



**Virginia
Regulatory
Town Hall**

Proposed Regulation Agency Background Document

Agency Name:	20
VAC Chapter Number:	70
Regulation Title:	Regulations Governing Pupil Transportation Including Minimum Standards for School Buses in Virginia
Action Title:	NOIRA
Date:	January 28, 2002

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

These regulations were last revised in 1994. Since that time, statutory provisions addressing the content of these regulations have been enacted or amended, resulting in conflicting requirements, which has the potential to mislead the public.

Federal standards addressing bus equipment and construction have, in some instances, changed significantly. Virginia is unable to permit the use of equipment approved in federal standards because it is not permitted by our current regulations.

Technological and manufacturing advancements that are not addressed in our current regulations have resulted in regulations and manufacturing requirements that are too restrictive and that do not support use of "state-of-the-art" equipment.

The 2000 *National School Transportation Specifications and Procedures* are now available. These standards address such issues as school inspections, infants and toddlers, special education and specially equipped school buses. These standards were reviewed as part of the revision process in order to incorporate changes, as appropriate.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Article VIII, §4, Constitution of Virginia; *Code of Virginia* §22.1-176; 22.1-177; 22.1-178; 22.1-181; and 22.1-186.

The scope of legal authority is defined by Article VIII, §4. Constitution of Virginia which vests in the Board of Education the general supervision of the public school system.

Section 22.1-16 <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+22.1-16>, *Code of Virginia*, authorizes the Board to promulgate "such regulations as may be necessary to carry out its powers and duties..."

Section 22.1-177 <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+22.1-177>, *Code of Virginia*, gives the Board general authority to make regulations relating to the construction, design, operation, equipment, and color of public school buses and the authority to issue an order prohibiting the operation on public streets and highways of any public school bus which does not comply with such regulations.

Further, §22.1-176 <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+22.1-176> and §22.1-186 <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+22.1-186>, *Code of*

Virginia, authorize the Board to promulgate regulations relating to fees for school transportation.

Section 22.1-178 <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+22.1-178> additionally sets forth requirements for school bus drivers and authorizes the Board to furnish forms to school divisions to obtain information from applicants for employment as school bus drivers as required in statute."

The Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulations and it comports with applicable state and/or federal law. (See attached letter.)

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The Regulations Governing Pupil Transportation need to be revised to include new state laws passed since 1994 and new federal standards governing transportation included in the 2000 National School Transportation Specifications and Procedures.

Current law does not require students to ride public school buses nor does it require school divisions to provide transportation. These regulations do, however, govern those instances when transportation is provided and is used by students. Consequently, the revision of these regulations will help to ensure the safety of children riding public school buses. Providing safe, free transportation to and from school for children in Virginia provides a valuable service and eliminates the need for parents to transport their children.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

Substantive changes to the existing regulations include:

1. Definitions have been updated to reflect the *2000 National School Transportation Specifications and Procedures* definitions.
2. Language has been included to accommodate new equipment and technology that will better facilitate the transportation of students safely and efficiently.
3. The revisions include the latest laws passed on the speed limit school buses may travel on any given highway.
4. The revised regulations include the use of flashing amber warning lights to notify motorists that buses are about to stop or are stopped. The white strobe light assist in identifying a school bus during reduced visibility.
5. Drivers of Type D buses will be required to complete eight additional hours of training behind-the-wheel. Drivers of special needs children will be required to receive appropriate training and instruction using a curriculum approved by the Department of Education.
6. School divisions will determine the amount of in-service training and develop a schedule that is needed for bus drivers.
7. The regulations update the minimum requirements for pupil transportation in Virginia. School divisions may exceed these requirements with permission from the Department of Education.
8. Article 2 (Bus Chassis) and Article 3 (Bus Body) have been removed from the regulations and will be issued by the Department each year as guidelines with the specifications for school buses. These guidelines will be updated each year to reflect changes in technology and equipment.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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 include a sentence to that effect.

The following summarizes a list of issues addressed with changes in the pupil transportation regulations.

- The 2001 General Assembly amended section §22.1-178, *Code of Virginia*, to state that drivers must furnish statements signed by two reputable persons who reside in the school division or in the applicant's community that the person is of good moral character to the school division.
- The 2000 General Assembly added section §46.2-324, *Code of Virginia*. This section addresses requirements for the initial licensure of certain applicants who have Commercial Driver's License (CDL) learner's permits.
- The 1999 General Assembly amended §46.2-871, *Code of Virginia*, permitting a higher speed limit for school buses on certain highways. The 1994 regulations prohibit the higher speed limit.
- The 1998 General Assembly amended §22.1-178, *Code of Virginia*, allowing a licensed nurse practitioner to perform and record the results of the annual school bus driver's physical examination. The 1994 regulations allow only a licensed, Virginia physician to perform the examination and record the results.
- The 1997 General Assembly amended §46.2-1090.1, *Code of Virginia*, to permit the use of the roof-mounted strobe lights anytime students are on board. The 1994 regulations prohibit the use of these lights except when the school bus transports students during periods of reduced visibility caused by conditions other than darkness.
- The 1996 General Assembly amended §22.1-221, *Code of Virginia*, allowing students other than those with special needs to ride a specially equipped school bus without affecting exclusive fund reimbursement.
- The General Assembly amended §46.2-498, *Code of Virginia*, revising the driver improvement clinic.
- The 1995 National Standards on School Transportation recommends eight hours of in-service training for school bus

drivers. The 1994 regulations require four hours of in-service training for school and activity bus drivers.

- Section 46.2-340, *Code of Virginia*, requires new or revised data on school bus drivers to be submitted to DMV whenever needed rather than the tenth of each month as currently stated in the 1994 Board regulations.
- Due to the frequency of changes in engineering standards and design, a mechanism is needed that considers modifications to the requirements for equipment that can become obsolete or should be revised to recognize changes in technology.
- The Board of Education should also consider changes related to the requirements for Type A buses due to technological changes in their manufacture.
- The requirement for a back-up alarm installed on all new school buses was approved in 1994, but omitted from the July 1, 1994, State Board Regulations; therefore, the regulations need to permit frequent or routine updates in safety equipment. Examples of the types of changes or improvements that have occurred since the last revision of these regulations include:
 1. Use of approved fire suppression systems in all gas-powered and specially equipped school buses.
 2. Use of equipment such as radios, cellular telephones, and other communications devices.
 3. Changes to address snagging incidents associated with doors and handrails.
 4. Use of turn arrows on rear turn signal lenses to eliminate potential confusion caused by the many lights on the school bus.
 5. Requirements for use and mounting of roof-mounted strobe lights on all new buses.
 6. Requirements related to seat belts and other passenger restraint systems.
 7. Revisions to driver training requirements.

The regulations should be sufficiently flexible to permit these items to be addressed without having to revise the regulations.

- Due to the increase in the number of infants and toddlers and students with disabilities being transported, the Board should

consider changes in training requirements for drivers and equipment specifications.

- Finally, it is not anticipated that the proposed revisions would present any disadvantages to school divisions or their clients.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

The proposed regulations will have very little fiscal impact on school divisions at this time. The one item that may have a small impact would be the 8 hours of training on Type D buses. The majority of school divisions currently offer some training of this nature. The change in the regulation to 8 hours of training may cause divisions to have to pay drivers for additional time to attend the training.

There is no additional fiscal impact on the Department of Education. The Department currently administers these regulations. None of the proposed changes should create additional costs. The current regulations are administered by the Pupil Transportation office in the Department of Education. General funds totaling \$605,111 annually support this office in program/subprogram 191-08-20.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

Language has been included in the regulations to cover changes due to new equipment and technology. Any new equipment or

technology must be approved by the Department of Education before being used on school buses.

8 VAC 20-70-10 - Definitions. The definitions have been updated to include the definitions used in the 2000 National School Transportation Specifications and Procedures. The definitions no longer indicate the passenger capacity of the various types of buses.

8 VAC 20-70-30 - Safe Speeds. This section has been revised to recognize legislative changes and to specifically reference the *Code of Virginia* section that controls school bus speeds. The General Assembly passed legislation in 1999 to allow school buses to go forty-five miles per hour or the minimum speed allowable, whichever is greater, on any highway where the maximum speed limit is fifty-five miles or less, and fifty-five miles per hour on all interstate highways and on other highways where the maximum speed limit is more than fifty-five miles per hour. The speed of a school bus shall not exceed thirty-five miles per hour between the first stop and the last stop.

8 VAC 20-70-40 - Seating. This section has been revised to make the seating capacity requirements more specific. The seating on a school bus shall not exceed the manufacturer's capacity. The number of students who may ride a bus shall be determined by the total number who can be seated facing forward and within the seating compartment safely. The seats on buses are 39 inches in length. The seats were designed to carry 3 passengers, but due to the size of the children, divisions may not be able to place three children to a seat. Therefore, the number of students that a school bus can carry may differ from the manufacturer's capacity indicator.

8 VAC 20-70-70. Traffic warning devices. This section has been revised to recognize legislative changes and to specifically reference the section of the *Code of Virginia* that addresses traffic warning devices. The 1997 General Assembly passed legislation allowing the use of flashing white or amber warning lights. The lights will be used when transporting students during periods of reduced visibility caused by atmospheric conditions other than darkness. These lights may be used at other times when transporting school children. This device will assist motorists in seeing the bus during times when visibility is not good.

8 VAC 20-70-80. Loading or discharging pupils. This section is amended to stipulate that pupils may be picked up and discharged

only at designated school bus stops approved by the local school division. Loading and discharging students at stops other than the designated ones can be dangerous. Drivers of school buses are made aware of the designated bus stops at the beginning of the school year.

8 VAC 20-70-90 - Safety Belts. This section has been amended to specify that safety belts shall be worn in accordance with manufacturer's recommendations. Following the correct procedure for the wearing of safety belts will ensure the safety of the individuals on the bus.

8 VAC 20-70-100. Passenger restraint belts. This section is amended to require that restraint belts will be worn as required by federal or state law. Federal Motor Vehicle Safety Standard No. 209 specifies requirements for seat belt assemblies. The requirements apply to straps, webbing, or similar material, as well as to all necessary buckles and other fasteners and all hardware designed for installing the assembly in a motor vehicle, and to the installation, usage, and maintenance instructions for the assembly.

8 VAC 20-70-110. Pupil rider safety instruction. The regulation has been revised to specify that the second required emergency exit drill must occur during the second semester. It also adds a statement that school divisions should perform summer session evacuation drills as needed. Students need to be trained on the proper way to evacuate a school bus when a problem arises.

8 VAC 20-70-120. Insurance. This section has been amended to reference the statutory code section that establishes the requirements for insurance.

8 VAC 20-70-130. Maintenance Inspection. The regulations are amended to encourage divisions to hire adequate staff to perform maintenance and inspection functions. These individuals are encouraged to attend workshops and training institutes to receive up-to-date information on maintenance and inspections. In order for buses to operate efficiently, adequate staff must be available to work on the buses and must have the most up-to-date information available on the changes in technology and equipment.

8 VAC 20-70-140. Crash/Incident Reporting. The term accident has been changed to crashes or incidents to better distinguish the difference between serious accidents and incidents that are

less serious. The Department of Education will be reviewing the data that should be reported and the method of reporting this data.

8 VAC 20-70-150. Route Schedule. The changes specify that routes shall be scheduled to maximize safety and efficiency in divisions. Scheduling routes needs to take into consideration the location of stops as to safety. Routes need to be scheduled so that students spend a minimum amount of time on the bus.

8 VAC 20-70-160. Review of Routes. Requires hazardous or unusual situations to be marked on route sheets and the information made available to drivers and substitutes. Drivers need to be aware of these situations in order to insure the safety of the children on the bus.

8 VAC 20-70-170. Railway crossings. School bus drivers will be required to turn off all noisy equipment and follow procedures for stopping at railway crossings before proceeding across the tracks. The driver needs to be able to hear whether a train is approaching a road.

8 VAC 20-70-240. Funding for Pupil Transportation. The funding for pupil transportation is governed by the Appropriation Act. 8 VAC 20-70-250 through 20-70-270 have been deleted from the regulations as they are no longer needed. The section now refers to the Appropriation Act.

8 VAC 20-70-250 (Renumbered from 8 VAC 20-70-280). Requirements for School Bus Drivers for both Employment and Continued Employment. The physical examination form describes the physical qualifications for school bus drivers. The 1998 General Assembly passed legislation allowing a licensed nurse practitioner to conduct the physical examination required for all school bus drivers. The information that is on the physical form has been deleted from the regulations since it is contained on the form prescribed by the Board. The 2001 General Assembly passed legislation that the moral character of a driver may be obtained from two persons who reside in the school division or in the applicant's community.

8 VAC 70-320 (Renumbered from 8 VAC 20-70-350). Training. Drivers of Type D buses will be required to complete eight additional hours of training behind-the-wheel. School divisions are providing this training, but it varies from division to division. This change will require at least 8 hours of training by every school division. Drivers of special needs children

will be required to receive six hours of appropriate training and instruction using the Department of Education approved curriculum. The curriculum will be updated as changes occur.

8 VAC 20-70-330 (Renumbered from 8 VAC 20-70-360). In-service Training. The requirement of two hours before opening of schools and two hours during the second half of the school year has been deleted. In-service training shall be determined by each school division based upon the amount of in-service training required for both experienced and new drivers. The training will cover subjects determined by the school division and it may vary based upon the experience of the driver. The subjects covered may include attitudes, safety programs, and improving skills.

8 VAC 20-70-390. Misconduct Reports. The section has been deleted to permit school divisions to address student misconduct on school buses as part of their overall student conduct policies. These policies may vary from division to division based upon individual needs and circumstances.

8 VAC 20-70-420 (Renumbered from 8 VAC 20-70-460). Specifications. The regulations have been revised with changes to accommodate new equipment and technology. The Department of Education shall issue guidelines on the specifications and standards for public school buses that will reflect any desired technology or safety improvements for the model year. The guidelines will be reviewed and adopted by the Board of Education periodically.

8 VAC 20-70-520. Road Speed Control. Deletes unnecessary language that permitted school divisions to set road speed controls at their discretion.

8 VAC 20-70-530 through 8 VAC 20-70-1510. These sections that describe specifications for bus chassis, bus body, and a variety of other bus equipment are deleted. Having this level of detailed equipment specifications in the regulations makes it very difficult to make revisions and updates as necessary due to the length of the regulatory revision process. Changes in equipment are required annually to address safety technology, and manufacturing changes. Instead, the Board will annually adopt specification guidelines.

Please describe the specific 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.

The alternatives considered were:

1. An advisory committee composed of transportation directors across the state was established to identify problems with the existing regulations and to recommend changes for the Board's consideration. Most of the proposed changes reflect this group's work and is, therefore, considered necessary.
2. The decision to delete the specifications part of the regulations allows the Department to update the requirements every year or as necessary. This will allow school divisions in Virginia to use the most up-to-date equipment and technology on school buses. Inclusion in the regulations is considered too burdensome by school divisions.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

There were no public comments during the NOIRA comment period.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

Information was obtained from school division personnel and department personnel on the changes needed. There were no public comments during the NOIRA process. It appears that the regulation is clearly written and easily understandable.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable

regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The Regulations will be reviewed in the year 2005 to determine if any part of the regulations should be continued, amended, or terminated. If changes are required, the APA process will be followed.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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.

Neither current law nor the pupil transportation regulations require students to ride public school buses. However, to the extent that students ride public school buses, these regulations will provide standards and requirements to help ensure the safety of children.

Many changes will help to increase the safety of school buses, thus further ensuring the safety of children being transported to and from our public schools, which will promote family well-being. There is no negative impact on the welfare of the family.

The provision of safe, free transportation to and from school can provide economic assistance to parents by eliminating the need for parents to transport their children to and from school.