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Fast-Track Regulation Agency Background Document

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| Agency name | Department of Historic Resources |
| Virginia Administrative Code (VAC) Chapter citation(s) | 17 VAC10-30 |
| VAC Chapter title(s) | Historic Rehabilitation Tax Credit |
| Action title | Removal of Document Incorporated by Reference Dates |
| Date this document prepared | 10/4/2022 |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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.

Effective February 10, 2016, amendments were made to 17VAC10-30. *Historic Rehabilitation Tax Credit*, to make numerous clarifying changes, including updating the reporting requirements and review procedures for projects with less-than or more-than \$500,000 in rehabilitation expenses. This request is limited to the removal of the text, “, dated October 2015” that is referenced twice in 17VAC10-30-50. *Certifications of Rehabilitation*. This date is regarding Documents Incorporated by Reference (DIBR), specifically the “audit of the rehabilitation expenses” and “agreed-upon procedures engagement report.”

This date was included in error as no documents with such a date exist and have not been in use since the regulations took effect in 2016. Furthermore, as business and accounting practices evolve, it is essential that the Agency be able to update the financial documentation templates and guidance documents in response to the public’s needs for their utilization of the Historic Tax Credit Program.

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.

N/A

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 October 4, 2022, the Director of the Department of Historic Resources initiated promulgation of a revision to 17VAC10-30. Historic Rehabilitation Tax Credit, for the removal of the text “, dated October 2015” found in 17VAC10-30-50. Certifications of Rehabilitation, A.2.f.

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 the ORM procedures, “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.”

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

This action fulfills the mandate as required pursuant to §58.1-339.2. Historic Rehabilitation Tax Credit, item E, which states: “The Director of the Department of Historic Resources shall establish by regulation the requirements needed for this program...”

The realization that the DIBRs for the “agreed-upon procedures engagement report” and “audit of the rehabilitation expenses” included a specific, arbitrary date of effectuation was only made after multiple Certified Public Accounting firms – who are responsible for creating the required financial reporting – communicated that the templates that had been in use since the 2016 regulatory update were no longer valid according to updated rules issued by the American Institute of Certified Public Accountants.

This change is expected to be noncontroversial as the removal of the text, “, dated October 2015,” will have no impact on the Agency’s administration of the program or its utilization by the general public. DIBR’s with this date do not exist and have not since the Regulations were updated and passed in 2016. Further, it is expected by those that utilize the Historic Tax Credit Program that the Agency will update templates and guidance documents to respond to the public’s needs and industry requirements, with routine updates providing clarity and changes as needed.

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.

This action fulfills the mandate as required pursuant to § 10.1-2202. Powers and Duties of the Director, item 4, which states: "To perform acts necessary or convenient to carry out the duties conferred by law..."

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 is intended to solve.

(1) The promulgation of this change fulfills the mandate as required pursuant to §58.1-339.2. Historic Rehabilitation Tax Credit, item E, which states: "The Director of the Department of Historic Resources shall establish by regulation the requirements needed for this program..." (2) The removal of the arbitrary text ", dated October 2015," is essential to respond to the needs of the public who use and work with the Historic Tax Credit Program. (3) The goal of the requested deletion of ", dated October 2015" is to allow the Agency to update/revise guidance and template documents as required based on the needs of the applicants who utilize the Historic Tax Credit Program and the industry professionals who are hired by the applicants.

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.

There are no substantive provisions or changes proposed to existing sections. The inclusion of ", dated October 2015" in was in error, as no documents with this date have been in use since the regulations were updated in 2016 and this text was included. The removal of this text will not have an impact on the substance of 17VAC10-30-50, or on its use by the public.

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.

(1) The primary advantage to the public is that the Agency will be able to revise and update guidance documents and templates to meet the specific and current needs of those who interface with the Historic Tax Credit Program. These updates are essential as business practices and industry standards are constantly evolving, requiring updated guidance and documents. There are no disadvantages to the public. (2) The primary advantage to the Commonwealth is that the Agency will be able to better service the public who utilize the Historic Tax Credit Program through regular updates to guidance documents, templates, and forms. This will allow the Agency to be better stewards to the taxpayers and Commonwealth at large. There are no disadvantages to the Commonwealth. (3) There are no disadvantages to the regulated community, as the DIBRs referenced with the at-issue text do not exist.

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 federal requirements of the regulatory change.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "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

There are no other State Agencies particularly affected.

Localities Particularly Affected

There are no Localities particularly affected.

Other Entities Particularly Affected

There are no Entities particularly affected.

Economic Impact

Consistent with § 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 the proposed change versus the status quo.

Impact on State Agencies

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| <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 fiscal impacts to the Agency for implementation. |
| <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 fiscal impacts to other state agencies for implementation. |
| <i>For all agencies:</i> Benefits the regulatory change is designed to produce. | The regular updating of Historic Tax Credit Program guidance documents, templates, and forms positively impacts all state agencies. |

Impact on Localities

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| Projected costs, savings, fees or revenues resulting from the regulatory change. | N/A |
| Benefits the regulatory change is designed to produce. | N/A |

Impact on Other Entities

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| 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. | Only individuals/businesses applying for the Historic Tax Credit Program, and the Certified Public Accountants hired by such individuals/businesses, would be affected by this regulatory change. However, as the dated documents incorporated by reference do not exist, there will be no effect on these entities. |
| 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. | 0 The change is solely to correct an error in including a date where no date should have been included. No entities will be affected by this change. |
| All projected costs for affected individuals, businesses, or other entities resulting from the | 0 There should be no additional projected cost to individuals, businesses, or other entities due to |

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| <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>this regulatory change. Updates to guidance documents, templates, and forms will have the effect of reducing costs on individuals, businesses, and other entities through increased clarity and certainty.</p> |
| <p>Benefits the regulatory change is designed to produce.</p> | <p>Removing the arbitrary date for the two DIBRs will enable the Agency to respond to questions and clarifications requested by those who utilize the program. This increased clarity and certainty in the application and review process is highly sought after by the individuals/businesses who apply for and work with the Historic Tax Credit Program.</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.

There are no alternatives to the regulatory change except to continue to administer the program with this unnecessary and inaccurate date reference.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B 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 alternative regulatory methods.

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.

Consistent with § 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.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Department of Historic Resources is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in 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 Jessica A. Ugarte, 2801 Kensington Avenue, Richmond, VA 23221, 804-482-6082, and Jessica.Ugarte@dhr.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 |
|--------------------------------|---|-----------------------------|--|
| 30-50 | N/A | “, dated October 2015” | REMOVE “, dated October 2015” |
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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- | New requirements | Other regulations and law that apply | Intent and likely impact of new requirements |
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| section number | | | |
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*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 |
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