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Proposed Regulation Agency Background Document

Agency name	Department for the Blind and Vision Impaired
Virginia Administrative Code (VAC) Chapter citation(s)	<u>22VAC45-30</u>
VAC Chapter title(s)	Regulations Governing the Sale and Distribution of Goods and Articles Made by Blind Persons
Action title	22VAC45-30 Amendments
Date this document prepared	October 27, 2020

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 (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 Department for the Blind and Vision Impaired (DBVI) seeks to amend 22VAC45-30, Regulations Governing the Sale and Distribution of Goods and Articles Made by Blind Persons, to correct the agency name and incorporate the use of people first language. Additionally, this action brings 22VAC45-30 into alignment with §§ 51.5-101 through 51.5-105 of 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.

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

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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

Executive Order 14 (as amended, July 16, 2018) requires that executive branch agencies consider, review, and promulgate regulations annually. As part of the periodic review process, DBVI staff determined to amend 22VAC45-30 to reflect the accurate agency name, correct Code of Virginia citations from the repealed § 63.1-167 to §§ 51.5-101 through 51.5-105, and to bring the regulation into alignment with the relevant Code of Virginia sections.

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.

DBVI is the agency initiating this regulatory action. Statutory authority comes from § 51.5-65 of the Code of Virginia, which identifies the functions, duties, and powers of the Commissioner to adopt regulations to carry out the applicable provisions of the chapter.

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.

This regulation facilitates identification of goods and articles made by persons who are blind and organizations established to assist persons who are blind in the sale of goods or articles by providing a means of authenticating the source of such goods and articles; the regulation prevents misrepresentation of these same persons.

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.

This regulatory action updates the agency name, deletes references to repealed sections of the Code of Virginia, and aligns language in 22VAC45-30 with relevant sections of the Code of Virginia, including §§ 51.5-101 through 51.5-105.

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.

This regulatory action poses no disadvantages to the public or to the Commonwealth. DBVI considered repealing 22VAC45-30 because neither agency administration nor other agency staff have any recollection of the agency receiving applications for registration from persons who are blind to have goods or articles identified as made by persons who are blind in at least 20 years. However, because the statutory authority identified in §§ 51.5-101 through 51.5-105 of the Code of Virginia remain active, DBVI recognizes the advantage of amending 22VAC45-30 to reflect the relevant sections. This regulatory action clarifies the agency name and brings agency Administrative Code into alignment with the Code of Virginia which assures that citizens of the Commonwealth, government officials, and other members of the public do not experience confusion when seeking to understand the relevant Administrative Code and Code of Virginia sections requirements.

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 applicable federal requirements associated with the regulatory change.

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.

There are no other state agencies, localities, or other entities particularly affected by this regulatory change.

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	Status quo
<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.	Status quo
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	Status quo

Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	Status quo
Benefits the regulatory change is designed to produce.	Status quo

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.	Status quo
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.	Status quo
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.	Status quo

Benefits the regulatory change is designed to produce.	Status quo
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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.

DBVI considered repealing 22VAC45-30 because neither agency administration nor other agency staff have any recollection of the agency receiving applications for registration from persons who are blind to have goods or articles identified as made by persons who are blind in at least 20 years. However, because the statutory authority identified in §§ 51.5-101 through 51.5-105 of the Code of Virginia remain active, DBVI seeks to amend 22VAC45-30 to reflect those sections accordingly.

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.

Enter statement 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 Executive Order 14 (as amended, July 16, 2018), 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 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.

This NOIRA is not being used to announce a periodic review or a small business impact review. It should be noted that DBVI has considered repealing 22VAC45-30 because neither agency administration nor other agency staff have any recollection of the agency receiving applications for registration from persons who are blind to have goods or articles identified as made by persons who are blind in at least 20 years. However, because the statutory authority identified in §§ 51.5-101 through 51.5-105 of the Code of Virginia remain active, DBVI seeks to amend 22VAC45-30 to reflect those sections accordingly. The agency has not received any complaints or comments concerning this regulation.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency 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.

DBVI did not receive any public comment on this regulatory action.

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 for the Blind and Vision Impaired 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 Susan K. Davis, Regulatory Coordinator, 397 Azalea Avenue, Richmond, Virginia. Phone number 804-371-3184. FAX number 804-371-3157. Email address susan.davis@dbvi.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

THEN, INSERT EITHER:

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 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
22VAC45-30-10		It is the policy of the Commonwealth of Virginia through the Department for the Visually Handicapped to assist blind persons and organizations established to aid blind persons in the sale of goods and articles which are the product of a blind craftsman's labor by providing a means of authenticating the source of such goods and articles and by preventing misrepresentation.	Changes update the agency name, adds person first language, removes repealed Virginia Code citations, and adds current Virginia Code citations.
22VAC45-30-20		Application for registration and permit required to manufacture, sell, or distribute goods or articles purported to be made by blind people.	Changes remove references to a permit; DBVI does not provide or require a permit. Adds people first language. Updates agency name.

<p>22VAC45-30-30</p>		<p>Section outlines the application requirements for applicants seeking to manufacture, sell, or distribute "blind-made" products and the proposed sale price of each such item.</p>	<p>Edits language for clarity, removes reference to forms that do not exist, adds people first language, adds Code of Virginia reference regarding the definition of a "blind person", and details that persons who are blind shall perform at least 75% of the labor to produce the products.</p>
<p>22VAC45-30-40</p>		<p>No organization representing itself as established for the purpose of selling "blind-made" products exclusively shall carry in stock or sell any merchandise which is not made by blind persons and so identified.</p>	<p>Edits section to include people first language, clarify that 75% of the direct labor making the product must be persons who are blind, corrects COV citations, remove the word permits (because DBVI does not provide permits), and replace the word "revalidated" to "registered".</p> <p>Statutory Authority</p>
<p>22VAC34-30-50</p>		<p>No goods or articles made in this Commonwealth or elsewhere may be displayed, advertised, offered for sale, or sold in this Commonwealth upon the representation that the same are made by blind persons unless such goods or articles are identified as such by a label or symbol prescribed or approved by the department.</p>	<p>Edits grammar and adds relevant COV sections.</p>

22VAC45-30-60		Registration and permits are valid for one year only but may be renewed upon application in writing not less than 60 days prior to expiration.	Edits section to include removal of permits, updates of COV citations, and revisions of language for clarification.
22VAC45-30-70		Suspension of registration or permit.	Edits to include updating COV citations, remove reference to permits, and revises language for clarification.
22VAC34-30-80		Use of permit for the purpose of soliciting money prohibited.	Edits section to improve grammar, remove references to permits, and update COV citations.
22VAC45-30-90		Outlines grounds upon which the department may deny registration or permit.	Edits section to improve grammar, remove references to permits, add relevant COV citations, and incorporates people first language.
22VAC45-30-100		There shall be written on the face of every permit issued to a business organization essentially engaged in profit making "This is a profit making enterprise."	Edits section to improve grammar, remove reference to permits, adds reference to registration issued by the department, and adds relevant COV citation.
22VAC45-30-100		Designates to whom the chapter applies.	Edits remove outdated language and agency practice. Removes reference to

			repealed section of the COV and replaces with relevant COV section.

If a new VAC Chapter(s) is being promulgated and is not 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 identical to the emergency regulation, complete Table 1 and/or Table 2, as described above.

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

Table 3: Changes to the Emergency Regulation

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