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Fast-Track Regulation Agency Background Document

Agency name	Department for the Blind and Vision Impaired
Virginia Administrative Code (VAC) citation(s)	<u>22 VAC 45-20-10, 22 VAC 45-20-110, and 22 VAC 45-20-120</u>
Regulation title(s)	Regulations to Govern the Operation of Vending Facilities in Public Buildings and Other Property 22VAC45-20-10 Definitions, 22VAC45-20-110, Setting aside of funds, and 22VAC45-20-120 Distribution and use of income from vending machines)
Action title	Update agency name and change frequency of setting aside of funds and distribution of income to blind vendors.
Date this document prepared	October 30, 2018

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please 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The proposed changes update the agency name, amend the definition of “blind person,” which was based on a repealed section of the Virginia Code, to mirror the definition found at 34 CFR § 395.1 (c), and aligns the state regulations with the federal regulations, specifically 34 CFR § 395.8 (b) and 34 CFR § 395.9 (a). Section 395.8 (b) reads: “The State licensing agency shall disburse vending machine income to blind vendors within the State on at least a quarterly basis.” Section 395.9 (a) reads: “The State licensing agency shall establish in writing the extent to which funds are to be set aside or caused to be set aside from the net proceeds of the operation of the vending facilities...” The proposed amendments to sections 22VAC45-20-110 and 22VAC45-20-120 reflect this change and provide consistency in both sections as to frequency.

1. The proposal is to amend in the definition of “blind person” at 22VAC45-20-10 to mirror the definition of “blind person” found at 34 CFR § 395.1 (c).

"Blind person" means a person who, after examination by a physician skilled in diseases of the eye or by an optometrist, which ever such person shall select, has been determined to have (i) not more than 20/200 central visual acuity in the better eye with correcting lenses, or (ii) an equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20°.

2. The proposal is to update the agency name from “Department of the Visually Handicapped” to “Department for the Blind and Vision Impaired” in 22VAC45-20-10 and to remove references to “DVH” within the same section.

“DBVI” means the Department for the Blind and Vision Impaired.

"Department" means the Department for the Blind and Vision Impaired.

3. The proposal is to add the words “at least” to 22VAC45-20-110 (B). Setting aside of funds.

B. These charges shall be assessed (**at least**) quarterly. Statements shall be prepared and rendered, along with settlement, to each blind vendor (**at least**) quarterly.

4. The proposal is to add the words “at least” to 22VAC45-20-120 (D). Distribution and Use of Income from Vending Machines.

D. The department shall disburse vending machine income to eligible blind vendors on (**at least**) a quarterly basis.

Acronyms and Definitions

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

DBVI - Department for the Blind and Vision Impaired
VEB – Virginia Enterprises for the Blind

Statement of Final Agency Action

Please 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 October 30, 2018, the Department for the Blind and Vision Impaired amends 22 VAC 45-20 to include:

1. Revisions in the Definitions section to reflect the federal regulation’s definition of “blind person” and to update the name of the agency from “Department for the Visually Handicapped” to “Department for the Blind and Vision Impaired”; and
2. A change in the frequency of setting aside of funds and distribution of income to blind vendors from quarterly to at least quarterly.

Mandate and Impetus

Please 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, board decision, etc.). 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, please also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

The agency, along with the VEB Vendors Council, recognized the importance of having flexibility to pay operators in a more timely manner that would be defined as “at least” quarterly rather than the more rigid payment schedule defined as “quarterly” in the existing regulations. Because this change is beneficial to operators, the regulatory action is expected to be noncontroversial. Though there is no specific mandate for this regulatory change, the phrase “at least” quarterly conforms to federal law.

Legal Basis

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

The regulation is promulgated under the authority of §§ 51.5-65, 51.5-78, and 51.5-97 of Chapter 12 of Title 51.5 of the Code of Virginia. Section 51.5-65 grants the Commissioner the legal authority to adopt regulations necessary to carry out the applicable provisions of Chapter 12 of Title 51.5 of the Code of Virginia. Section 51.5-78 authorizes the Department to operate vending stands and other business enterprises in public and private buildings for providing blind persons with employment, enlarging the economic opportunities of the blind, and stimulating the blind to make themselves self-supporting. Section 51.5-97 directs the Department to set aside or cause to be set aside from the net proceeds of the operations authorized by this article [Article 4 of Chapter 12, § 51.5-79 through § 51.5-100] such funds as may be necessary for the purposes of (i) maintenance and replacement of equipment, (ii) purchase of new equipment, (iii) management services, (iv) assuring a fair minimum return to vendors and (v) the establishment and maintenance of retirement or pension funds, health insurance contributions and the provision for paid sick leave and vacation time in accordance with the Randolph-Sheppard Act Amendment of 1974 (P.L. 93-516).

Purpose

Please 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 proposed amendments to this regulation will correct the definition of blind person, clarify the name of the agency to which the regulation refers, and improve the welfare of operators in the Virginia Enterprises for the Blind (VEB) by increasing the frequency of payments for their work rather than the current requirement of quarterly only payments. Payments that are more frequent will allow for more timely cash flow management and income for the operator while not affecting the financial viability of the VEB. This change will enhance the mission of DBVI by allowing operators to be more independent and economically self-sufficient.

Substance

Please 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 substantive change adds only the words "at least" to two sections of the regulation, 22VAC45-20-110 and 22VAC45-20-120, providing for increased frequency of setting aside funds and distributing income to operators.

Issues

Please 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.

- 1) The primary advantage for private citizens who are operators in the VEB is that they will be able to receive their income more rapidly and no longer have to budget and manage their cash flow over a three-month period. There is no disadvantage.
- 2) The primary advantage to DBVI is that this change enhances its mission to improve the independence of people who are blind and aligns state law as to vending machines located on state property to language in the federal law, Section 34 CFR § 395.8 (b), which governs vending machines located on federal property. Section 34 CFR § 395.8 (b) reads: The State licensing agency shall disburse vending machine income to blind vendors within the State on at least a quarterly basis. There is no disadvantage.

- 3) This change is fully supported by the VEB Vendors Council, the governing body elected to represent the operators. There is no disadvantage to operators, the general public, or the Commonwealth.

Requirements More Restrictive than Federal

Please 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 such restrictive requirements.

Agencies, Localities, and Other Entities Particularly Affected

Please 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

None

Localities Particularly Affected

None

Other Entities Particularly Affected

None

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, please 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. Please keep in mind that this is change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail;</p>	<p>No cost to implement change</p>
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b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	
<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.	No cost to implement change
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	Only affects the licensed operators in the VEB.

Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	No impact
Benefits the regulatory change is designed to produce.	No impact

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.	Approximately 48 operators in the VEB will be paid in a more timely fashion.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: 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.	Approximately 48 operators in the VEB
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please 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.	No additional cost.
Benefits the regulatory change is designed to produce.	VEB operators will no longer have to wait three full months to be paid for their work, allowing them to budget more effectively.

Alternatives

Please 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.

The change grants flexibility over the rigid quarterly payment format and is the best alternative.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) 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.

The agency's analysis of current regulations revealed a need for flexibility on the issue of payments to VEB operators. Adding the words "at least" facilitates flexibility and provides the opportunity for operators to be paid more expediently than the current rigid quarterly basis. Additionally, the proposed changes align existing regulations with the flexibility included in federal law and regulations and eliminates Virginia's more stringent quarterly basis.

Public Participation

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.

Detail of Changes

Please 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.

If the regulatory change will be a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory change. Delete inapplicable tables.

If the regulatory change is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below. Please include citations to the specific section(s) of the regulation that are changing.

For changes to existing regulation(s), please use the following chart:

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
22 VAC 45-20-10		<p>"Blind person" means the condition as defined in §§ 63.1-142 and 63.1-166 of the Code of Virginia.</p> <p>"Department" means the Department for the Visually Handicapped.</p> <p>"DVH" means the Department for the Visually Handicapped.</p>	<p>"Blind person" means a person who, after examination by a physician skilled in diseases of the eye or by an optometrist, which ever such person shall select, has been determined to have (i) not more than 20/200 central visual acuity in the better eye with correcting lenses, or (ii) an equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20°.</p> <p>"DBVI" means the Department for the Blind and Vision Impaired.</p> <p>"Department" means the Department for the Blind and Vision Impaired.</p> <p>The changes clarify the definition of "blind person" and an agency name change from the Department of the Visually Handicapped to the Department for the Blind and Vision Impaired. Additionally, the changes correct the agency acronym from "DVH" to "DBVI"</p>
22 VAC45-20-110 (B)		<p>B. These charges shall be assessed quarterly. Statements shall be prepared and rendered, along with settlement, to each blind vendor quarterly.</p>	<p>B. These charges shall be assessed (at least) quarterly. Statements shall be prepared and rendered, along with settlement, to each blind vendor (at least) quarterly.</p> <p>These changes are advantageous for private citizens who are operators in the Virginia Enterprises for the Blind because they will be able to receive their income more rapidly and no longer have to budget and manage their cash flow over a three-month period. Additionally, the change benefits DBVI because it enhances the agency mission to improve the independence of people who are blind and aligns state law regarding vending machines located on state property to language in the federal law, 34 CFR § 395.8 (b), which governs vending machines located on federal property. Section 34 CFR § 395.8 (b) reads: The State licensing agency shall disburse vending machine income to blind vendors within the State on at least a quarterly basis.</p>

22 VAC45-20-120 (D)		D. The department shall disburse vending machine income to eligible blind vendors on a quarterly basis.	D. The department shall disburse vending machine income to eligible blind vendors on (at least) a quarterly basis. These changes are advantageous for private citizens who are operators in the Virginia Enterprise Program because they will be able to receive their income more rapidly and no longer have to budget and manage their cash flow over a three-month period. Additionally, the change benefits DBVI because it enhances the agency mission to improve the independence of people who are blind and aligns state law regarding vending machines located on state property to language in the federal law, 395.8 (b), which governs vending machines located on federal property. Section 395.8 (b) reads: The State licensing agency shall disburse vending machine income to blind vendors within the State on at least a quarterly basis.
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If an existing regulation or regulations (or parts thereof) are being repealed and replaced by one or more new regulations, please use the following chart:

Current chapter-section number	New chapter-section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements

If a new regulation is being promulgated, that is not replacing an existing regulation, please use this chart:

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements

If the regulatory change is intended to replace an emergency regulation, and is identical to the emergency regulation, please choose and fill out the appropriate chart template from the choices above. In this case “current section number” or “current chapter-section number” would refer to the **pre-emergency** regulation.

If the regulatory change is intended to replace an emergency regulation, but includes changes made since the emergency regulation, please create two charts:

1. A chart describing changes from the **pre-emergency** regulation to the regulatory change, as described in the paragraph above; or if a new chapter is being promulgated, a chart describing the proposed new regulation.
2. A chart describing changes from the **emergency** regulation to the regulatory change. For the second chart please use the following title: “Changes from the Emergency Regulation.” In this

case “current section number” or “current chapter-section number” would refer to the **emergency** regulation.