



Proposed Regulation Agency Background Document

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| Agency name | State Board of Social Services |
| Virginia Administrative Code (VAC) citation | 22 VAC40-880 |
| Regulation title | Child Support Enforcement Program |
| Action title | Child Support Enforcement Regulation Comprehensive Revision |
| Date this document prepared | February 15, 2012 |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

The proposed changes to 22VAC40-880 will: repeal numerous sections that are either duplicative of state or federal law or serve no purpose; amend sections to update language to reflect statutory changes, use current terminology and clarify the child support program; and, streamline the regulation in accordance with Executive Order 14 (2010).

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.

IV-D cases: cases administered and managed by the child support agency
 Non-TANF: Child support cases where no TANF has been paid to the family
 TANF: Temporary Assistance to Needy Families
 UIFSA: Uniform Interstate Family Support Act

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.

Sections 63.2-217 and 63.2-1901 of the Code of Virginia (Code) provide the legal authority of the Board to promulgate regulations for the child support enforcement program.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The child support regulation supplements the statutory law by providing a framework to promote the efficient and accurate administration of the child support program. The efficient and accurate administration of the program is critical to the health and well-being of children on whose behalf the funds are collected and disbursed. The primary functions of the child support program include locating noncustodial parents, establishing paternity, establishing and modifying child support orders and enforcing support obligations. This proposed action is the result of a comprehensive review of the child support regulation. The regulation has not been thoroughly reviewed since 2002. Statutory and program changes since that time required a complete review of all portions of the regulation to reflect current federal and state legislative and program requirements.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)

This regulatory action primarily involves removing numerous sections which are duplicative of existing state and federal law and federal regulations, updating obsolete terms with current terminology, clarifying the remaining sections by making the regulation easier to read and understand for the user. As a result, there are no substantive changes, except for 22VAC40-880-405, Passport Denial, which is amended to provide for an appeal process to circuit court pursuant to the Set-off Debt Collection Act.

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.

The primary advantages of this proposed regulatory action to the public are to streamline the administrative code, remove unnecessary language, correct incorrect cites and clarify the program. These are no disadvantages to the public.

The primary advantages to the agency and the Commonwealth are to streamline and clarify the regulation and remove unnecessary provisions. There are no disadvantages to the agency or the Commonwealth.

There are no other pertinent matters of interest associated with the proposed regulation.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale 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 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.

This proposed regulation will not impact any localities in particular.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website, www.townhall.virginia.gov, or by mail, email, or fax to Alice G. Burlinson, Senior Assistant Attorney General, Division of Child Support Enforcement, 4504 Starkey Rd. S.W., Suite 103, Roanoke, VA 24018, 540-776-2779, 540-776-2797 (fax), alice.burlinson@dss.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period.

In addition, the agency is seeking information on (1) the continued need for the regulation; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) 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.

A public hearing will not be held.

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 requirements creates the anticipated economic impact.

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| Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures. | There are no projected costs to the state. |
| Projected cost of the <i>new regulations or changes to existing regulations</i> on localities. | There are no projected costs to localities. |
| Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>. | None |
| 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 (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million. | None |
| All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. 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. | Streamlines and clarifies child support program operations. |

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 are no viable alternatives to the proposed regulatory action.

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.

It is anticipated the proposed regulation will have no impact on small businesses.

Small business impact review result

In order to minimize the economic impact of regulations on small businesses, please include, pursuant to Code of Virginia § 2.2-4007.1 E and F, 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. Also, include a discussion of the agency's determination of whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

The agency considered and determined that, while substantially reduced in size, there is a continued need for the regulation. one comment was received from the public that seemed to address the need for parents to be involved in their children's lives while not specifically addressing the child support regulation; the complexity of the regulation has been significantly reduced with the recommendation that 55 of 74 sections be repealed; the existing regulation significantly overlaps and duplicates federal or state law or regulation, hence the recommendation to repeal 75% of the sections; this regulation has not been thoroughly reviewed in ten years and there have been considerable changes in technology, economic conditions, and other factors have changed in the area affected by the regulation. The agency has determined that the regulation should be amended consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

| Commenter | Comment | Agency response |
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| Abdiel Clark | It is very important to legitimate parent’s relations. They must have harmony marriage to influence their children properly. Some of this questions are covered here. | This comment is not specific to a section of the regulation, or changes being proposed. |

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.

The proposed regulatory action will encourage economic self-sufficiency, self-pride, and the assumption of responsibility for one’s children and potentially increase or decrease disposable family income, depending on the family. The regulation has no impact on the authority and rights of parents or marital commitment.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. 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.

| Current section number | Proposed new section number, if applicable | Current requirement | Proposed change, intent, rationale, and likely impact of proposed requirements |
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| 10 | | Provides definitions of the terms used in the regulation. | Removes terms “absent parent”, “administrative”, “AFDC”, “AFDC/FC”, “assignment”, “custodial parent”, “debt”, “department”, “erroneous payment”, “foreclosure”, “genetic testing”, “health insurance coverage”, “interest”, “judicial”, “local social services agency”, “mistakes of fact”, “noncustodial parent”, “obligee”, “obligor”, “public assistance”, “reasonable cost”, |

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| | | | <p>“subpoena”, “subpoena duces tecum”, “Supplemental Security Income”, “support order” and “TANF” because these terms are defined in the Code (Code) of Virginia, have commonly used meanings that does not require further definition or are obsolete.</p> <p>Adds the term “federal foster care” to replace “AFDC/FC”, an obsolete term.</p> <p>Adds the term “parent” to clarify that, when used in the regulation, it can refer either a custodial or a noncustodial parent.</p> <p>Clarifies definitions for “child support guideline”, “hearings officer”, “locate services”, “pendency of an appeal” and “recipient.”</p> |
| 20 | | Describes child support services. | <p>Moves “locate services” from 22VAC40-880-140, to be listed with other services not already listed in the Code.</p> <p>Changes “clients” to “customers”.</p> <p>Changes “custodial parents” and “noncustodial parents” to “parents”.</p> |
| 30 | | Describes eligibility for child support services. | Repeal. This information is found in §§ 63.2-1904, 1908 and 1909. Additionally, paragraph (C) is found in §20-88.33 et seq. the interstate statute also known as UIFSA. |
| 40 | | Describes the assignment of rights required by TANF recipients. | Repeal. This information is found in § 63.2-1908. |
| 50 | | Describes the Division’s authority to seek or enforce a child support obligation. | Repeal. This information is found in § 63.2-1904. |
| 60 | | Describes special conditions for individuals who receive TANF. | Repeal. This information is found in § 63.2-1908. |
| 70 | | Describes the application fees for those seeking child support services. | Repeal. This information is found in § 63.2-1904. |
| 80 | | Describes the application process for child support services. | Repeal. This information is found in 45 CFR 303.2 and the |

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| | | | program manual. |
| 90 | | Describes the Division's case assessment process. | Clarifies the case assessment process. |
| 100 | | Describes the case prioritization process. | Clarifies the prioritization process by making this section more general. More specific provisions are in Chapter 12 (N) of the program manual. |
| 110 | | Describes the necessity for service of process. | Repeal. This information is found in 45 CFR 303.3. |
| 120 | | Describes the Division's authority to summons parties administratively. | Repeal. This information is found in § 63.2-1903. |
| 130 | | Describes the Division's authority to assess and recover costs associated with the provision of child support services. | Repeal. This information is found in § 63.2-1960. |
| 140 | | Describes the location services provided in child support cases. | Repeal. This information was moved forward and added to 22VAC40-880-20 and is found in 45 CFR 303. |
| 150 | | Describes the sources available to obtain information to locate individuals for child support purposes. | Repeal. This information is found in § 63.2-1902. Specifics sources are found in the program manual. |
| 160 | | Describes the time requirements to locate parents. | Repeal. This information is found in 45 CFR 303.3 and 303.7. |
| 170 | | Describes the process to establishing paternity. | Repeal. This information is found in §§ 20-49.1 et seq. and 63.2-1913. Specific procedures are in the program manual. |
| 180 | | Describes the process for establishing paternity in interstate cases. | Repeal. This information is found in § 20-88.78. |
| 190 | | Describes the process to administratively establish a child support obligation. | Removes paragraphs A, B, C, G and H. This information is found in §§ 63.2-1903 and 1916. |
| 200 | | Describes the process to determine the amount of the child support obligation. | Repeal. This information is found in §§ 63.2-1916, 63.2-1919 and 34-29. Specific procedures are in the program manual. |
| 210 | | Describes the requirement for service of the administrative support order. | Repeal. This information is found in § 63.2-1916. |
| 220 | | Describes authority to order medical support for children. | Repeal. This information is found in §§ 63.2-1903, 1916 and 1924.1. |
| 230 | | Describes the Division's use of the child support guideline. | Repeal. This information is found in §§ 63.2-1918 and 20-108.2. |
| 240 | | Describes authority for administrative deviation from the | Removes paragraph 1 as this information is found in § 20- |

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| | | child support guideline. | 108.2. Adds “natural or adoptive” to modify “parent” to clarify that only natural or adoptive parents can be obligated for child support. Additionally, §§ 20-108.1, 20-108.2 and 63.2-1918 govern this topic. |
| 250 | | Describes process for periodic review of the child support obligation. | Clarifies the section to be more specific and to comport with existing statutory and case law. Changes “special circumstance” to “material change of circumstance” to match language in the Code. Adds “adoptive or natural” to indicate only those parents can be obligated for support. Replaces “dependent care” with “employment-related child-care costs” as that term is used in § 20-108.2. |
| 260 | | Describes enforcement remedies. | Repeal. This information is found specifically in § 63.2-1932.1 as well as throughout Articles 5 and 6 of Chapter 19 of Title 63.2. There are specific procedures in Chapters 19 and 20 of the program manual. |
| 270 | | Describes withholding of income process. | Repeal. This information is found in §§ 63.2-1923 and 1924. |
| 280 | | Describes withholding of income process for administrative support orders. | Repeal. This information is found in § 63.2-1923. |
| 290 | | Describes process to determine the amount to be applied for the liquidation of arrearages. | Clarifies the language for ease of understanding. Adds appropriate statutory authority. |
| 300 | | Describes payment arrangement as alternative to income withholding. | Repeal. This information is found in § 63.2-1923. |
| 310 | | Describes Division’s authority to pursue enforcement remedies. | Repeal. This information is found in §§ 63.2-1901, 1902, 1904 and 1916 as well as in Article 6 of Chapter 19 of Title 63.2. |

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| 320 | | Describes process to initiate withholding of income. | Clarifies authority to initiate income withholding and added relevant Code sections, §§ 63.2-1923 and 1924. |
| 330 | | Describes liens for child support. | Repeal. This information is found in §§ 63.2-1927, 1928 and 1935. |
| 340 | | Describes Division's authority to issue orders to withhold and deliver. | Repeal. This information is found in §§ 63.2-1929, 1931 and 1932.1. |
| 350 | | Describes process of distraint, seizure, and sale. | Adds current term "arrearage." Removes last sentence of E. which is not accurate. Adds appropriate statutory authority. |
| 360 | | Describes authority to intercept unemployment compensation benefits. | Repeal. This information is found in §§ 63.2-1941, 34-29 and 15 USC 1673 (b). |
| 370 | | Describes Division's use of bonds, securities, and guarantees. | Repeal. This information is found in § 63.2-1936. Specific provisions are in the program manual. |
| 380 | | Describes tax intercept process. | Updates current terminology. Removes reference to Internal Revenue Code. Adds appropriate statutory authority. |
| 385 | | Describes license suspension process. | Repeal. This information is found in §§ 46.2-320 and 63.2-1937. |
| 390 | | Describes additional enforcement remedies. | Clarifies use of federal enforcement remedies. |
| 405 | | Describes the passport denial program. | Adds language setting out appeal rights for passport denial program. Adds appropriate statutory authority. |
| 410 | | Describes the enforcement remedies to be used against federal employees. | Simplifies language, clarifies that current and retired federal employees are subject to these remedies. Adds current Code cites. |
| 420 | | Describes authority to administratively appeal agency actions. | Repeal. This is a generic title section with no substantive provisions. |
| 430 | | Describes determination of validity of the appeal. | Adds "administrative" to clarify this provision applies to administrative appeals. |

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| | | | Clarifies exception for tax intercepts. Adds current statutory authority. |
| 440 | | Describes general rules for appeals. | Removes paragraphs D, E and F. Corrects obsolete Code cite. Changes “parties” to “parents” to be consistent with definitions section. Additional information is found at § 63.2-1942. |
| 450 | | Describes appeal process for enforcement actions. | Repeal. Each enforcement remedy in the Code contains its own appeal process. |
| 460 | | Describes appeal process for federal enforcement remedies. | Repeal. This information is found in § 58.1-528. |
| 470 | | Describes long-arm authority of Division. | Repeal. This information is found in §§ 63.2-1902 and 1903. |
| 480 | | Describes Division’s cooperation with other state IV-D agencies. | Corrects obsolete Code section reference. |
| 490 | | Describes the central registry for interstate cases. | Repeal. This information is found in § 63.2-1902. |
| 500 | | Describes how information is collected from state, county, and city offices. | Repeal. This information is found in § 63.2-1902. |
| 510 | | Describes authority to subpoena financial information. | Repeal. This information is found in § 63.2-1903 (F). |
| 520 | | Describes agencies to which the department releases information. | Repeal. This information is found in § 63.2-1902. |
| 530 | | Describes release of information to and from the internal revenue service. | Repeal. This information is found in § 63.2-1906. |
| 540 | | Describes responses to requests for information from the general public. | Repeal. This information is found in § 2.2-3700 et seq. also known as the Freedom of Information Act (FOIA). |
| 550 | | Describes responses to requests for information from parents. | Repeal. This information is found in § 2.2-3800 et seq. also known as the Government Data Collection and Dissemination Practices Act. |
| 560 | | Describes Division’s release of health insurance information | Corrects incorrect Code cite. Changes AFDC/FC to federal foster care to use current terminology. |
| 570 | | States custodial parents have rights and responsibilities. | Repeal. This section is superfluous and contains no substantive provisions. |

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| 580 | | Describes custodial parent's rights. | Repeal. This information is contained in the application for services and is also in the program manual. |
| 590 | | Describes custodial parent's responsibilities. | Repeal. This information is contained in the application for services and is also in the program manual. |
| 600 | | Describes the Department's rights. | Repeal. This provision does not add anything to the Department's obligation in state and federal statute and federal regulations. |
| 610 | | Describes the Department's responsibilities. | Repeal. There is no authority for this provision. |
| 620 | | Describes disbursement of payments. | Repeal. This information is found in § 63.2-1954. This information is also found in the program manual. |
| 630 | | Describes treatment of bad checks. | Repeal. This information is found in the program manual. |
| 640 | | Describes treatment of erroneous or duplicate disbursements. | Repeal. This information is found in the program manual. |
| 650 | | Describes methods of payment recovery from the custodial parent. | Repeal. This information is found in the program manual. |
| 660 | | Describes authority to discharge debt. | Repeal. This information is found in § 63.2-1958. |
| 670 | | Describes general rules to stop providing services. | Repeal. The Code of Federal Regulations controls these situations. |
| 680 | | Describes recovery of fees associated with child support cases. | Repeal. This information is found in § 63.2-1960. |
| 690 | | Describes recovery of attorney's fees for enforcement of child support cases. | Repeal. This information is found in § 63.2-1960. |
| 700 | | Describes assessment of fees for genetic testing. | Repeal. This information is found in § 63.2-1960. |
| 710 | | Describes assessment of fees in intercept programs. | Repeal. This information is found in § 63.2-1960. |
| 720 | | Describes assessment of fees associated with service of process, seizure and sale. | Repeal. This information is found in § 63.2-1960. |