



Virginia  
Regulatory  
Town Hall

## Proposed Regulation Agency Background Document

<b>Agency Name:</b>	16 VAC 5
<b>VAC Chapter Number:</b>	16 VAC 5-20
<b>Regulation Title:</b>	Unemployment Taxes
<b>Action Title:</b>	Proposed
<b>Date:</b>	March 28, 2001

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

### Summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The regulation eliminates the requirement for “reimbursable” employers to post a surety bond. Reimbursable employers are government and non-profit entities not required to pay unemployment taxes, but are required to reimburse the unemployment insurance trust fund for benefits paid to qualified individuals separated from such employers.

## Basis

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

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Section 60.2-111.A of the Code of Virginia authorizes the Virginia Employment Commission to promulgate regulations. This section provides broad-based authority for the agency to adopt, amend, or rescind such rules and regulations as it deems necessary or suitable to administer Title 60.2. The amendments are discretionary in nature and are not required by state or federal law. Written assurance from the Office of the Attorney General the Commissioner possesses, and has not exceeded, his statutory authority is attached.

## Purpose

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

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While the amendments are not essential to protect the health, safety or welfare of the citizens of the Commonwealth, the amendments are intended to relieve reimbursable employers – typically non-profit organizations – from requirements to post a surety bond. During the 15 years that the Virginia Employment Commission has required reimbursable employers to post a bond, the agency has drawn only once upon the bonds to reimburse the unemployment trust fund. The requirement for employers to post a surety bond and administering the requirement has proven unnecessarily cumbersome for employers and for the VEC. Given the past experience in this area, eliminating the requirement to post surety bonds poses little or no risk to the unemployment trust fund while relieving employers of an administrative task and an unnecessary expense.

## Substance

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

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The requirement in 16 VAC 5-20-20 (pages 1-3) for reimbursable non-profit employers to post a surety bond would be eliminated.

## Issues

*Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.*

The primary advantages of implementing the regulation to the public and the commission are discussed below. No disadvantages to the public or the commission are anticipated.

1. The adoption of these regulations will benefit reimbursable employers by eliminating an administrative task and its related expense.
2. The primary advantage to the commission will be eliminating the administration of escrow accounts and the reporting requirements necessary to maintain the surety bonds. The benefit derived from such surety bond has been far outweighed by the record-keeping, reporting and other expense of administering the requirement.

## Fiscal Impact

*Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.*

- a. The agency does not anticipate any cost to the state to implement this regulation.
- b. The proposed regulation will impose no cost on localities.
- c. The entities affected by the proposed regulation are non-profit reimbursable employers.
- d. There are approximately 360 non-profit reimbursable employers in Virginia.
- e. The proposed regulation would save non-profit reimbursable employers from posting a bond equal to 1.0% of their taxable payroll.

## Detail of Changes

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This*

*statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.*

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The requirement in 16 VAC 5-20-20 (pages 1-3) for reimbursable non-profit employers to post a surety bond would be eliminated. Current regulations require such employers to post a surety bond equal to 1% of the employers taxable wages. The surety bond was instituted in lieu of paying unemployment taxes and was to be used if the employer failed to reimburse the agency for benefits for which that employer had been determined liable. Since the enactment of this requirement 15 years ago, the agency has used the surety bonds to reimburse the unemployment trust fund only once.

### Alternatives

*Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.*

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The agency considered the following alternatives:

1. Take no action to amend the regulations. This option was not chosen because the current regulations impose a burden upon non-profit reimbursable employers that is not justified by the very small risk to the unemployment trust fund that such employers present.
2. Require a surety bond in a smaller amount than that currently required. This option was not chosen because although the expense to regulated non-profit reimbursable employers would be smaller, the reporting and record keeping burdens would remain.
3. Eliminate the requirement to post a surety bond. This option was chosen as the least burdensome and intrusive method.

### Public Comment

*Please summarize all public comment received during the NOIRA comment period and provide the agency response.*

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The agency received no comments during the NOIRA comment period regarding these regulations.

### Clarity of the Regulation

*Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.*

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To ensure that the regulation is clearly written and easily understandable, the commission had the regulation reviewed by an individual who has no expertise in the commission's operations. The reviewer then summarized the regulation to ensure that the amendments were clearly understandable on their face.

### Periodic Review

*Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.*

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The agency will convene an internal committee to review and re-evaluate the regulation within their years of the amendment's effective date to consider whether it should be continued, amended, or terminated. The goals against which the regulation will be reviewed are:

- a. The regulation will not reduce the accuracy or timeliness of employer wage reporting as measured by random audits.
- b. The regulation will not increase failure to reimburse the unemployment trust fund as measured by reimbursement delinquency rates among non-profit reimbursable employers.

### Family Impact Statement

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

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The commission does not anticipate that the proposed regulation will have any impact on the institution of the family and family stability.