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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Department of Health
Virginia Administrative Code (VAC) Chapter citation(s)	12VAC5-110
VAC Chapter title(s)	Regulations for the Immunization of School Children
Action title	Amend Regulations to Conform to Chapter 1223 of the 2020 Acts of Assembly
Date this document prepared	February 3, 2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

This amendment to the Regulations for the Immunization of School Children is necessary to maintain conformity with the Code of Virginia following language added in Chapter 1223 of the 2020 General Assembly Regular Session.

As a result of that action, the list of minimum requirements for school required immunization in section 32.1-46 was amended to include additional vaccine requirements. This amendment to the regulations will bring them into compliance with the list specified in the Code of Virginia.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

There are no terms that are not already defined.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

Chapter 1223 of the 2020 General Assembly Regular Session requires the Virginia Department of Health to update the Regulations for the Immunization of School Children to conform school immunization requirements to the minimum requirements specified in § 32.1-46.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Statutory authority to promulgate these regulations is granted to the State Board of Health by §§ 22.1-271.2 and 32.1-46 of the Code of Virginia. Penalties are established in § 32.1-27 of the Code of Virginia.

Further, § 32.1-46 subsection C provides that amendments to these regulations by the Board of Health shall be exempt from the requirements of Article 2 of the Administrative Process Act. However, the Board of Health shall provide a Notice of Intended Regulatory Action and provide for a 60 day public comment period prior to adoption of the regulations.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The Regulations for the Immunization of School Children are designed to clarify immunization requirements for attendance at a public or private elementary, middle or secondary school, child care center, nursery school, family day care home, or developmental center as required by § 32.1-46 of the Code of Virginia.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

The proposed amendments seek to update the Regulations for the Immunization of School Children in order to adhere to the minimum immunization requirements specified in § 32.1-46. The proposed amendments are listed below and are consistent with language added to the Code of Virginia as a result of Chapter 1223 of the 2020 Regular Session.

- Update 12VAC5-110-10 to
 - Include the term “Adequately Immunized” in the definition of “Adequate Immunization”
 - Amend the definition of “Immunization Schedule” in 12VAC5-110-10 to reference the 2021 Recommended Immunization Schedules for Children and Adolescents Aged 18 Years or Younger developed and published by the Centers for Disease Control and Prevention (CDC), the Advisory Committee on Immunization Practices (ACIP), the American Academy of Pediatrics (AAP), and the American Academy of Family Physicians (AAFP).
- Update the purpose in 12VAC5-110-20 of the regulations such that it no longer contains specific vaccines.
- Amend the language in 12VAC5-110-50 to reference the exemption to the Administrative Process Act, requirement for a NOIRA, and a 60 day public comment period
- Update 12VAC5-110-70 to
 - Amend the varicella requirement to clarify that children shall receive two properly spaced doses of varicella vaccine and that the first dose shall be administered at age 12 months or older.
 - Amend the HPV requirement to clarify that there shall be two doses of properly spaced HPV vaccine, regardless of gender, and that the first dose shall be administered before the child enters the 7th grade.
 - Add a requirement for rotavirus to state that children shall have two or three properly spaced doses of rotavirus vaccine, depending on the manufacturer, for children up to eight months of age
 - A requirement for hepatitis A vaccine has been added to state that children shall have two properly spaced doses of hepatitis A vaccine and the first dose shall be administered at age 12 months or older.
 - Add a requirement for meningococcal conjugate vaccine to state that children shall have two properly spaced doses of meningococcal conjugate vaccine, that the first dose shall be administered prior to entry to seventh grade, and that the second dose shall be administered prior to entry to twelfth grade.
- Update 12VAC5-110-90 to
 - Clarify exclusion language so as to not use a term defined to mean something else in the regulations (immunization schedule)
 - Amend subsection H to clarify update HPV requirements
- Amend Documents Incorporated by Reference to incorporate the most recent version of the Recommended Immunization Schedule for Children and Adolescents Aged 18 Years or Younger

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

In light of the clear, specific, and mandatory authority of the State Board of Health to promulgate the proposed amendments to the regulations, no alternatives are available that are advisable.

Periodic Review and Small Business Impact Review Announcement

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

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Board of Health is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Kristin Collins, 109 Governor St., Richmond, VA 23219, Epi-Comments@vdh.virginia.gov, 804-864-7298. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.