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Fast-Track Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation(s)	22VAC40-880-240
Regulation title(s)	Child Support Enforcement Program
Action title	Administrative Child Support Obligations by Parental Agreement
Date this document prepared	August 15, 2018

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 section 240, "Administrative Deviation from the Child Support Guideline", to allow the Department of Social Services (Department) to issue an administrative support order based on an agreement of the parents.

Pursuant to §§ 20-108.1, 20-108.2, and 63.2-1918 of the Code of Virginia (Code), there is a rebuttable presumption that the amount of child support that results from the application of the child support guidelines is the correct amount of child support. Judicial and administrative proceedings may consider factors for rebutting the presumption.

For administrative support orders, the agency may consider the following factors when rebutting the presumption: 1) income imputed to a noncustodial parent who is voluntarily unemployed, and 2) income

imputed to a noncustodial parent who has failed to provide financial information upon request. This action would add agreement by the parents as a third factor. This factor is already one that judges may consider in court proceedings.

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.

For the purposes of this document, the term "parents" collectively refers to the custodial parent and noncustodial parent.

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.

The State Board of Social Services took final action on 22VAC40-880, Child Support Enforcement Program, on August 18, 2018.

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 provides that the State Board of Social Services (Board) shall adopt regulations, not in conflict with Title 63.2, as may be necessary or desirable to carry out the purpose of the title.

Section 63.2-1918 of the Code provides that there is a rebuttable presumption that the amount of a child support award that would result from the application of the guidelines is the correct amount. While the Code lists factors for rebuttal, it states that "[a]dditional factors that may lead to rebuttal of the presumption shall be determined by Department [of Social Services] regulation."

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.

In approximately 80% of cases with the Division of Child Support Enforcement, the custodial parent has never received public assistance, or no public assistance debt remains. In such cases, the parents may seek a court order setting an obligation by agreement. The purpose of the amendment is to provide

similar flexibility for parents who are subject to administrative support orders. Children need both financial and family support to grow and thrive. This regulation is essential to protect the health and welfare of children by establishing uniform child support enforcement procedures, which facilitate the financial stability of children and families.

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?

The Board does not believe that the proposed regulation will be controversial. The amended regulation provides parents the opportunity for increased participation in setting a child support order. Such participation is voluntary and judges may already consider parental agreements in court proceedings..

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 section 240, "Administrative Deviation from the Child Support Guideline", to allow the Department to issue an administrative support order based on an agreement of the parents.

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:

- It expands parents' involvement in establishing child support obligations and increases their investment in the outcome. This can improve a noncustodial parent's willingness to comply with the order and reliability of payments for the custodial parent.
- It provides parents with flexibility to make strategic decisions. For example, a custodial parent may consent to a noncustodial parent paying less in the present to pursue education, because such education will allow greater payments in the future.
- The ability to deviate by parental agreement already exists as a factor in court proceedings.

The agency is aware of no disadvantages to the public or to the Commonwealth.

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 particularly 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.

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	None
Projected cost of the new regulations or changes to existing regulations on localities.	None
Description of the individuals, businesses, or other entities likely to be affected by the new	None

regulations or changes to existing regulations.	
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.	None
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.	None
Beneficial impact the regulation is designed to produce.	Permits Department to issue orders based on agreement between parents.

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.

There is no alternative to accomplish this change without regulatory action. This regulatory action will have no impact on 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.

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 have positive impacts on the institution of the family and family stability. It strengthens the authority and rights of parents in the education, nurturing, and supervision of their children by increasing their participation in setting child support obligations. It encourages the development of self-sufficiency, self-pride, and assumption of responsibility. When noncustodial parents view their obligations as legitimate, it strengthens their commitment to providing consistent child support payments and supporting their children. Finally, where parents are unable to agree or if they stipulate to an amount that is not in the best interest of the child, the Commonwealth retains the authority to set an amount based on the guidelines.

The regulatory action has no impact on the marital commitment. It will not increase or decrease aggregate disposable family income.

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 follow the instructions in the text following the three chart templates below.

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

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
240	n/a	Deviation from the child support guidelines is currently permitted to impute income to a noncustodial parent who is voluntarily unemployed or to a noncustodial parent who has failed to provide financial information upon request.	The regulatory action adds the option for deviation when parents agree to a child support amount different from the amount indicated by the presumptive guidelines calculation. The intent is to increase parental involvement in determining obligations and to increase the consistency of child support payments.