



Fast Track Proposed Regulation Agency Background Document

Agency name	Department of Corrections
Virginia Administrative Code (VAC) citation	6 VAC15-80
Regulation title	Standards for Planning, Design, construction and Reimbursement of Local Correctional Facilities
Action title	Add new Section 6 VAC 15-80-211 and amend definitions to Value Management Analysis
Date this document prepared	July 23, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

The Board of Corrections will amend definitions and add a new section to existing Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities under the Fast Track Rulemaking Process, COV §2.2-4012.1 to make provisions relative to a Value Management Assessment Study. The amendment will allow for local and regional correctional facilities to receive Value Management Assessment cost reimbursement, which is currently not provided for in 6 VAC 15-80 et seq. (1994).

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 May 16, 2007, the Virginia Board of Corrections moved to amend the existing 6VAC15-80 under emergency procedures to include a provision relative to the Value Management Assessment Study. The

amendment is not retroactive to projects that have already been reimbursed. There were no questions or comments and no opposing votes and the motion carried. After the emergency regulatory action was filed, the Board was informed that the action did not meet emergency regulation requirements. The emergency action was withdrawn on July 10, 2007. At its meeting on July 18, 2007, the Board discussed and agreed to proceed with Fast Track Rulemaking Process. No additional action by the Board was taken.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

The Board of Corrections will amend 6VAC15-80 under the Fast Track Rulemaking Process, COV §2.2-4012.1 to make provisions relative to a Value Management Assessment Study. Code of Virginia §53.1-80 through 53.1-82.3 allows up to 25% reimbursement of capital construction costs for local jails and up to 50% reimbursement of capital costs for regional jails. The Board of Corrections is mandating a Value Management Assessment of each project in order to reduce the costs on the projects. The Value Management Assessment is a part of required capital construction costs.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The Board of Corrections recommends to amend its existing Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities to include a provision relative to the Value Management Assessment Study. The amendment will allow local and regional correctional facilities to receive cost reimbursement, to define limits for required Value Management Assessment Studies that serve to keep construction costs lower while promoting quality and efficient designs. The Value Management Assessment will analyze a project design including systems, products/materials used, quality, efficiency, functionality, long- term design, operational needs beyond 10 years and cost.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be non controversial?

Please note: If an objection to the use of the fast-track process is received within the 60-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 (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

There is an increasing dissatisfaction on the part of local governments about being required to expend funds on local and regional jail construction projects that the Commonwealth, to date, has not participated in financially. Value Management Assessment benefits the Commonwealth as well as localities in cost saving on these projects. The Board of Corrections has already had two formal requests for reimbursement from attorneys representing localities. Until the amendment to this regulation is in effect, the state cannot release the funds (which have already been mandated) to reimburse the localities.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
6VAC15-80-10	same	Definitions	<p>Change Definition of "Reviewing Authority" to the representative(s) of the Department of Corrections and/or the Department of Criminal Justice Services responsible for reviewing required documents, attending required meetings, interpreting and determining compliance with these Standards.</p> <p>Add Definition: "Standards" means the "Board of Corrections' Minimum Standards for Planning, Design Construction and Reimbursement of Local Correctional Facilities".</p> <p>Add Definition " Value Management Analysis (VMA)" means an analysis of facility design and construction for the purpose of satisfying required function, cost efficiency, while providing the greatest quality and efficiency for the project.</p> <p>Add Definition "Value Management Team' means a team of people, independent from the owner and/or the owner's A/E, headed by a Certified Value Specialist (CVS) or Certified Value Engineer (CVE) with a combination of the following disciplines based on phase and nature of the project: architecture, engineering (civil/site/mechanical/electrical) security and cost estimating.</p>
None	6VAC15-80-211		<p>Add new section entitled Value Management Analysis.</p> <p>A. All jail projects for which reimbursement is being requested for new construction, expansion or renovation shall have a Value Management Analysis (VMA) performed during design. For</p>

			<p>renovation projects, a waiver may be requested from the Board.</p> <p>B. VMA shall be performed at the conclusion of the Design Development (35-40% complete) phases of the project. For large projects (in excess of 250 beds), it is recommended that a second phase of VMA be performed at the construction documents phase (90-95% complete).</p> <p>C. The VMA shall involve a three to four day exercise at the Design Development phase, or four to five days each at the design development and construction document phases. The first day, or portion thereof, of each Analysis consists of a presentation overview by the owner and the A/E design team to the Value Management Team. The final day or portion thereof, consists of a presentation of findings and recommendations by the Value Management Team to the owner and A/E design team and attended by the Reviewing Authority.</p> <p>D. The VMA process shall analyze at a minimum the following aspects of the project's design: systems, products/materials, quality, efficiency, functionality, long-term design and operational needs (beyond 10 years) and cost.</p> <p>E. The Owner shall engage the services of a qualified Value Management Team, as defined in the definitions and headed by a Certified Value Specialist (or Engineer) pursuant to the definitions. The VMA team shall be independent of the A/E design team. Cost estimators are also recommended as beneficial to the Analysis, particularly for projects performing VMA at the Construction Documents phase.</p> <p>F. The Owner shall advise the Reviewing Authority in writing, at least 15 working days in advance of the meeting dates for the VMA. A representative of the Reviewing Authority shall meet with the Value Management Team at the formal presentation of results to the owner and A/E design team.</p> <p>G. Upon completion of the VMA process, a summary report detailing VMA recommendations and the Owner's decision on implementation of the recommendations shall be provided in writing to the Reviewing Authority.</p>
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Issues

Please identify the issues associated with the proposed regulatory action, 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, please indicate.

Localities within the Commonwealth will receive the benefit of Value Management Assessment cost reimbursement for approved costs associated with new construction, expansion or renovation.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include 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 statement to that effect.

There are no applicable federal requirements or requirements that exceed applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

Facilities immediately affected by the delay in approval of these regulatory amendments would be Chesterfield Jail, Loudoun Adult Detention Center, Northwest Adult Detention Center in Winchester, Rappahannock Regional Jail, Riverside Regional Jail, Blue ridge Regional Jail, Rockbridge Regional Jail, Culpeper Jail, Botetourt-Craig Regional Jail and the upcoming 5 jails that have submitted planning studies for review this year. To date, both Rappahannock and riverside jails have had their attorney approach the Board of Corrections with formal requests for reimbursement.

Regulatory flexibility analysis

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) the establishment of less stringent compliance or reporting requirements;*
- 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements;*
- 3) the consolidation or simplification of compliance or reporting requirements;*
- 4) the establishment of 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 proposed regulation.*

Not to provide a Value Management Assessment for each project could result in increased costs to the Commonwealth for local or regional jail projects, as well as lesser quality facilities and less efficient design.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>§ 53.1-80 mandates State “reimbursement of localities for construction and authorizes the Board to promulgate regulations, to include criteria used to assess need and establish priorities, to serve as guidelines in evaluating requests for such reimbursement and to ensure the fair and equitable distribution of state funds provided for such purpose”. The funding source is Virginia Department of Treasury, Virginia Public Building Authority. Reimbursements will be minimal and range from \$2,000 to \$25,000 per project for multi-million dollar projects. The expenditures will be on-going.</p>
<p>Projected cost of the regulation on localities</p>	<p>Cost beneficial to localities</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>Local and regional jails within the Commonwealth</p>
<p>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.</p>	<p>Facilities immediately affected by these regulatory amendments would be Chesterfield Jail, Loudoun Adult Detention Center, Northwest Adult Detention Center in Winchester, Rappahannock Regional Jail, Riverside Regional Jail, Blue ridge Regional Jail, Rockbridge Regional Jail, Culpeper Jail, Botetourt-Craig Regional Jail and the upcoming 5 jails that have submitted planning studies for review this year. To date, both Rappahannock and Riverside jails have had their attorney approach the board of corrections with formal requests for reimbursement. Every local entity in the Commonwealth could potentially be affected. No small businesses are affected.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>None</p>

Alternatives

Please describe any viable 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. 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 regulation.

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Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent 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.

There is no family impact

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

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None	6VAC15-80-211		<p>Add new section entitled Value Management Analysis.</p> <p>H. All jail projects for which reimbursement is being requested for new construction, expansion or renovation shall have a Value Management Analysis (VMA) performed during design. For renovation projects, a waiver may be requested from the Board.</p> <p>I. VMA shall be performed a the conclusion of the Design Development (35-40% complete) phases of the project. For large projects (in excess of 250 beds), it is recommended that a second phase of VMA be performed at the construction documents phase (90-95% complete).</p> <p>J. The VMA shall involve a three to four day exercise at the Design Development phase, or four to five days each at the design development and construction document phases. The first day, or portion thereof, of each Analysis consists of a presentation overview by the owner and the A/E design team to the Value Management Team. The final day or portion thereof, consists of a presentation of findings and recommendations by the Value Management Team to the owner and A/E design team and attended by the Reviewing Authority.</p> <p>K. The VMA process shall analyze at a minimum the following aspects of the project’s design: systems, products/materials, quality, efficiency, functionality, long-term design and operational needs (beyond 10 years) and cost.</p> <p>L. The Owner shall engage the services of a qualified Value Management Team, as defined in the definitions and headed by a Certified Value Specialist (or Engineer) pursuant to the definitions. The VMA team shall be independent of the A/E design team. Cost estimators are also</p>

			<p>recommended as beneficial to the Analysis, particularly for projects performing VMA at the Construction Documents phase.</p> <p>M. The Owner shall advise the Reviewing Authority in writing, at least 15 working days in advance of the meeting dates for the VMA. A representative of the Reviewing Authority shall meet with the Value Management Team at the formal presentation of results to the owner and A/E design team.</p> <p>N. Upon completion of the VMA process, a summary report detailing VMA recommendations and the Owner's decision on implementation of the recommendations shall be provided in writing to the Reviewing Authority.</p>
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