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Exempt Action: Final Regulation Agency Background Document

Agency name	Virginia State Police
Virginia Administrative Code (VAC) Chapter citation(s)	19 VAC 30-170
VAC Chapter title(s)	19VAC30-170 Regulations Governing the Operation and Maintenance of the Sex Offender and Crimes Against Minors Registry
Action title	Regulations Governing the Operation and Maintenance of the Sex Offender and Crimes Against Minors Registry – 2022 Amendments (FINAL)
Final agency action date	31 March 2022
Date this document prepared	31 March 2022

Although a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), 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.

Section 19VAC30-170-30 of the *Virginia Regulations* is being amended to clarify that the issuance of a Simple Pardon / Restoration of Rights does not result in removal from the Registry and that an expungement does not include expungements of charges the person was convicted of.

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, internal staff review, petition for rulemaking, periodic review, or board decision). “Mandate” is defined as “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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

These regulations are mandated by §9.1-915 of the Code of Virginia. The Secretary of the Commonwealth manages the process and review of executive clemency. Executive Clemency in Virginia takes on three forms; (i) a simple pardon which is a statement of official forgiveness and is sometimes referred to as a restoration of rights. While it does not remove the conviction from the record, it often serves as a means for the petitioner to advance in employment, education, and self-esteem, (ii) a conditional pardon which is an act to modify or end a sentence imposed by the court. Conditional pardons are rare as the Governor does not typically substitute their judgment for that of the courts. In order to be eligible for a conditional pardon, you must be currently incarcerated, and (iii) an absolute pardon may be granted when the Governor is convinced that the petitioner is innocent of the charge for which he or she was convicted. An absolute pardon is often a remedy of last resort.

Because the existing regulations use the term pardon without qualification it was unclear that when drafted the term referred only to an Absolute Pardon. In addition as the registry requires registration based upon conviction an expungement of a charge which resulted in a conviction is not eligible for removal.

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 March 30, 2022, the Virginia State Police adopted final amended regulations for 19 VAC 30-170, Regulations Governing the Operation and Maintenance of the Sex Offender and Crimes Against Minors Registry as follows:

19VAC30-170-30 was amended by inserting the word “Absolute” in front of the word pardon and adding language to ensure that expungements of convictions are not eligible for removal from the registry.