



Proposed Regulation Agency Background Document

Agency name	Virginia Department of Education
Virginia Administrative Code (VAC) citation	8 VAC 20 -720-160 and 170 (new sections)
Regulation title	Regulations Governing Local School Boards and School Divisions
Action title	Add sections governing instructional materials and textbooks to the above named regulation
Date this document prepared	August 24, 2009

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 Board of Education currently has three sets of regulations governing textbooks and one set of regulations governing instructional materials. The regulations governing textbooks are: *Regulations Governing Textbook Adoption State Level* (8 VAC 20-220), *Regulations Governing Textbook Adoption Local Level* (8 VAC 20-230), and *Regulations Governing Textbook Fund Management and Handling on Local Level* (8 VAC 20-270). The regulations governing instructional materials are: *Regulations Governing Instructional Materials – Selection and Utilization by Local School Boards* (8 VAC 20-170). All of these regulations were adopted on or before September 1, 1980, have not been amended since that time and are out of date. The NOIRA to repeal the three regulations governing textbooks and include provisions regarding textbooks into the proposed *Regulations Governing Local School Boards and School Divisions* was published on July 7, 2008. The proposal to repeal the *Regulations Governing Instructional Materials – Selection and Utilization by Local School Boards* (8 VAC 20-170), and include provisions regarding instructional materials into the proposed *Regulations Governing Local School Boards and School Divisions* was included in the NOIRA that was published proposing the *Regulations Governing Local School Boards and School Divisions*, 8VAC20-720 et seq.

During the 2008 General Assembly, three bills were passed that impact the purchasing and provision of textbooks for Virginia’s public school students. These bills were HB 137, patroned by Delegate Chris Peace, HB 354, patroned by Delegate Mark Cole, and SB 356, patroned by Senator John Watkins. HB 137 and SB 356 are identical and were proposed by the Department of Education. HB 354 is identical, with the addition of a provision making it possible for any private school within a school division to purchase textbooks from the local school board’s contract with a publisher. These bills took effect on July 1, 2008.

The proposed regulation sections incorporate provisions from the three current Board of Education regulations as well as capturing the requirements of HB 137, HB 354 and SB 356 regarding textbook purchasing. These provisions relate to the approval of textbooks, basal textbooks, contracts with textbook publishers, and the selection of instructional materials by local school divisions. In addition, a number of provisions that are unnecessary, outdated, or are no longer required by the *Code of Virginia* are deleted.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

This proposal adds one definition to the *Regulations Governing Local School Boards and School Divisions*. Therefore, there are no acronyms or technical terms that are not defined in the definitions section of the *Regulations Governing Local School Boards and School Divisions*.

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.

Section 22.1-16 of the Code of Virginia provides that “The Board of Education may adopt bylaws for its own governance and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of this title.” Section 22.1-242 of the Code of Virginia, effective July 1, 2008, requires the Board of Education to “adopt regulations governing (i) the purchase of textbooks approved by it for use in the public schools directly from the publishers by school boards and (ii) the distribution of such textbooks for the use by children attending public schools in Virginia. Additionally, § 22.1-38 of the Code permits local school boards to use textbooks not approved by the Board of Education so long as the school board selects the books in accordance with regulations promulgated by the Board.

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.

The purpose of this proposal is to repeal the four current regulations and add to the *Regulations Governing Local School Boards and School Divisions*, 8 VAC 20-720, by creating sections governing instructional materials and textbooks. The current regulations governing instructional materials and textbooks will be repealed simultaneously with the adoption of the addition to the new *Regulations Governing Local School Boards and School Divisions*. These new sections will not become effective until after the *Regulations Governing Local School Boards and School Divisions* become final.

As noted earlier, the proposed regulation sections will capture the requirements of HB 137, HB 354 and SB 356 regarding textbook purchasing. These provisions relate to the approval of textbooks, basal textbooks, contacts with textbook publishers, and the selection of instructional materials by local school divisions. In addition, a number of provisions that are unnecessary, outdated, or are no longer required by the *Code of Virginia* are deleted. The goal of this proposal is to have regulations that comport with the *Code of Virginia* requirements governing textbooks and other statutes, such as the Virginia Procurement Act, while providing local school divisions and school boards more flexibility in the selection and purchasing of textbooks and instructional materials.

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 sections include provisions related to the approval of textbooks, basal textbooks, contracts with textbook publishers, the distribution of textbooks and consumable materials, and the selection of instructional materials by local school divisions. In addition, a number of provisions that are unnecessary, outdated, or are no longer required by the *Code of Virginia* are deleted.

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.

Section 22.1-242 of the Code of Virginia, effective July 1, 2008, requires the Board of Education to "adopt regulations governing (i) the purchase of textbooks approved by it for use in the public schools directly from the publishers by school boards and (ii) the distribution of such textbooks for the use by children attending public schools in Virginia. Additionally, § 22.1-38 of the Code permits local school boards to use textbooks not approved by the Board of Education so long as the school board selects the books in accordance with regulations promulgated by the Board. Therefore, the Board of Education must adopt these regulations in order to properly address the issue of textbooks and instructional materials.

This proposal is beneficial to the public as well as local school divisions in that the provisions will be up-to-date and will provide local school divisions with more flexibility without having a negative impact on the provision of educational services. The requirements regarding instructional materials and textbooks will be added to the *Regulations Governing Local School Boards and School Divisions* once they are final thus making them a part of one regulation with current regulatory requirements. This will eliminate the need to consult four separate regulations making it easier for school divisions to determine applicable

requirements. Additionally, the regulations regarding textbooks that have been placed into the one section will provide the requirements for today's educational programs and more directly reflect current business practices.

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.

All 132 school divisions may be affected as they purchase textbooks from their own contracts. However, this should create a positive impact as they negotiate their own contracts with publishers rather than relying on contracts negotiated by the Department of Education. It is not expected that any school division will bear a disproportionate material impact.

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, e-mail or fax to the Division for Policy and Communications, Virginia Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, (804) 225-2043; (804) 786-5389, Policy@doe.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.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed regulation 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.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures</p>	<p>It is anticipated that there will be little or no cost to the state to implement and enforce the proposed sections to the regulation.</p>
<p>Projected cost of the new regulation or changes to existing regulations on localities</p>	<p>It is impossible to estimate whether there will be an increased cost due to the varying nature of the 132 school divisions. The proposed amendments could reduce the administrative burden for school divisions as the local adoption process for textbooks is streamlined and simplified.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations</p>	<p>Textbook publishers and local school divisions and school boards.</p>
<p>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.</p>	<p>132 local school divisions and several textbook publishers may be affected. It is doubtful that any of the publishers qualify as small businesses as they are all national companies.</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and do 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>It is not possible to estimate a projected cost due to the varying nature of the local school divisions. The proposed amendments could reduce the administrative burden for school divisions as the local adoption process for textbooks is streamlined and simplified.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>Local school divisions will be able to continue to purchase their textbooks directly from publishers and will have more flexibility in the review and selection of those textbooks when locally adopted.</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.

The only alternative is to revise the four current regulations individually to update them and reflect changes made by the 2008 General Assembly. The addition of the requirements into two sections of the *Regulations Governing Local School Boards and School Divisions* when they are final will make the selection and purchasing of textbooks easier and more cost effective for school divisions without negatively impacting book publishers. Additionally, school divisions will have increased flexibility in the selection and purchasing of instructional materials.

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.

This agency does not regulate small businesses. The only businesses that should be affected, in any way, by these regulatory amendments are book publishers and it is anticipated that the impact will be positive rather than negative. Additionally, these publishers are not small businesses.

Public comment

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

The Board of Education approved the NOIRA for the addition of requirements regarding instructional materials on April 24, 2008 and the NOIRA for the addition of requirements regarding textbooks on May 21, 2008. Public comment periods were held following the publication of both NOIRAs on the Town Hall. The notice provided that comments would be accepted via mail, e-mail or facsimile. Additionally, time is always set aside at the Virginia Board of Education’s regular meetings for public comment. However, in spite of these efforts, no public comments were received following the publication of the NOIRAs.

Commenter	Comment	Agency response

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 proposed regulatory action is not expected to have a negative impact on the institution of the family and family stability. Schools are important institutions in communities. The impact of the proposed regulatory action on the institution of the family will be continued improvement in the public school system. Students must be adequately prepared for the future in order to lead productive lives. Being productive and successful will increase the potential for strong stable families.

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
8VAC 20-170-10	8VAC20-720-10	No definitions are provided.	A definition for "textbooks" has been added. Rationale: Ensure clarity in the use of the term and the responsibilities related to it.
8VAC 20-170-10	8VAC20-720-160	Provides that local school boards have the responsibility for the selection, approval and utilization of instructional materials. Also, states that in the selection of instructional materials, the local school board is responsible for: developing local criteria, approving materials, appointing a division evaluation committee, providing for the examination of materials by the committee, providing notice to parents that the books and materials under consideration will be available for review by interested citizens,	Streamlines the requirements for local boards to adopt in their policies and criteria for the selection of instructional materials. School divisions must include the following, at a minimum, but may include additional requirements at their discretion. <ul style="list-style-type: none"> • Instituting a policy regarding the rights or parents in accordance with the <i>Protection of Pupil Rights Amendment</i>, 20 U.S.C. § 123h, and its implementing regulation, 34 CFR 98; • Establishing procedures for the reconsideration of challenged materials; • Placing special emphasis on the thorough evaluation of materials related to controversial or sensitive topics; and • Include options for parents of students to withdraw them from class during the treatment of a sensitive or controversial topic.

		requesting special assistance in the evaluation of proposed materials, if desired, from the Department of Education, establishing procedures for the reconsideration of challenged materials; placing special emphasis on the thorough evaluation of sensitive materials; and including options for parents to withdraw students from class for the duration of the treatment of a sensitive or controversial topic.	Rationale: To ensure compliance with federal law in the first instance. The other three requirements have been retained to ensure their inclusion in the local school division's policy and criteria. All others were removed to grant local school divisions more flexibility and discretion in developing their process for selecting, approving and utilizing instructional materials.
8VAC20-220-10 through 30	8VAC20-720-170	Lists the subjects for which textbooks must be adopted for a six-year period according to a schedule adopted by the Department of Education and approved by the Board of Education; provided requirements for deletion of textbooks from the approved lists and the extension of contracts for adopted books; and, specified that only those materials designed to provide basic support for the instructional program will be adopted.	The new regulatory requirements do not include the names of the subjects for which textbooks must be purchased. Provides that the Board of Education has the authority to approve textbooks, shall report to local school boards those textbooks with a minimum decodability standard in accordance with § 22.1-239 of the <i>Code of Virginia</i> . Also, permits local school boards to use textbooks not approved by the Board provided the school board selects the textbooks in accordance with the proposed regulations. Rationale: To streamline the textbook selection process consistent with the legislation passed by the 2008 General Assembly. Additionally, to permit flexibility for local school divisions in the selection of textbooks on an as-needed basis.
8VAC20-220-40 through 70	8VAC20-720-170	Provides requirements regarding wholesale prices, allowances for delivery costs, maximum retail prices and price adjustment requests.	In accordance with § 22.1-241 of the Code of Virginia, local school divisions shall purchase textbooks approved by the Board of Education directly from publishers by either entering into written term contracts or issuing purchase orders. These written contracts or purchase orders are exempt from the Virginia Public Procurement Act and from any locally adopted regulations or procedures. Local school divisions are required to purchase non-Board approved textbooks by either entering into written contracts or issuing purchase orders on an as-needed basis in accordance with locally adopted procurement procedures or regulations that contain requirements for competitive purchasing or the Virginia Public Procurement Act. The textbook price shall not exceed the lowest wholesale price at which the book or books

			<p>covered by the contracts are currently bid anywhere in the United States. Local school divisions are required to certify annually that the textbooks have been selected and purchased in accordance with the Code of Virginia and these regulations to provide a list of all textbooks adopted by the local school board.</p> <p>Rationale: These provisions were written to comply with the newly revised sections of 22.1-241 of the Code of Virginia passed by the 2008 General Assembly and to provide school divisions with needed flexibility to secure textbooks in accordance with their needs while still being protected by correct purchasing practices.</p>
8VAC20-230-10 through 40	8VAC20-720-170	Provides for the local adoption of textbooks and materials; sets forth requirements for the local adoption of textbooks not on the state adopted list and for the local adoption of materials for subject areas not included in basal adoptions.	<p>Section B. provides for selection of textbooks by local school boards. It requires local school boards to adopt procedures for the selection of the textbooks and prescribes what the procedures must include, at a minimum. These include the appointment of an evaluation committee, notice to parents that textbooks under consideration for approval are available for review and public comment and the use of selection criteria that have been approved by the local school board.</p> <p>Rationale: Provides local school boards and divisions with needed flexibility to select textbooks, while providing parents and other interested citizens with the opportunity for public participation in the process.</p>
8VAC20-270-10 through 130	8VAC20-720-170	Provides general requirements for textbook fund management and handling on the local level. Also, sets requirements for: the establishment and designation of a special fund and bank account; textbook sales, receipts, and disbursements and bonds for clerk and other personnel handling the funds; accounting and records; verification of book shipments received; the selling of textbooks to students; transfers between funds; reports and payments to publishers; unsold textbooks; books for resale; responsibility for the	<p>None of these requirements have been included in the proposed regulation section on textbooks.</p> <p>Rationale: The majority of the provisions applied to the sale of textbooks, a practice that no longer exists. Additionally, other provisions no longer apply because textbooks are purchased in accordance with the <i>Virginia Public Procurement Act</i> (§§ 2.2-4300 et seq. of the Code of Virginia) which was not in existence at the time the current regulation was promulgated, and locally adopted regulations or procedures. Therefore, these requirements were unnecessary, and in some cases, did not comply with the Virginia Public Procurement Act and local regulations, procedures and practices.</p>

		placement of books in specific schools; audits and preservation of records; fire insurance on textbooks; retail sales of textbooks; and the issuance of warrants between board meetings.	
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