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Fast-Track Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation(s)	22 VAC 40-880-405
Regulation title(s)	Passport Denial Program
Action title	Amend the agency's standards for a noncustodial parent's release from the Passport Denial Program by adding an exception.
Date this document prepared	April 19, 2017

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation.

This regulatory action will amend a regulation section entitled "Passport Denial Program" to provide an additional exception for a noncustodial parent's release from the program. Currently, there is one exception for "compelling evidence of a life-or-death situation of an immediate family member."

The amendment will add an exception for release from the passport program if a noncustodial parent provides documentation from the employer to verify that the employment requires international travel.

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.

Not applicable.

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.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.

Section 63.2-217 of the Code of Virginia (Code) states that the State Board of Social Services shall adopt regulations, not in conflict with this title, as may be necessary or desirable to carry out the purpose of this title.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe 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.

This regulatory action will amend a regulation section entitled “Passport Denial Program” to provide an additional exception for release of a noncustodial parent’s passport.

This amendment is needed to provide the Division of Child Support Enforcement (Division) with the ability to increase collection of child support for families. Currently, noncustodial parents in the Passport Denial Program must pay their child support arrears in full to obtain or renew a passport. The only exception is for cases where a noncustodial parent’s immediate family member lives abroad and faces a life-or-death situation. In those instances, the Division director can grant the release of a passport upon the noncustodial parent’s written request, which must include documentation of compelling evidence of the situation.

With our increasingly mobile society, many child support payors need to travel internationally for work. Under the current regulation, these noncustodial parents have no way to obtain or renew their passport unless they have the ability to pay their arrears in full. The Division would like to encourage payment of support and does not want the passport regulation to be a barrier when a noncustodial parent has

employment that would provide him or her with the means to pay child support but for the denial of a passport.

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 noncontroversial?

DSS does not believe that the proposed regulation will be controversial. The amended regulation will provide for an additional exception for release of a passport from the Passport Denial Program.

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.

This regulatory action will amend an existing regulation section entitled "Passport Denial Program" to provide for an additional exception for a noncustodial parent's release from the Passport Denial Program.

This change would enable the Division to work with noncustodial parents who are unable to pay their child support arrearage in full but whose employment is contingent upon international travel to allow them to obtain or renew their passport. These parents would be required to make a lump sum payment towards their arrearage, agree to an income withholding order, and enter into a payment agreement with the Division with a regular monthly payment amount and a schedule for paying off the arrearage in full. They would also be required to provide written proof of current employment or proof of an offer and acceptance of employment from their employer.

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.

There are numerous advantages to this regulatory action. The amended regulatory section will (1) provide an additional exception for a noncustodial parent's release from the Passport Denial Program in Virginia; (2) increase child support collection through lump sum payments and payment agreements; and (3) potentially provide for regular payment of support from noncustodial parents who are required to travel internationally as part of their employment.

DSS is aware of no disadvantage to this regulatory action.

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.

This regulatory action is consistent with current federal requirements and guidance.

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.

No locality will be disproportionately affected by the proposed regulatory action.

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) 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.

This regulatory action will have no impact on small businesses.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

The purpose of this regulatory action is to provide an additional exception for a noncustodial parent to be released from the Passport Denial Program. The program was implemented in Virginia in 1997. In SFY2016, the Division collected \$144,735 from parents who were in the program and wished to obtain or renew a passport.

This regulatory action will not have any financial impact on the program.

Projected cost to the state to implement and	The Passport Denial Program was implemented in
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<p>enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p>	<p>1997. There are no additional projected costs due to the passage of this regulation.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>None.</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>Noncustodial parents who owe \$2,500 or more in child support arrearages.</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. 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.</p>	<p>Affected noncustodial parents would be those who have a need to travel outside the country for employment-related purposes and who owe \$2,500 or more in child support arrearages.</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>Payment of child support arrearages owed by those noncustodial parents.</p>
<p>Beneficial impact the regulation is designed to produce.</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.

As an alternative to the proposed language of the new regulatory section, the Division could request the release of a noncustodial parent from the Passport Denial Program prior to satisfying the arrearage. However, the Division has determined that releasing a noncustodial parent from the program before he or she satisfies the arrearage may negatively impact the custodial parent and ultimately the children for whom support is owed. It would be difficult, and in many cases impossible, for DSS to assist custodial parents owed current support or arrears should the noncustodial parent leave the country with a valid passport but without having an income withholding order and payment agreement with the Division.

This regulatory action will not impact small businesses.

Public participation notice

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.

Periodic review and small business impact review report of findings

If this fast-track is the result of a periodic review/small business impact review, use this form to report the agency's findings. Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review and (2) indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (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.

Commenter	Comment	Agency response

This fast-track is not the result of a periodic review/small business impact review.

Family impact

Please assess the impact of this 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.

This regulatory action will not negatively impact the rights of noncustodial parents with regard to their children. Should the noncustodial parent need his/her passport for economic reasons, it can be obtained by (1) satisfying the arrearage or (2) providing proof of employment that requires international travel, making a lump sum payment towards the support arrearage, agreeing to an income withholding order, and entering into a payment agreement with the Division. This regulation will not impact marital commitment. The Passport Denial Program will not impact disposable family income. The arrearage which must be satisfied prior to release from the program is only composed of ordered child support payments which were not previously paid.

Release from the Passport Denial Program can also occur with proof of a life-or-death situation of an

immediate family member.

Detail of changes

*Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is 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 action. If the proposed regulation is intended to replace an emergency regulation, please list separately: (1) all differences between the **pre-emergency** regulation and this proposed regulation; and 2) only changes made since the publication of the emergency regulation.*

For changes to existing regulation(s), use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
22-VAC-880-405		An individual can be released from the Passport Denial Program only by paying off the child support arrearage in full. The only existing exception is approval by the Division director in the case of compelling evidence that an immediate family member who lives abroad faces a life-or-death situation.	This amendment will add another exception: proof of employment requiring international travel. The amendment will require the individual to make a lump sum payment towards the child support arrearage, agree to an income withholding order, and enter into a payment agreement with the Division with a regular monthly payment and a schedule for paying off the arrearage in full.

If a new regulation is being promulgated, use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements