup recommended is to add "at any step" to the phrase "If the appeal is granted and the finding overruled…" This change is intended to clarify when the finding of noncompliance shall be removed from the certification audit report. Finally, the old subsection E becomes subsection F, and the requirement remains unchanged.
20-100		Section 100 is a fairly long and complex section. Subsection A states that the department must notify the program or facility administrator of the date, time, and location the director or designee will take certification action relating to the program's or facility's certification audit. The program or facility administrator has the right to appear in person or by counsel or other qualified representative when the director considers the audit report and makes a certification decision. The program or facility administrator must be provided notice of the right to appear 10 business days before the director's consideration of the audit report and final certification determination. Subsection B	The proposed language makes a number of changes for grammar, punctuation, style, and clarity, or to comply with the Office of the Registrar's style guide. Several provisions also add the word "program" to make the provision apply to facilities and programs. These omissions in the current text appear to be unintentional. Also, throughout this section, there is an inconsistency between the phrases "compliance with" and "compliance on." The proposed text attempts to achieve consistency in the phrase by making all of them "compliance with." The first substantive change is in B.3. The proposal expands that requirement for a conditional certification to say that the program or facility may have (i) no pattern of action that puts at risk the health, welfare, or safety of residents, program participants, or staff, and (ii) no circumstance or condition that presents an immediate threat to the health, welfare, or safety of the residents, program participants, or staff. This, then becomes more expansive than the original requirement to have no

		states that a conditional certification for up to six months will be issued to a new program or newly opened facility that: B.1 demonstrates 100% compliance with all critical regulatory requirements and (ii) any physical plant regulatory requirements, B.2 demonstrates at least 90% compliance with all noncritical regulatory requirements and has an acceptable corrective action plan, and B.3 has no unresolved health, welfare, or safety violations. Subsection C provides that upon review of the audit findings and any acceptable corrective action plans, the director shall take one or more of the actions listed subsequently. C.1 says that if the certification audit finds the program or facility in 100% compliance with all regulatory requirements, the director or designee shall certify the facility for three years. C.2 states that if the certification audit finds the program or facility in less than 100% compliance with all regulatory requirements and a subsequent status report completed prior to the certification audit finds 100% compliance on all regulatory requirements, the director or designee shall certify the facility for a specific time period up to three years. C.3 provides that if the certification audit finds the program or facility in less than 100% compliance with all critical regulatory requirements or less than 90% compliance with all noncritical regulatory requirements or both, and a subsequent status report completed prior to the certification action finds 100% compliance on all	unresolved health, welfare, or safety violations. In C.4.a, the proposed language changes "prior to the extension of the certification period" to "prior to the end of the extended certification period." The work group decided the existing language is vague and open to interpretation, while the proposal is clearer and aligns more neatly with the subdivisions that follow. C.5.a changes "shall" to "may" to give the director more flexibility in taking action when a status report shows that the program or facility shows acceptable compliance with regulatory requirements. Likewise, C.5.b changes "shall be decertified" to "may be placed on probationary certification status or decertified." This change recognizes that not all findings of noncompliance are equal and gives the director the discretion to act when a program or facility continues to be out of compliance on a status report. A similar change is made in C.6.a. C.7 strikes the phrase "notwithstanding the foregoing provisions" as unnecessary. C.D.1 strikes "as provided in department procedures" as an improper incorporation by reference. C.D.4 changes "per 6VAC35-20-36.1" to "in accordance with" the regulatory section. This is consistent with the language used in other changes over the past decade. E.1 removes "but not limited to" from "including," bringing it into alignment with 1VAC7-10-30.

		critical regulatory requirements and 90% or greater compliance on all noncritical regulatory requirements, the program or facility shall be certified for a specified period of time up to three years. C.4 says that if the certification audit finds the program or facility in less than 100% compliance with all critical regulatory requirements or less than 90% compliance with all noncritical regulatory requirements or both, and subsequent status report completed prior to the certification action finds less than 100% compliance with all critical regulatory requirements or less than 90% compliance with all noncritical regulatory requirements or both, the program or facility shall be subject to the items listed subsequently. C.4.a. says that if there is an acceptable corrective action plan and no conditions or practices exist in the program or facility that pose an immediate and substantial threat to the health, welfare, or safety of the resident's, the program's or facility's certification shall be continued for a specified period of time up to one year with a status report completed for review prior to the end of the extended certification period. C.4.a.1 states that if the status report finds the program or facility in 100% compliance with all critical regulatory requirements and 90% or greater compliance with all noncritical regulatory requirements, the program or facility shall be certified for a specified period of time up to three years, retroactive to the date upon which the prior certification was scheduled to	

		expire.C.4.a.2 says that fi the status report results find that the program or facility continues to be at less than 100% compliance with critical regulatory requirements or less than 90% compliance with all noncritical regulatory requirements, the program or facility shall be placed on probationary certification status for a period of time up to one year. C.4.b states that if there is not an acceptable corrective action plan or there is a health, welfare, or safety violation or both, the program or facility shall be placed on probationary certification status for a specified period of time up to one year or decertified. Subsection C.5 provides that whenever a program or facility is placed on probationary certification status, a status report shall be completed prior to the expiration of the probationary certification period. Subdivision C.5.a says that if the status report results find the program or facility in 100% compliance with all critical regulatory requirements and 90% or greater on all noncritical regulatory requirements, the program or facility shall be certified for a specified period of time up to three years, retroactive to the date upon which the prior certification was scheduled to expire. C.5.b states that if the status report results find the program or facility continues to be in less than 100% compliance with the critical regulatory requirements or less than 90% compliance with all noncritical regulatory requirements, the program or facility shall be decertified. Subdivision C.6 provides that when a program or facility is	

		placed on probationary certification status (i) the director or designee shall, taking into account the program's or facility's history of compliance with regulatory requirements, specify the duration of the probationary certification status and (ii) the department and program or facility shall provide a status report to the board at all meetings for the duration of the status. C.6.a says that if the status report indicates no continued areas of noncompliance, the director or designee shall certify the facility for up to three years subject to the provisions of subdivision 8 of this subsection. Subdivision C.6.b states that if any area of noncompliance continues thereafter, the director or designee may (i) continue the probationary certification status, (ii) decertify the program or facility as provided for in 6VAC35-20-120, or (iii) take any other action provided for by law. Subdivision C,7 states that if the certification audit report indicates an immediate threat to the health, welfare, or safety of the residents or facility the director or designee may decertify the program or facility as provided for in subsection D of this section and 6VAC35-20-120 or take any other action provided for by law. C.8 says that if a program's or facility's certification status is continued after the initial period expires, the subsequent certification will be retroactive to the date of expiration, unless the director or designee specifically issues a certification with different terms. Subsection D says that any program or facility, regardless of current	

		certification status, may be decertified or denied certification when: D.1 The program or facility has an unacceptable level of compliance, as provided in department procedures, with applicable regulatory requirements without acceptable corrective action plans to address deficiencies; D.2 The program or facility, if on probation or administrative probation, has not corrected the circumstances that were cited in placing the program or facility on probation or administrative probation to the point that the program or facility would qualify for at least conditional certification; D.3 The program's or facility's staff have knowingly (i) committed, permitted, aided, or abetted any illegal act in the program or facility resulting in a criminal conviction, (ii) violated child abuse or neglect laws; (iii) deviated significantly from the program or services for which a certificate was issued without prior approval from the director or designee, (iv) failed to correct any such deviations within the time specified by the director or designee, or (v) falsified records, and the facility administrators knew or should have known and failed to report the actions and take immediate remediating actions; or D.4 If the program or facility fails to adequately correct the health, welfare, or safety violation per 6VAC35-20-36.1. Subsection E provides that certification decisions may be issued outside the requirements of subsections C and D of this section under the following circumstances: E.1 The director may	

		consider any aggravating and mitigating circumstances affecting the facts resulting in a finding of noncompliance, including the history of the facility and the ability of the facility to predict and control the conditions resulting in the noncompliance. In such circumstances, the director may operate outside the requirements of subsection C of this section; E.2 When considering whether to place a program or facility on probationary certification status or to decertify the program or facility due to a finding of noncompliance on a critical regulatory requirement, the director may consider whether the facility (i) had control over and knowledge of the circumstances, behaviors, or conditions leading to the finding and (ii) took appropriate steps to rectify the situation immediately. In such cases, the director may continue the certification instead of taking those actions. Subsection F says that once the director or designee takes the certification action, the department shall issue a certificate or letter clearly identifying the program or facility, the certification status, and the period of time during which the certification will be effective unless the certificate is revoked or surrendered sooner. The program or facility administrator must be informed of the factual or procedural basis when any program or facility is issued a probationary certification or is decertified. Finally, subsection G states that any program's or facility's status shall remain in effect until	

		subsequent action by the director or designee.	
20-120		Section 120 establishes what actions must be taken following decertification of a program or facility or denial of certification. Subsection A provides requirements for when a program or facility operated by the department is decertified or denied certification. The department must take remedial action and may choose to close the program or facility or relocate residents. Subdivision A.1 requires a report to be sent to the board within 90 calendar days after decertification or denial detailing the actions the department took to bring the program or facility into compliance with all regulatory requirements and to protect the health, welfare, or safety of the residents. In subdivision In A.2, after 90 days, if the program or facility has not met the requirements for at least conditional certification and the department has not closed the program or facility, the board must recommend appropriate action to the Governor and the Secretary of Public Safety. Subsection B states that when a program or facility that is locally, regionally, or privately operated is decertified or denied certification, the board, and the department may take any and all of the actions in the subdivisions that follow. In B.1, the facility supervisor and the governing authority may be required to reorganize the program structure or take necessary personnel action or any other steps necessary to qualify the program or facility for at least a conditional certification within 90 calendar days. B.2 states	As in Section 100, the proposal makes numerous recommendations to correct errors in grammar and style, ensure that both programs and facilities are referenced in every requirement, and restructure sentences for clarity and readability. In A.1, the proposal recommends changing “or” to “and” in the (ii) reference to “health, welfare, or safety.” The department believes that health, welfare, and safety are not divisible in protecting the youth in the department’s care, so that should be reflected in the wording of this provision. Subdivision A.2 is partly restructured for clarity, and “Secretary of Public Safety” is changed to the correct title: “Secretary of Public Safety and Homeland Security.” The content of this provision is unchanged. An amendment to subsection B removes the unnecessary “to the circumstances” following “appropriate.” The proposed amendments to B.1 include adding “program” to “program or facility” and replacing “supervisor” with “administrator” as it is used throughout the rest of the chapter. In B.2, the department proposes removing the unnecessary “as applicable” from the provision. B.3 and B.4 contain stylistic changes.

		that the director or designee may reduce or suspend funding to the program or facility in accordance with §§ 16.1-322.1, 16.1-309.9 C, or 66-30 of the Code of Virginia or may withdraw the approval required in § 16.1-249 A of the Code of Virginia. In B.3, the board may enter an order, pursuant to § 16.1-309.9 B of the Code of Virginia, prohibiting or limiting the placement of children in the program or facility. And in B.4, the department shall not utilize facilities for residential placements if they have been decertified for denied certification.	
20-150		Section 150 pertains to critical regulatory requirements for juvenile residential facilities. Subsection A establishes that the board has the sole authority for designating critical regulatory requirements. The board must identify critical regulatory requirements at the first board meeting after the final regulation is published in the Virginia Register of Regulations. Subsection B says that the critical regulatory requirements may be amended by a majority of the board at a regularly scheduled board meeting only when (i) the proposed change was raised at a previous board meeting but not voted on and a date for final consideration and voting was set at that meeting; (ii) notice of the proposed change was posted with the notice of the board meeting designated for discussion and voting; (iii) consideration of the proposed change was placed on the board meeting agenda at which a vote is anticipated; and (iv) written	As in other sections, the proposed language for section 150 makes numerous changes for grammar and style, particularly to remove unnecessary verbiage. For example, in subsection A, the second sentence, “The board shall identify the designated critical regulatory requirements,” is changed to, “The board shall designate critical regulatory requirements.” Also, the reference to “designated critical regulatory requirements” is changed to, simply, “critical regulatory requirements” throughout the section. There is a substantive change in subsection A, which is to make it clear that the board’s designation of critical regulatory requirements must occur at the first *regularly scheduled* board meeting after the final regulation is published in the Virginia Register. From time to time, the board may call special meetings to discuss specific topics, and these meetings are not the appropriate place to discuss critical regulatory requirements. In subsection B, a change is made to clarify that it is *the list* of critical regulatory requirements that may be amended, not the requirements themselves. In B (i) the words “but not voted upon” are removed as unnecessary. Further changes are made to clarify and simplify language, correct tenses across the section, and correct the numbering of the romanettes under

		notice was provided to the facility administrators prior to the board meeting at which the vote is anticipated, Subsection C allows a person to request to review the critical requirements at any time. And subsection D requires the list of critical regulatory requirements to be posted on the department's web site.	subsection B. Subsection C is reworded to put it in active voice.
20-200		Section 200 is a short section which requires the department to develop a schedule for monitoring all VJCCCA programs or offices on youth. The schedule must provide for at least on scheduled on-site VJCCCA program or office on youth visit every two years. Additional monitoring visits or reviews may be scheduled whenever deemed necessary.	The only change to this section is to change "monitoring visits or reviews" to "monitoring reviews." The term "monitoring visit" was removed from the definitions in section 10.
20-210		Section 210 pertains to VJCCCA programs and offices on youth self-evaluations. Subsection A directs all VJCCCA programs and offices on youth to conduct an annual self-evaluation and provide the department with a written summary of the self-evaluation process and the findings of the self-evaluation. These things are to be done in accordance with department procedures and manuals. Subsection B directs the department to schedule each VJCCCA program or office on youth to conduct the self-evaluation and complete the report. Finally, subsection C directs the department to review each VJCCCA program's or office on youth's self-evaluation report and provide feedback to the VJCCCA program or office on youth.	The proposed language eliminates the reference to department procedures and manuals in subsection A; this is an improper incorporation by reference. In subdivision A.2, the proposal changes the word "summary" to "report." The workgroup decided the word "summary" implied a shorter, less complete description of the self-evaluation process and the self-evaluation's findings and that the word "report" was more appropriate. The proposal also makes several minor changes in subsection B to clarify the meaning of the provision.
20-220		Section 220 provides requirements for VJCCCA	The workgroup recommended several changes to this section. First, in

		program and office on youth audits. Subsection A states that during the program audit, the VJCCCA program or office on youth shall demonstrate an acceptable level of compliance, as provided in this chapters, with all statutory requirements, the approved local plan, applicable regulatory requirements, and applicable department procedures or manuals. In subsection B, the burden of proving compliance with the applicable requirements rests with the program staff. And in C, findings of noncompliance shall be documented.	subsection A, Chapter 20 does not provide acceptable levels of compliance with statutory requirements or the local plan; therefore, the proposal removes the phrase "as provided in this chapter." For clarity, the proposed language in subsection A (ii) changes "the approved local plan" to "the local plan approved by the board." The original wording was vague; the amendment clarifies the intent of the requirement. The final change in subsection A removes "(iv) applicable department procedures or manuals" as an improper incorporation by reference. In subsection B, the proposed language changes "applicable requirements" to "requirements listed in subsection A," for clarity. The workgroup also recommended clarifying that "the program staff" means "the VJCCCA program or office on youth staff." Finally, the requirement in subsection C is reworked to put it in active voice and avoid the use of "any," as recommended in the Registrar's style guide.
20-230		This section establishes requirements pertaining to the findings of VJCCCA program and office on youth audits. Subsection A states that upon completion of the VJCCA or office on youth audit, the VJCCCA or office on youth audit findings must be reported to the VJCCCA program plan contact or office on youth program director, along with a copy to "the individual with supervisory authority over that individual." Subsection B allows the VJCCCA program plan contact or office on youth program director to appeal the audit findings to the director or designee. Finally, subsection C requires the department to monitor the progress of the VJCCCA program or office on youth in correcting the identified noncompliance through subsequent documentation.	The proposed amendments make several changes to this section. First, in subsection A, the proposal makes it clear that the VJCCCA program or office on youth audit discussed in this section is the one provided for in 6VAC35-20-200. The original text is unclear as to who is supposed to report the audit findings to the VJCCCA program plan contact or office on youth program director. The workgroup proposes amending the text to clarify that the department shall report the audit findings and provide a copy to the person with supervisory authority over the VJCCCA program plan contact or the office on youth program director. Subsection B strikes "VJCCCA program or office on youth" as an unnecessary descriptor of the audit at this point in the section. The proposal expands the monitoring options in C by adding that "Monitoring may be accomplished by subsequent documentation, telephone or electronic contact, or visits to the VJCCCA program or office on youth." The existing text only provides for monitoring through subsequent documentation.
20-240		Section 240 establishes requirements pertaining to the effect of VJCCCA	While there are no substantive changes in this section, there are a few changes for style and clarity. The largest change

		program or office on youth noncompliance. Subsection A states that if the department determines that a VJCCCA program or office on youth is not in compliance, it may suspend all or any portion of the program's funding until compliance is achieved, as provided in subsection C of § 16.1-309.9 of the Code of Virginia. In subsection B, the department must notify the person responsible for the daily administration of a VJCCCA program or office on youth of the intent to withhold funds prior to withholding them. The notification must include the justification for the withholding and any corrective actions the VJCCCA program or office on youth must complete. Subsection C provides for a written appeal to the director or designee of the withholding of funds within 10 business days of receiving notice of the department's intent.	is in subsection C which the workgroup proposes rewriting for style and clarity.

If a <u>new</u> VAC Chapter(s) is being promulgated and is <u>not</u> replacing an existing Chapter(s), use Table 2.

Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace

New chapter-section number	New requirements to be added to VAC	Other regulations and laws that apply	Change, intent, rationale, and likely impact of new requirements

*If the regulatory change is replacing an **emergency regulation**, and the proposed regulation is <u>identical</u> to the emergency regulation, complete Table 1 and/or Table 2, as described above.*

*If the regulatory change is replacing an **emergency regulation**, but <u>changes have been made</u> since the emergency regulation became effective, <u>also</u> complete Table 3 to describe the changes made <u>since</u> the emergency regulation.*

Table 3: Changes to the Emergency Regulation

Emergency chapter-section number	New chapter-section number, if applicable	Current emergency requirement	Change, intent, rationale, and likely impact of new or changed requirements since emergency stage