



Fast Track Proposed Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22VAC40-35
Regulation title	Virginia Independence Program
Action title	Amend VIP Regulation
Date this document prepared	August 15, 2013

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

Please provide a brief summary (no more than 2 short 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

Current references to "Aid to Families with Dependent Children" or "AFDC" will be updated to "Temporary Assistance for Needy Families" or "TANF." References to the "Food Stamp Program" or "Food Stamps" will be updated to the "Supplemental Nutrition Assistance Program" or "SNAP." The terms "child day care" or "day care" will be replaced with "child care." The term "relative," includes a reference to "a qualified employer." This definition will be updated and the reference to "a qualified employer" will be removed. Both "Full Employment Program" and "sanction" will be updated to remove references to Food Stamps.

To be consistent with § 63.2-609 of the Code of Virginia, 22VAC40-35-80 will be updated to include a 12 month lifetime limit on the exemption from participating in the employment and training program for caring for a young child.

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 approved final action on 22VAC40-35, Virginia Independence Program, on August 15, 2013.

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.

Pursuant to § 63.2-217 of the Code of Virginia, the State Board of Social Services has authority to promulgate rules and regulations necessary for operation of all assistance programs. With regard to amendments to 22VAC40-35-80 specifically, federal regulations at 45 CFR §261.22 (c) (1) give the state the option of how long, up to one year, to disregard a custodial parent from engaging in a work program.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail 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.

The purpose of the proposed action is to amend the Virginia Independence Program regulation by changing references from Food Stamps to the current Supplemental Nutrition Assistance Program (SNAP), day care to child care, and Aid to Families with Dependent Children (AFDC) to Temporary Assistance for Needy Families (TANF). The definitions will be updated. Finally, the Code of Virginia §63.2-609 was amended to limit the exemption for caring for a young child to 12 months in a lifetime. The regulation will be updated to reflect this change in the law. This will result in consistency with federal requirements (45 CFR §261.22) and greater access to employment and training opportunities.

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?

Please note: 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 (i) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

During the public comment period of the periodic review process, there were no comments made about this regulation. The changes are minimal and expected to be non-controversial.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the “Detail of changes” section.) Please be sure to define any acronyms.

Current references to “Aid to Families with Dependent Children” or “AFDC” will be updated to “Temporary Assistance for Needy Families” or “TANF.” References to the “Food Stamp Program” or “Food Stamps” will be updated to the “Supplemental Nutrition Assistance Program” or “SNAP.” The terms “child day care” or “day care” will be replaced with “child care.”

The term “relative,” includes a reference to “a qualified employer.” This definition will be updated and the reference to “a qualified employer” will be removed. Both “Full Employment Program” and “sanction” will be updated to remove references to Food Stamps.

To be consistent with the Code of Virginia §63.2-609, 40-35-80 will be updated by including a 12 month lifetime limit on the exemption from participating in the employment and training program for caring for a young child.

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.*

The primary advantage to the public is that the terms and definitions will be current and correct. The regulation will no longer improperly refer to other programs using outdated program titles. In addition, the regulation will reflect the employment and training exemptions as stated in statute. There are no disadvantages to the public or 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.

There are no requirements of the proposal that exceed 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 bears any identified disproportionate material impact which would not be experienced by other localities.

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.

The agency explored alternatives to regulatory methods, but determined that regulatory action was necessary to set out the rules for different aspects of the Temporary Assistance for Needy Families (TANF) program. The regulation is intended to promote self-sufficiency for recipients of TANF and to emphasize personal responsibility while not requiring burdensome and stringent standards upon small businesses and the general public.

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	There is no cost to the state associated with enforcing the amended regulation.
Projected cost of the new regulations or changes to existing regulations on localities.	There is no cost to localities associated with the amended regulation.
Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.	The regulation will impact low-income families that receive TANF assistance. The regulation changes will not impact businesses.
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.	There are approximately 62,250 monthly recipients (adults and children) of TANF.
All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities.	There are no additional costs for the amended regulation.

<p>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.</p>	
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The benefit of these changes is that the terms and definitions will be up to date and correct which will reduce confusion and misunderstanding.</p>

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 having correct program references, correct definitions, and having the regulation reflect the requirements of the Code of Virginia.

Periodic review/small business impact review result

If this fast-track regulation is not the result of a periodic review/small business of the regulation, please delete this entire section.

If this fast-track regulation is the result of a periodic review/small business impact review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, please include, pursuant to § 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.

No comments were received during the public comment period. The regulation was reviewed and it is necessary to maintain the regulation. The regulations are necessary for the establishment of the Virginia Independence Program and protection of the public welfare. The regulation is clearly written and easily understandable. The review resulted in the identification of a number of items that require updating and that will resolve conflict with federal requirements (45 CFR 261.22).

The Temporary Assistance for Needy Families program is established by federal law and regulation. However, the federal requirements tend to be broad based requirements with considerable flexibility provided to states. As a result, this regulation has some overlap with federal regulations, but is more

specific than the federal regulations. There was one instance identified that was a conflict with federal regulations and as a result, will be updated. The regulation was last evaluated in 2009.

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 regulatory action has no impact on parental rights, self-sufficiency, or marital commitment. The program itself has a positive impact on families transitioning from dependence on government public assistance to employment and independence. The VIP enhances the opportunity to engage participants in activities that support and enhance a participant’s work experience and will increase self-sufficiency.

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
10	NA	“Allotment” means the monthly food stamp benefit given to a household.	Change food stamps to Supplemental Nutrition Assistance Program (SNAP) because the name of the program has changed. This change will bring the regulation up to date and reduce any confusion caused by the incorrect program name.
10	NA	“Child day care” means those services for which a participant is eligible pursuant to child day care services policy. “Child day care services/program” means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume	The obsolete term child day care is changed to child care. This change will bring the regulation up to date and reduce any confusion caused by the incorrect name.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
		responsibility for the supervision, protection and well-being of children under the age of 13 (or children up to 18 years of age if they are physically or mentally incapable of caring for themselves or subject to court supervision) for less than a 24-hour period.	
10	NA	“Food Stamp Program” means the program administered through the Virginia Department of Social Services through which a household can receive food stamps with which to purchase food products.	Delete the food stamp definition and add the SNAP definition because the name of the program has changed. This change will bring the regulation up to date and reduce any confusion caused by the incorrect program name.
10	NA	“Full Employment Program” or “FEP” means subsidized, training-oriented, employment which replaces the TANF and food stamp benefits of a participant. This component of VIEW is designed to train the recipient for a specific job, increase his self-sufficiency and improve his competitiveness in the labor market.	Remove food stamps from the definition. The term is obsolete and such benefits are not used to subsidize wages. This will have no impact on participants or businesses.
10	NA	“Part-time unsubsidized employment” means employment of at least 10 hours but less than 30 hours per week and for which no VIEW, TANF, or food stamp funds are used to pay the individual’s salary.	Remove food stamps from the definition. The term is obsolete and such benefits are not used to subsidize wages. This will have no impact on participants or businesses.
10	NA	“Relative” means spouse, child, grandchild, parent, or sibling of a qualified employer.	This definition is being corrected. Clearly, it should not have referred to an employer in the definition. This change will correct the regulation and reduce any confusion caused by the incorrect definition.
10	NA	“Sanction” means to reduce or suspend a participant’s TANF grant or food stamp allotment or both, where applicable, for noncompliance with these regulations or the statute.	Remove food stamps from the definition. The term is obsolete and penalties are not imposed on a SNAP recipient for failing or refusing to comply with the TANF program.
40	NA	In the section on diversionary	AFDC is an obsolete program name. The

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
		assistance, reference is made to AFDC.	correct program name is TANF. This change will bring the regulation up to date and reduce any confusion caused by the incorrect program name.
80	NA	The regulation states that a parent is exempt from participation in VIEW if caring for child less than 12 months of age.	For consistency with both federal regulations and state code, language is added to cap this exemption as a cumulative total of 12 months. This will not change how the program currently operates as the program already has implemented this provision to be in compliance with federal regulations and state code.
100	NA	This section makes reference to day care.	The term was updated to child care. This change will bring the regulation up to date and reduce any confusion caused by the incorrect name.