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Exempt Action Final Regulation Agency Background Document

Agency name	Virginia Department of Education/Board of Education
Virginia Administrative Code (VAC) citation(s)	8 VAC 20-521-40 and 8 VAC-521-50
Regulation title(s)	Regulations Governing Reduction of State Aid When Length of School Term Below 180 Teaching Days or 990 Hours
Action title	Adding evacuations to the regulations on waivers for school closings
Final agency action date	July 25, 2019
Date this document prepared	July 5, 2019

While a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The Board of Education's *Regulations Governing Reduction of State Aid When Length of School Term Below 180 Teaching Days or 990 Hours* implement statutory requirements in Va. Code § 22.1-98. Per Va. Code § 22.1-98, if a school fails to meet the minimum instructional time - 180 teaching days or 990 teaching hours – the amount paid by the Commonwealth from the Basic School Aid Fund shall be reduced in the same proportion as the length of the school term has been reduced in any school or the schools in the school division from 180 teaching days or 990 teaching hours. When a school is unable to make up for instructional time lost due to a declared state of emergency, severe weather conditions, or other emergency situations, § 22.1-98 and 8 VAC 20-521-40 allow the local school board to apply to the Board of Education to have the instructional time requirement waived without penalty in state or local aid.

Pursuant to Chapters 644 and 645 of the 2019 Acts of Assembly, the Board of Education is now required to waive the requirement that school divisions provide additional teaching days or teaching hours to compensate for school closings resulting from an evacuation directed and compelled by the Governor for up to five teaching days. For such waivers, the local school division must apply and demonstrate certified evidence of its efforts to reschedule as many days as possible. As with cases of a declared state of emergency, severe weather conditions, or other emergency situations, waiver applications for time lost due an evacuation directed and compelled by the Governor may be approved by the Superintendent of Public Instruction, as the Board has delegated such authority. The legislation further provides that there shall be no proportionate reduction in the amount paid by the Commonwealth from the Basic School Aid Fund or the amount paid by a local governing body. The revisions to the *Regulations Governing Reduction of State Aid When Length of School Term Below 180 Teaching Days or 990 Hours* reflect this statutory change.

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, board decision, etc.). "Mandate" is defined as "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

Revisions to the *Regulations Governing Reduction of State Aid When Length of School Term Below 180 Teaching Days or 990 Hours* were mandated by Chapters 644 and 645 (House Bill 2124 and Senate Bill 1269) of the 2019 Acts of Assembly, effective July 1, 2019.

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.

On July 25, 2019, the Board of Education adopted final amendments to 8VAC20-521-40 and 8VAC20-521-50, *Regulations Governing Reduction of State Aid When Length of School Term Below 180 Teaching Days or 990 Hours*.

Periodic Review Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the proposed stage, please indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.

In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, 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.

This form is not being used to announce a periodic review or a small business impact review.

- (1) There is a continued need for the Regulations Governing Reduction of State Aid When Length of School Term Below 180 Teaching Days or 990 as it allows the Board of Education to execute statutory requirements in §22.1-98 and delegates the authority to field, review, and approve waiver applications to the Superintendent of Public Instruction.
- (2) Following the evacuations directed and compelled by the Governor during the 2018 hurricane season, several school divisions communicated concern about lost instructional time. This feedback resulted in House Bill 2124 and Senate Bill 1269
- (3) The regulation is not overly complex and is easily understandable for school administrators and school board members.
- (4) This regulation does not overlap, duplicate, or conflict with federal or state law or regulations.
- (5) The regulation was last amended December 1, 2016 in response to legislation that 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, including severe weather or other emergency situations. The regulations were evaluated during this revision period and there has been no change to relevant factors, including technological or economic conditions, in areas affected by the regulation.