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Fast-Track Regulation Agency Background Document

Agency name	Virginia Workers' Compensation Commission
Virginia Administrative Code (VAC) Chapter citation(s)	16 VAC 30-50
VAC Chapter title(s)	Rules of the Virginia Workers' Compensation Commission
Action title	Rules of the Virginia Workers' Compensation Commission
Date this document prepared	August 10, 2023

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.

This regulatory action would update the Rules of the Virginia Workers' Compensation Commission for 16VAC30-50-10 through 16VAC30-50-50, 16VAC30-50-70 through 16VAC30-50-110 and 16VAC30-50-140. These portions of the Rules cover prehearing procedures, hearing procedures, posthearing procedures, filing documents, award of attorneys fees under §65.2-714 of the Code of Virginia, employer responsibilities, self-insurance, payment of compensation and x-ray evidence for coal workers' pneumoconiosis claims. This action would also would correct the title of the Table of Percentage of loss of visual acuity in 16VAC30-50-140.

The action would repeal 16VAC30-50-150. Rule 14. Definition of community.

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.

No acronyms have been used in completing this form.

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.

The Virginia Workers' Commission has approved amendments to 16VAC30-50-10 through 16VAC30-50-50, 16VAC30-50-70 through 16VAC30-50-110 and 16VAC30-50-140. The Commission has also approved the repeal of 16VAC30-50-150.

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.

There is not a specific mandate for this regulatory change. The impetus that specifically prompted the initiation for this change includes a need to:

1. Update the language of these regulations;
2. Revise the lettering/numbering to accord with that currently used in the Virginia Administrative Code (VAC); and
3. Correct the title of a table in 16VAC30-50-140.

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 Workers' Compensation Commission administers the Virginia Workers' Compensation Act, §§ 65.2-201 of the Code of Virginia, "The Commission shall make rules and regulations for carrying out the provisions of this title."

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 rationale and justification for these regulatory changes is that there is a need to:

1. Update the language of these regulations;
2. Revise the lettering/numbering to accord with that currently used in the Virginia Administrative Code (VAC); and
3. Correct the title of a table in 16VAC30-50-140.

The goal of revising these regulatory sections is to make the process of administering Virginia's workers' compensation benefits more efficient, which will protect the health, safety and welfare of Virginia's citizens.

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.

The rationale and justification for these regulatory changes is that there is a need to:

1. Update the language of these regulations;
2. Revise the lettering/numbering to accord with that currently used in the Virginia Administrative Code (VAC); and
3. Correct the title of a table in 16VAC30-50-140.

The goal of revising these regulatory sections is to make the process of administering Virginia's workers' compensation benefits more efficient. There are no substantive changes.

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.

These regulatory changes present no disadvantages to the agency, the public or the Commonwealth. The primary advantages to the agency, the public and the Commonwealth are that the proposed changes would make the process of administering Virginia's workers' compensation benefits more efficient.

One other pertinent matter of interest to the regulated community, government officials and the public would be the revision of the lettering/numbering to accord with that currently used in the Virginia Administrative Code (VAC).

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.

There are no requirements of these regulatory changes which are more restrictive than applicable federal requirements.

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.

No other state agencies will be particularly affected by these regulatory changes.

No localities will be particularly affected by these regulatory changes.

No other entities will be particularly affected by these regulatory changes.

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

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:</p> <ul style="list-style-type: none"> 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 	<p>These regulatory changes should not result in any changes to funding sources. There will not be any one-time costs or on-going expenditures associated with any of these proposed regulatory revisions. There should not be any costs or revenue loss. Therefore, no costs or revenue loss would need to be absorbed within existing resources.</p>
<p><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.</p>	<p>These regulatory changes should not result in any changes to funding sources, fees or revenues for other state agencies. Other state agencies will not have any one-time costs or on-going expenditures associated with any of these proposed regulatory revisions.</p>

For all agencies: Benefits the regulatory change is designed to produce.	All state agencies could potentially benefit from the improved efficiency which should result from implementation of these proposed regulatory revisions.
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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.	These regulatory changes should not result in any costs or changes to savings, fees or revenues for localities.
Benefits the regulatory change is designed to produce.	All localities could potentially benefit from the improved efficiency which should result from implementation of these proposed regulatory revisions.

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 will be affected by these regulatory changes.
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.	No other entities will be affected by these regulatory changes.
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: 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.	No individuals, businesses or other entities will be affected by these regulatory changes. The proposed revisions have no requirements for: a) reporting, recordkeeping or other administrative activities for small businesses; b) the development of real estate for commercial or residential purposes; c) fees; d) purchases of equipment or services. Because there are no requirements for a) through d) above, there are no deadlines for complying with any requirements.
Benefits the regulatory change is designed to produce.	These regulatory provisions provide the benefit of improved efficiency.

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.

There are no viable alternatives to the proposed regulatory changes. The proposed regulatory changes should not be burdensome, intrusive or more costly for other state agencies, for localities or for small businesses. There are no less intrusive or less costly alternatives for small businesses.

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 are no 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. Furthermore, these proposed regulatory changes do not contain any requirements for small businesses. There is no way to make nonexistent requirements less stringent.

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 Workers' Compensation 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 or email to:

Reba O'Connor
 333 East Franklin Street
 Richmond, Virginia 23219
reba.oconnor@workcomp.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
16VAC30-50-10		Definitions	Adds two definitions. See below: <u>“Signature” is a person’s endorsement and may be handwritten, typed, electronic, or any other form allowed by the Code of Virginia.</u> <u>“Jurisdiction Claim Number” is the case number assigned by the commission and should be on all documents filed with the commission. This is different than the claim number from an insurance carrier (and is also often referred to as “JCN”).</u>

16VAC30-50-20		Prehearing Procedures	Two types of requested revisions: 1) A renumbering/relettering to accord with the numbering/lettering system of the Virginia Register of Regulations Style Manual. 2) Textual revisions that clarify prehearing procedures and make those procedures more efficient.
16VAC30-50-30		Hearing Procedures	Two types of requested revisions: 1) A renumbering/relettering to accord with the numbering/lettering system of the Virginia Register of Regulations Style Manual. 2) Textual revisions that clarify hearing procedures and make those procedures more efficient.
16VAC30-50-40		Posthearing Procedures	Two types of requested revisions: 1) A renumbering/relettering to accord with the numbering/lettering system of the Virginia Register of Regulations Style Manual. 2) Textual revisions that clarify posthearing procedures and make those procedures more efficient.
16VAC30-50-50		Filing Documents	Two types of requested revisions: 1) A renumbering/relettering to accord with the numbering/lettering system of the Virginia Register of Regulations Style Manual. 2) Textual revisions that clarify procedures for filing documents and make those procedures more efficient.
16VAC30-50-70		Award of attorneys fees under §65.2-714 of the Code of Virginia.	Two types of requested revisions: 1) A renumbering/relettering to accord with the numbering/lettering system of the Virginia Register of Regulations Style Manual. 2) Textual revisions that clarify procedures for award of attorneys' fees and make those procedures more efficient.
16 VAC-30-50-80		Employer Responsibilities	Two types of requested revisions: 1) A renumbering/relettering to accord with the numbering/lettering system of the Virginia Register of Regulations Style Manual. 2) Textual revisions that simplify and clarify employer responsibilities.
16VAC30-50-90		Self-Insurance	Renumbering/relettering to accord with the numbering/lettering system of the Virginia Register of Regulations Style Manual.
16VAC30-50-100		Payment of Compensation	Renumbering/relettering to accord with the numbering/lettering system of the Virginia Register of Regulations Style Manual.
16VAC30-50-110		X-ray evidence for coal workers' pneumoconiosis claims.	Renumbering/relettering to accord with the numbering/lettering system of the Virginia Register of Regulations Style Manual.

16VAC30-50-140		Table of Percentage of loss of visual acuity.	Correcting the name of a table from the incorrect "Snellen's Chart" to the correct "Snellen Chart".
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If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements

If the regulatory change is replacing an **emergency regulation**, and the proposed regulation is identical to the emergency regulation, complete Table 1 and/or Table 2, as described above.

If the regulatory change is replacing an **emergency regulation**, but changes have been made since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.

Table 3: Changes to the Emergency Regulation

Emergency chapter-section number	New chapter-section number, if applicable	Current <u>emergency</u> requirement	Change, intent, rationale, and likely impact of new or changed requirements since emergency stage