



## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	Department of Education
<b>Virginia Administrative Code (VAC) citation</b>	8 VAC 20-720-170
<b>Regulation title</b>	<i>Regulations Governing Local School Boards and School Divisions</i>
<b>Action title</b>	Revisions to the <i>Regulations Governing Local School Boards and School Divisions</i> would incorporate the Board of Education's <i>Guidelines for Local Textbook Approval</i> , thus changing them from optional guidelines to required regulations.
<b>Date this document prepared</b>	March 1, 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

On September 22, 2011, the Board of Education adopted [Guidelines for Local Textbook Approval](#) to assist school divisions as they review and approve textbooks at the local level. The *Guidelines* encourage local school boards that opt to use a textbook that has not been approved by the Board of Education to conduct a local textbook review that includes components similar to the state level review. Revisions to the *Regulations Governing Local School Boards and School Divisions* include the addition of provisions of the Board of Education's *Guidelines for Local Textbook Approval*, thus changing them from optional guidelines to required regulations.

### 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 Board of Education received the proposed revised *Regulations Governing Local School Boards and School Divisions* for first review on January 10, 2013, with final approval on February 28, 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.*

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*Constitution of Virginia (Article VIII, Section 5): “[The Board of Education] . . . shall have authority to approve textbooks and instructional aids and materials for use in courses in the public schools of the Commonwealth. . . .”*

*Code of Virginia, Section 22.1-16. Bylaws and regulations generally. The Board of Education may adopt bylaws for its own government and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of this title.*

## 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.*

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On September 22, 2011, the Board of Education adopted [Guidelines for Local Textbook Approval](#) to assist school divisions as they review and approve textbooks at the local level. The *Guidelines* encourage local school boards that opt to use a textbook that has not been approved by the Board of Education to conduct a local textbook review that includes components similar to the state level review. Revisions to the *Regulations Governing Local School Boards and School Divisions* include provisions of the Board of Education's *Guidelines for Local Textbook Approval*, thus changing them from optional guidelines to required regulations.

## 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.*

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The Board of Education is adding to existing regulations content from guidelines it has already reviewed and approved.

## 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.*

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The changes in the regulations would require local school boards that opt to use a textbook that has not been approved by the Board of Education to conduct a local textbook review that includes components similar to the state level review. Such components include a correlation with the Standards of Learning for the particular subject area, if they exist, and a review of strengths and weaknesses in instructional planning and support. Additionally, the publisher of the textbook must certify the accuracy of the content of the textbook and sign an agreement to correct all factual and editing errors found in a textbook, at its expense. Finally, the publisher must certify that the books meet other requirements of the *Code of Virginia* related to textbooks.

## 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.*

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The *Regulations Governing Local School Boards and School Divisions* set forth the requirements for local school boards and school divisions to review and approve instructional materials and textbooks. The primary advantage of the review of the regulations is that they address the quality of materials used in Virginia classrooms.

## 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.*

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There are no applicable federal requirements for review of textbooks.

## 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.*

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These regulations will affect all localities that opt to adopt textbooks that are not on the list of textbooks approved by the Board of Education.

**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.*

No specific alternatives exist. Revisions to the *Regulations Governing Local School Boards and School Divisions* require regulatory action.

**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.*

<b>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</b>	None
<b>Projected cost of the new regulations or changes to existing regulations on localities.</b>	There would be some effort required for local school divisions to seek from textbook publishers a certification that the content of their textbooks is accurate and an agreement to correct errors at their own expense.
<b>Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.</b>	School personnel will have to seek certifications and agreements from textbook publishers. Textbook publishers will have to certify the accuracy of their textbooks and agree to correct errors at their own expense.
<b>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.</b> 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.	Approximately 20 publishing companies are listed as having one or more books on the list of textbooks approved by the Board of Education. There are numerous other publishing houses that may market their materials directly to local school divisions.
<b>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. 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</b>	There would be some effort required for local school divisions to seek from textbook publishers a certification that the content of their textbooks is accurate and an agreement to correct errors at their own expense. There would be some effort required of publishers to complete the certifications and agreements. The cost to publishers to correct errors in textbooks would depend on the number of errors that must be corrected in textbooks

<p><b>purposes that are a consequence of the proposed regulatory changes or new regulations.</b></p>	<p>purchased by school divisions.</p>
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>To ensure the quality of textbooks used in Virginia's classrooms.</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.*

No specific alternatives exist. Revisions to the *Regulations Governing Local School Boards and School Divisions* require regulatory action.

**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 *Regulations Governing Local School Boards and School Divisions* set forth the requirements for local school boards and school divisions to review and approve instructional materials and textbooks. The review of the regulations will have a positive impact on the family since the requirements will address the quality of materials used in Virginia classrooms.

**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.*

For changes to existing regulation(s), use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
8VAC20-720-170	NA	<p>A. Textbook approval.</p> <ol style="list-style-type: none"> <li>1. The Board of Education shall have the authority to approve textbooks for use in the public schools of Virginia.</li> <li>2. In approving basal textbooks for reading in kindergarten and first grade, the board shall report to local school boards those textbooks with a minimum decodability standard based on words that students can correctly read by properly attaching speech sounds to each letter to formulate the word at 70% or above for such textbooks in accordance with § 22.1-239 of the Code of Virginia.</li> <li>3. Any local school board may use textbooks not approved by the board provided the local school board selects such books in accordance with this chapter.</li> <li>4. Contracts and purchase orders with publishers of textbooks approved by the board for use in grades 6-12 shall allow for the purchase of printed textbooks, printed textbooks with electronic files, or electronic textbooks separate and apart from printed versions of the same textbook. Each <b>local</b> school board shall have the authority to purchase an assortment of textbooks in any of the three forms listed in this subdivision.</li> </ol>	<p>A. Textbook approval.</p> <ol style="list-style-type: none"> <li>1. The Board of Education shall have the authority to approve textbooks for use in the public schools of Virginia.</li> <li>2. In approving basal textbooks for reading in kindergarten and first grade, the <b>Board of Education board</b> shall report to local school boards those textbooks with a minimum decodability standard based on words that students can correctly read by properly attaching speech sounds to each letter to formulate the word at 70% or above for such textbooks in accordance with § 22.1-239 of the Code of Virginia.</li> <li>3. Any local school board may use textbooks not approved by the <b>Board of Education board</b> provided the <b>local</b> school board selects such books in accordance with this chapter.</li> <li>4. Contracts and purchase orders with publishers of textbooks approved by the <b>Board of Education board</b> for use in grades 6-12 shall allow for the purchase of printed textbooks, printed textbooks with electronic files, or electronic textbooks separate and apart from printed versions of the same textbook. Each <b>local</b> school board shall have the authority to purchase an assortment of textbooks in any of the three forms listed in this subdivision.</li> </ol>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
			<p><u>Intent, Rationale, and Impact</u>                      The intent, rational, and impact are to provide clarity regarding the responsibilities of both the state Board of Education and local school boards.</p>
8VAC20-720-170	NA	<p>B. Selection of textbooks by local school boards. Local school boards shall adopt procedures for the selection of textbooks. These procedures shall include, at a minimum, the following:</p> <ol style="list-style-type: none"> <li>1. Appointment of evaluation committees by the local school board to review and evaluate textbooks in each of the subject areas.</li> <li>2. Notice to parents that textbooks under consideration for approval will be listed on the school division's website and made available at designated locations for review by any interested citizens.</li> <li>3. Opportunities for those reviewing such textbooks to present their comments and observations, if any, to the school board through locally approved procedures.</li> <li>4. Procedures to ensure appropriate consideration of citizen comments and observations.</li> <li>5. Selection criteria.</li> </ol>	<p>B. <b><u>Procedures for S</u></b>selection of textbooks by local school boards. Local school boards shall adopt procedures for the selection of textbooks. These procedures shall include, at a minimum, the following:</p> <ol style="list-style-type: none"> <li>1. Appointment of evaluation committees by the local school board to review and evaluate textbooks in each of the subject areas.</li> <li>2. Notice to parents that textbooks under consideration for approval will be listed on the school division's website and made available at designated locations for review by any interested citizens.</li> <li>3. Opportunities for those reviewing such textbooks to present their comments and observations, if any, to the <b><u>local</u></b> school board through locally approved procedures.</li> <li>4. Procedures to ensure appropriate consideration of citizen comments and observations.</li> <li>5. Selection criteria.</li> </ol> <p><u>Intent, Rationale, and Impact</u>                      The intent, rational, and impact are to provide clarity regarding the responsibilities of both the state Board of Education and local school boards.</p>
8VAC20-720-170	C	Any local school board may use textbooks not approved by the Board of Education provided it	C. Local school board selection of textbooks other than those approved by the Board of Education.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
		meets certain criteria.	<ol style="list-style-type: none"> <li>1. The selection process for non-Board of Education approved textbooks is subject to the procedures outlined in Section B.</li> <li>2. The selection process for such textbooks <b><u>pertaining to Virginia Standards of Learning</u></b> shall include at the local level a correlation of the content to the Virginia Standards of Learning in the content area and an analysis of strengths and weaknesses of the textbook in terms of instructional planning and support.</li> <li>3. The publisher of such textbooks shall:               <ol style="list-style-type: none"> <li>a. provide to the local school board a certification that the content of the textbook is accurate; and</li> <li>b. sign an agreement with the local school board to correct all factual and editing errors found in a textbook, at its own expense.</li> </ol> </li> </ol> <p><u>Intent, Rationale, and Impact</u>            The additions to the regulations are intended to ensure quality textbooks for students in Virginia. These regulations will provide protections to school divisions that adopt textbooks that are not on the list of textbooks approved by the Board of Education.</p>