



townhall.virginia.gov

Fast-Track Regulation Agency Background Document

Agency name	Virginia Department of Education
Virginia Administrative Code (VAC) citation(s)	8 VAC 20-521
Regulation title(s)	<i>Regulations Governing Reduction of State Aid When Length of School Term Below 180 Teaching Days or 990 Teaching Hours</i>
Action title	Revisions to the regulations to comport with legislation approved during the 2015 General Assembly session.
Date this document prepared	October 12, 2015

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation.

The Virginia Board of Education is proposing amendments to these regulations that are needed to ensure that the regulations comport with legislative changes made by the General Assembly during the 2015 session.

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.

N/A

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.

It is anticipated that the Board of Education will authorize the Department of Education to proceed with the fast track revision to the regulation at its November 19, 2015, meeting.

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.

Section 22.1-16 of the *Code of Virginia* vests the Board of Education with the authority to promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of Title 22.1. Section 22.1-98 of the *Code of Virginia* prescribes the circumstances under which state aid to school divisions shall be reduced when the length of the school term falls below 180 teaching days or 990 teaching hours. SB 1021 (2015) amended this *Code* section to permit the Board of Education to waive the requirement that school divisions provide additional teaching days or teaching hours to compensate for school closings resulting from severe weather conditions or other emergency situations. At present, the authority to waive the requirement only extends to school closings resulting from a declared state of emergency.

Purpose

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

Amendments to these regulations are necessary in order to comport with changes made by SB 1021, which was approved by the 2015 General Assembly. SB 1021 expanded the circumstances under which the Board of Education is authorized to waive the requirement that school divisions provide additional teaching days or teaching hours to compensate for school closings to include closings resulting from severe weather conditions or other emergency situations. At present, such waiver authority is only applicable to school closings resulting from a declared state of emergency.

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?

The fast track rulemaking process is for regulations expected to be noncontroversial. This revision is

noncontroversial because its only purpose is to address legislation that was adopted during the 2015 session of the General Assembly.

Substance

Please 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 proposed amendments to this regulation simply expand the circumstances under which the Board of Education is authorized to waive the requirement that school divisions provide additional teaching days or teaching hours to compensate for school closings. These amendments are necessary to comport with legislation approved by the 2015 General Assembly. Virginia law specifies the minimum number of instructional hours or days required for local school divisions to receive basic aid funding from the state. Section 22.1-98 of the *Code of Virginia* requires the length of every school's term in every school division to be at least 180 teaching days or 990 teaching hours in any school year but specifies certain exceptions to the minimum days or hours. When severe weather conditions or other emergency situations have resulted in school closings, the schedule of make-up days in this section requires:

- full make up of lost days when lost instructional time has been for five or fewer days, or
- make-up of the first five days plus one day for each additional two days missed when lost time equals six days or more, or
- instructional hours equivalent to such missed teaching days to meet the minimum 990 teaching hour requirement, or
- a Board of Education waiver from providing additional teaching days or teaching hours if the closings resulted from a declared state of emergency or severe weather conditions or other emergency situations.

While SB 1021 (2015) expanded the circumstances under which the Board may grant a waiver (to include closings resulting from severe weather conditions or other emergency situations), the Board of Education must still determine whether school division requests meet that standard. In addition, school divisions must still provide evidence of efforts to reschedule as many days as possible and certification by the division superintendent and chairman of the local school board that every reasonable effort for making up lost teaching days or teaching hours was exhausted before requesting a waiver. If the waiver is approved, the regulations authorize the Superintendent of Public Instruction to approve reductions in the school term without a proportionate reduction in the amount paid by the Commonwealth from the Basic School Aid Fund.

It is important to note that § 22.1-98 of the *Code of Virginia*, as well as the regulations currently in effect, contain the following definitions that are pertinent to this regulatory action:

"Declared state of emergency" means the declaration of an emergency before or after an event by the Governor or by officials in a locality that requires the closure of any or all schools within a school division.

"Severe weather conditions or other emergency situations" means those circumstances presenting a threat to the health or safety of students that result from severe weather conditions or other emergencies, including, but not limited to, natural and man-made disasters, energy shortages or power failures.

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.

There are no disadvantages to the public, the agency, or the Commonwealth. These revisions are required by changes in the *Code of Virginia* adopted by the Virginia General Assembly. The advantage to all parties is that the amended regulation will comport with the *Code of Virginia* by specifying that the Board of Education has the authority to waive the requirement that school divisions provide additional teaching days or teaching hours to compensate for school closings resulting from severe weather conditions or other emergency situations. When the length of the school term falls below 180 teaching days or 990 teaching hours, there is a proportionate reduction in the amount paid by the Commonwealth from the Basic School Aid Fund unless the school division is able to secure a waiver from the Board of Education.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no 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 local school boards and school divisions will be affected.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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.

These amendments are proposed to ensure compliance with the *Code of Virginia*. Therefore, there are no alternative regulatory methods that will accomplish the objectives of the statutory requirements. In addition, there is no adverse impact on small businesses.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures	Minimal
Projected cost of the new regulations or changes to existing regulations on localities.	None
Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.	Local school boards and local school divisions
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: 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.	132 local school divisions and local school boards. No small businesses.
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 including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) 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.	None
Beneficial impact the regulation is designed to produce.	The proposed amendments to the regulations are designed to ensure that all local school boards and school divisions are aware of the Board of Education’s expanded authority to grant waivers from the required length of the school term, pursuant to legislation approved during the 2015 legislative session.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

There are no viable alternatives to revisions of the regulations.

Public participation notice

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.

Periodic review and small business impact review report of findings

If this fast-track is the result of a periodic review/small business impact review, use this form to report the agency's findings. Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review and (2) indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

Commenter	Comment	Agency response

This regulatory action is not the result of a periodic review/small business impact review and will not affect small businesses.

Family impact

Please assess the impact of this 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.

There should not be any impact on the institution of the family or family stability. The proposed amendments to this regulation simply extend the Board of Education's waiver authority with respect to the length of the school term to include school closings resulting from severe weather conditions or other emergency situations. School divisions must still provide evidence of efforts to reschedule as many days as possible and certification by the division superintendent and chairman of the local school board that every reasonable effort for making up lost teaching days or teaching hours was exhausted before

requesting a waiver. If the waiver is approved, the regulations authorize the Superintendent of Public Instruction to approve reductions in the school term without a proportionate reduction in the amount paid by the Commonwealth from the Basic School Aid Fund; therefore, school divisions that secure a waiver from the Board of Education will not be penalized when their schools are closed as a result of severe weather conditions or other emergency situations.

Detail of changes

*Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. 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
8VAC20-521-40		The Board of Education's waiver authority applies to school closings resulting from a declared state of emergency only.	The proposed amendment expands the Board's waiver authority to include school closings resulting from severe weather conditions or other emergency situations in addition to a declared state of emergency. This is consistent with the provisions of § 22.1-98 of the <i>Code of Virginia</i> , as amended by SB 1021 (2015).
8VAC20-521-50		There will be no proportionate reduction in the amount paid by the Commonwealth from the Basic School Aid Fund if a local school division obtains a waiver for closings resulting from a declared state of emergency.	The proposed amendment provides that there will also be no proportionate reduction in the amount paid by the Commonwealth from the Basic School Aid Fund if a local school division obtains a waiver for closings resulting from severe weather conditions or other emergency situations. This is consistent with the provisions of § 22.1-98 of the <i>Code of Virginia</i> , as amended by SB 1021 (2015).