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Fast-Track Regulation Agency Background Document

Agency name	Virginia Employment Commission
Virginia Administrative Code (VAC) Chapter citation(s)	16 VAC5-80-20 16 VAC5-80-30
VAC Chapter title(s)	First level appeals; Commission review.
Action title	16 VAC5-80 Amend First level appeals and Commission review
Date this document prepared	11/15/2024

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.

The Virginia Employment Commission (VEC) seeks to amend Sections 20 and 30 of 16 VAC 5-80 to clarify current practices and update language to conform to current policies of First Level and Commission Appeals, update language to clarify practices, update agency names that have been created by statute, and update employee titles. The changes will conform to changes made in statutory language.

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.

"VEC" means Virginia Employment Commission.

“Commission” means Virginia Employment Commission.

“UI” refers to unemployment insurance.

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 June 28, 2024, the Commissioner approved amending 16 VAC 5-80-20 First level appeals and 5-80-30 Commission review. The action is being taken by the Virginia Employment Commission and regulation title is 16. Labor And Employment.

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.

Executive Order 19 requires agencies to modernize and eliminate unnecessary regulations. As part of this process, VEC determined amendments were needed for 16 VAC 5-80 to reflect an updated and more accurate layout of the UI process, more specifically the appeals process.

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.

The Virginia Employment Commission is the promulgating agency. The VEC may promulgate these regulations pursuant to §§ 60.2-111 & 60.2-623 of the Code of Virginia.

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.

The changes aim to remove language that has become obsolete due to internal technology or process changes. The language is also being updated to reference current agency names and titles and remove redundant language that is already addressed by statute. Removal of the language clarifies certain steps in the appeals process and makes the regulations less burdensome.

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.

16 VAC5-80-20 subsection B is being revised to allow for telephonic hearings and to allow Agency discretion for in-person hearings, as is the current practice.

16 VAC5-80-20 subsection F is being revised to include procedures for instances when the appealing party fails to participate in a hearing.

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.

The advantage to both the public and the agency is the regulations will now conform to the current practices of the appeals division and remove language already addressed by statute or prior regulation, to reduce the overall regulatory burden. There is no disadvantage as the substantive changes discussed in the pervious section provide guidance to the appeals divisions for instances of non-appearance by appellants, an issue which they are already faced with.

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.

None that the agency is aware of.

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

The VEC is not aware of any other agencies, localities, or entities that may be affected by the change.

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

<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	0
<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.	0
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	Eliminate redundancy in the regulation; clarify appeals procedures; allow proper reference to sister-agency and employees

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees or revenues resulting from the regulatory change.	0
Benefits the regulatory change is designed to produce.	None

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

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.	No other entities effected.
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

<p>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:</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>0</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Eliminate unnecessary regulatory language</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.

This change not burdensome or intrusive to interested parties, so no alternatives need be considered.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

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 is no impact on small business.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

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 Virginia Employment Commission 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 Ashley Ervin 6606 W. Broad Street, Henrico, VA 23230, 804-774-2713 or ashley.ervin@vec.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
16 VAC5-80-20	N/A	<ul style="list-style-type: none"> - File appeals in person at any agency locations. - File appeals "by the internet." - Include last four of SSN on appeals. - Signature required on appeal document. 	Update language to say "Virginia Works office" as they are now operated by Virginia works by statute. No impact. Removing language to file "by internet" as the regulation was previously updated to include "electronic format" which covers internet, etc. No impact. Removing requirement to include last four of SSN as agency is moving away from utilizing such info for security reasons. No impact .

			Removing requirement of signature as it is a not required in practice and appeals may be considered via all formats, some of which do not allow for signature. No impact.
16 VAC5-80-20	N/A	Agency has discretion to grant in-person hearings based on various factors such as access to telephone, number of witnesses involved, length of documents, time request is made, etc.	Remove the factors considered for determining whether to grant an in-person hearing. Language remains to leave the decision up to agency discretion to allow for changes in technology and processes. No impact.
16 VAC5-80-20	F. (5)	Non-appearance hearings are not addressed.	Subsection F. (5) added to include procedures for conducting a hearing and issuing a decision when an appellant does not participate in the hearing.
16 VAC 5-80-20	N/A	A hearing must be conducted when a reopening request is received	Language revised to state a hearing <i>may</i> be conducted on a reopening request. Allows the Chief of Appeals to make a decision on reopening without hearing, as is current practice. No impact.
16 VAC5-80-30	N/A	- File appeals in person at any agency locations. - File appeals "by the internet."	Update language to say "Virginia Works office" as they are now operated by Virginia works by statute. No impact. Removing language to file "by internet" to include "electronic format" which covers internet, etc and corresponds with First level appeal filing. No impact.
16 VAC5-80-30	N/A	Appeals are considered filed on date received by the Commission. If no date stamped, then considered received on date of postmark.	Language revised for clarity and plain language. No impact.
16 VAC5-80-30	N/A	Commission allows submission of affidavit in lieu of participation in a hearing.	Language revised for clarity. No impact.

If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.