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Fast-Track Regulation Agency Background Document

Agency name	Virginia Employment Commission
Virginia Administrative Code (VAC) Chapter citation(s)	16 VAC 5-80
VAC Chapter title(s)	Adjudication
Action title	16 VAC 5-80 Amendments for Modernization
Date this document prepared	05/12/2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), 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 Virginia Employment Commission (VEC) seeks to amend 16 VAC 5-80, Adjudication, to accurately reflect the updated processes as the agency increasingly moves away from local offices and into a modernized claim filing process. Taking full advantage of that fundamental change in operational structure will necessitate other measures for increased efficiency such as altering the continued and weekly claim filing deadline.

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.

"VEC" means Virginia Employment Commission.
"Commission" means Virginia Employment Commission.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On April 27, 2022, the Commissioner approved amending 16 VAC 5-80, Benefits.

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 Executive Order 14 (as amended, July 16, 2018), “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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

As required by Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

As part of the periodic review, VEC determined amendments were needed for 16 VAC 5-80 to reflect an updated and more accurate processes in light of increased modernization of agency software.

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.

VEC is the promulgating agency for this regulatory action. Statutory authority for such regulatory action is derived from Sections 60.2-113, 60.2-611, and 60.2-612 of the Code of Virginia authorizing the commission to adopt, amend, or rescind such rules and regulations deemed necessary, including methods of procedure.

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’s intended to solve.

The Commission must take all necessary steps to aid employment stabilization in the Commonwealth of Virginia under its duty to administer the Virginia Unemployment Compensation Act for the welfare of the citizens of the Commonwealth through not only unemployment benefits, but also the labor exchange system, job services programs, and solvency of the administered trust fund. Adapting to the shift away from brick and mortar local offices through an increased utilization of technology and stream lining of claim filing processes are necessary to gain efficiency in the pursuit of those mandated goals.

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.

16 VAC 5-80 amendments include by subsection:

- 16 VAC 5-80-10
 - Amend "Deputy's determinations" to "Deputy's determinations or decisions"
 - Section (A)
 - Delete "in person or by telephone"
 - Section (B)
 - Replace "scheduled by the" with "conducted with a"
 - Replace "ever a request is made by the claimant, his liable employer, or his interested subsequent employing unit, for the purpose of gathering information to determine benefit eligibility or qualification. Notice of the date, time and location will be mailed to the parties five days before the scheduled proceeding, but such notice may be waived with the parties' consent" with "deemed necessary by the commission in order to resolve an outstanding issue on a claim"
 - Delete "or in person"
 - Delete "The parties may also ask questions of each other and the witnesses."
 - Section (C)
 - Add "or decision" after "determination" (five instances)
 - Amend "shall be promptly mailed" to "shall be promptly delivered or mailed"
 - Amend "their last known addresses" to "their last known addresses or designated point of contact"
- 16 VAC 5-80-20
 - Section (A)
 - Amend "deputy's determination as specified" to "deputy's determination or decision as specified"
 - Section (A)(1)
 - Amend "Administrative Law Division" to "Administrative Law Division's Office of First Level Appeals"
 - Section (A)(1)(a)
 - Replace "field offices" with "workforce"
 - Amend "regional adjudication centers," to "adjudication or"
 - Section (A)(1)(b)
 - Amend "Administrative Law Division" to "Administrative Law Division's Office of First Level Appeals"
 - Amend "deputy's determination" to "deputy's determination or decision"
 - Section (A)(1)(c)
 - Amend "Administrative Law Division" to "Administrative Law Division's Office of First Level Appeals"
 - Amend "deputy's determination" to "deputy's determination or decision"
 - Section (A)(3)
 - Amend "as well as the social security account" to "as well as the name and last four digits of the social security account"
 - Amend "any document in writing submitted by a party" to "any document in writing submitted to the commission by a party"
 - Section (B)

- Amend “Administrative Law Division” to “Administrative Law Division’s Office of Commission Appeals,”
 - Amend “examiner’s determination; or” to “examiner’s determination or decision; or”
 - Section (B)(3)
 - Replace “Upon the consent of all interested parties” with “In its discretion”
 - Amend “permit oral argument hearings” to “permit oral argument and other hearings”
 - Amend “oral argument hearing. The commission may prescribe” to “oral argument hearing. Parties may also submit affidavits in lieu of a personal appearance at hearings scheduled for additional evidence issues such as reopening of an appeals examiner’s hearing or timeliness of an appeal to the Office of Commission Appeals. The commission may prescribe”
 - Section (B)(4)
 - Amend “hearing on its own motion, whenever it believes” to “hearing on its own motion, to be conducted in person, by telephone or video conference call, or by split hearing, whenever it believes”
- 16 VAC 5-80-40
 - Section (D)
 - Amend “and field tax representatives” to “and tax representatives”
 - 16 VAC 5-80 FORMS
 - Delete “Notice of Appeal Hearing, VEC-AE-1 (rev. 6/91).”
 - Replace “, VEC-AE-1A (rev. 5/92)” with “Before an Appeals Examiner, A-FLA-028 (rev.7/2012)”
 - Add “Notice of In-Person Hearing Before an Appeals Examiner, A-FLA-028 (rev.7/2012)”
 - Replace “VEC-AE-2 (rev. 6/91)” with “[First Level Appeals], A-FLA-002 (rev. 7/2012)”
 - Delete “Request for Withdrawal of Appeal, VEC-AE-10 (rev. 6/1/66)”
 - Add “Notice of Appeal [Commission Appeals], A-CLA-025 (7/2012)”
 - Replace “VEC-C-1 (rev. 6/90)” with “A-CLA-067 (rev.12/2016)”
 - Replace “VEC-C-1A (rev. 6/90)” with “A-CLA-067 (rev.12/2016)”
 - Replace “Pre-Determination Proceeding” with “Telephonic Fact Finding Interview” and add “(Rev. 1/2015)” after “B-10EX”
 - Add “Telephonic” after “Notice of” and before “Fact Finding”
 - Delete “Fact Finding Report, IB-11 (rev. 2/72).”
 - Delete “Separation Fact Finding Report, IB-11S (rev. 10/79).”
 - Delete “Claimant Notice of Predetermination Proceeding, VEC-B-10D (rev. 2/72).”
 - Delete “Employer Notice of Predetermination Proceeding, VEC-B-10E (rev. 4/82).”
 - Delete “Claimant’s Statement Concerning Voluntary Quit, VEC-B-60.1 (rev. 11/94).”
 - Delete “Claimant’s Statement Concerning Discharge, VEC-B-60.2 (rev. 11/94).”
 - Delete “Claimant’s Statement Concerning Able and Available, VEC-B-60.5 (rev. 11/94).”
 - Delete “Claimant’s Statement Concerning Refusal of Job or Referral, VEC-B-60.6 (rev. 11/94).”
 - Delete “Claimant’s Request for Training Approval, VEC-B-60.7 (rev. 11/94).”
 - Delete “Claimant’s Statement Concerning Voluntary Quit Illness, VEC-B-60.8 (rev. 11/94).”
 - Delete “Supplemental Sheet – Claimant and Employer Statement, VEC-B-60SUP (eff. 11/94).”
 - Replace “VEC-BPC-54 (eff. 6/90)” with “VEC-B-54 (rev. 3/2010).”
 - Add “Notice of Deputy’s Determination - Overpayment, VEC-BPC-54 (eff. 5/2009).”
 - Add “Notice of Deputy’s Determination - Fraud, VEC-BPC-54F (rev. 9/2007).”

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 primary advantage to the public is more clarity to the flow of information in the modernized processes, practices, and procedures used by the agency. There are no disadvantages to the public.

The Commonwealth will benefit by ensuring processes, practices, and procedures are accurately represented in the regulations. There are no disadvantages to the agency.

There are no other pertinent matters of interest to the regulated community, government officials, and the public.

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.

There are no known requirements more restrictive than federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "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 will be affected.

Localities Particularly Affected

No localities will be affected.

Other Entities Particularly Affected

No other entities will be affected.

Economic Impact

Pursuant to § 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 change versus the status quo.

Impact on State Agencies

<i>For your agency:</i> 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	There are no savings and no changes to costs, fees, or revenues of the VEC resulting from this regulatory change.
<i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	There are no savings and no changes to costs, fees, or revenues of other state agencies resulting from this regulatory change.
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	The regulatory change incorporates clarifications and updates in current practices and forms to increase comprehensibility.

Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	There are no savings and no changes to costs, fees, or revenues of localities resulting from this regulatory change.
Benefits the regulatory change is designed to produce.	None.

Impact on Other Entities

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.	No entities will be affected.
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: 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.	None.
All projected costs for affected individuals, businesses, or other entities resulting from the	There are no projected costs for individuals, businesses, or other entities resulting from this regulatory change.

<p>regulatory change. Be specific and include all costs including, but not limited to:</p> <ul style="list-style-type: none"> 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. 	
<p>Benefits the regulatory change is designed to produce.</p>	<p>The regulatory change incorporates clarifications and updates in current practices and forms to increase comprehensibility.</p>

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.

VEC found no viable alternatives to amending 16 VAC 5-80. The amendments within this Th-04 are required in large part due to the shift away from local office service locations and toward more modern and paperless processes. With regard to impact for small businesses, the modernized Employer Report of Separation and Wage Information process allows for greater efficiency and flexibility than a required paper process, and less processing of physical paperwork from all parties allows the commission to operate as a more agile and responsive organization to the benefit of all parties, including small businesses in the employer role.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B 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.

There are no regulatory alternatives that would be less stringent that are consistent with updating the regulations and forms contained in this chapter. As part of an agency-wide modernization process, some terms, practices, and forms require updates. The proposed changes would not present a health, safety, environmental, or economic risk to the public. Alternatives do not adequately accomplish the objectives of updating and aligning VEC regulations.

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.

As required by § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The VEC 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, and (iii) the potential impacts of the regulation.

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: Jake Shuford; Virginia Employment Commission, Attn: Jake Shuford, 6606 W Board Street, Richmond, VA 23230-1717; (Tel.) 804-486-2360; (Fax) 804-786-9034; RegulatoryCoordinator@vec.Virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

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 existing VAC Chapter(s) and the proposed regulation. If 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
16 VAC 5-80-10		Requirements and authorities in conducting predetermination fact-finding proceedings.	Proposed changes are to conform to the flow of information in new, modernized systems and better align with regulations of the United States Department of Labor.
16 VAC 5-80-20		Requirements for a claimant, employer, or employing unit to file a first level appeal.	Minor changes are needed to clarify the destination of an appeal from the Deputy's determination to First level Appeals.
16 VAC 5-80-30		Requirements for a claimant, employer, or employing unit to file a commission appeal.	Minor changes are needed to clarify the destination of an appeal from the Appeals Examiner's decisions to

			Commission Appeals and also update terminology to reflect current practices.
16 VAC 5-80 Forms		Forms, some of which are outdated, obsolete, or have been updated.	Some forms previously used by the agency are now outdated or obsolete, other new forms have been added, and others renamed.