



Proposed Regulation Agency Background Document

Agency name	Virginia Department of Health
Virginia Administrative Code (VAC) citation	12 VAC 5 -550
Regulation title	12VAC5-550-330. New certificate
Action title	To create a Certificate of Live Birth form and a Certified Birth Certificate that shows the parents designation as "Name of Parent".
Date this document prepared	November 20, 2007 (revised 7/16/08)

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The proposed amendment to existing regulation focuses on creating a new birth certificate form to permit the parents designation to be "Name of Parent" for a child that is adopted by a same-sex couple rather than "Mother" and Father".

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Sections 32.1-12 and 32.1-250 of the Code of Virginia authorize the Board of Health to promulgate procedural rules for the conduct of activities for the Division of Vital Records and to promulgate regulations.

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.

On April 22, 2005, the Virginia Supreme Court in a case styled *Davenport v. Little-Bowser*, 269 Va. 546, held that the plain language of Virginia Code § 32.1-261 required the Health Department's Division of Vital Records to issue new birth certificates for Virginia-born children adopted by out-of-state same sex couples. Because the Supreme Court did not invalidate the Health Department's current regulations regarding issuance of birth certificates, the Attorney General's Office has advised the Registrar to continue issuing birth certificates with one same-sex partner's name in the space reserved for "Mother" and the other partner's name in the space reserved for "Father" until such time as the current regulation may be amended. Adoptive same-sex parents have indicated a dissatisfaction with the certificates as currently issued and as a result, the Division of Vital Records is seeking to promulgate regulations changing the birth certificate form to permit the parents designation to be "Name of Parent" for a child that is adopted by a same-sex couple rather than "Mother" and "Father."

Substance

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

The proposed amendment is necessary to recognize the growing number of same-sex adoption of children born in the Commonwealth. The existing regulation will be amended to include language such as "In cases where a child has been adopted out-of-state by a same sex couple the new birth certificate will be created on a form and the certification will be issued showing the parents designation as Name of Parent".

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 so indicate.

The primary advantage of this regulation would be for the same-sex couples that adopted a Virginia-born child. Also VDH-Division of Vital Records would become one of many states that are issuing birth certificate with the designation of "Names of Parents" for children adopted by same-sex couples.

There are no known disadvantages to the public, the agency or the Commonwealth presented by this proposed regulation.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which are 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.

There are no 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.

No locality could be identified that would be affected by the proposed regulation.

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.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is 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 written comments may do so by mail, email or fax to **Janet Rainey, Division of Vital Records, P. O. Box 1000, Richmond, VA 23218, Telephone number (804) 66206245, Fax number (804) 662-6256, email address janet.rainey@vdh.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 date of the public comment period.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

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	\$1000.00
Projected cost of the regulation on localities	\$0.00
Description of the individuals, businesses or other entities likely to be affected by the regulation	No individuals, businesses or other entities will be affected by the regulation.
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.	0
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	\$0.00

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 alternatives because the current Regulation requires the new birth certificate be created on the form used at the time of the child’s birth. That form shows the parent’s designation as “Full Maiden Name of Mother” and Full Name of Father”.

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.

There was no agency analysis conducted because a regulatory change is required. This proposed regulation will have no adverse impact on small business.

Public comment

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

Commenter	Comment	Agency response

There were no comments received during the public comment period.

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.

This proposed regulation will probably have opposition from groups such as The Family Foundation, which opposed the Virginia Supreme Court ruling, and from the patron and supporters of SB414 that failed in the 2006 General Assembly. It will probably have support from groups such as Equality Virginia.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12VAC5-550-330	N/A	The new certificate of birth prepared after adoption, legitimation, court determination of paternity, or acknowledgement of paternity shall be on the form in use at the time of birth and shall include the following items and such other information necessary to complete the certificate:	<p>Proposed change - The new certificate of birth prepared after adoption, legitimation, court determination of paternity, or acknowledgement of paternity shall be on the form in use at the time of birth, however, a same-sex adoption new certificate of birth shall be on the form that show the parents designation as "Name of Parent, and shall include the following items and such other information necessary to complete the certificate:</p> <p>Rationale – Although the April 22, 2005 Virginia Supreme Court decision required the Health Department’s Division of Vital Records to issue new birth certificates for Virginia-born children adopted by out-of-state same-sex couples it did not invalidate the Health Department’s current regulation regarding issuance of birth certificates. Therefore birth certificates are currently been issued showing the parents designation as "Full Maiden Name of Mother" and "Full Name of Father". The proposed regulation will show the parent’s designation of a same-sex couple as "Name of Parents".</p>