



Proposed Regulation Agency Background Document

Agency name	Department of Education
Virginia Administrative Code (VAC) citation	8 VAC 20 - 710
Regulation title	Regulations Governing the Process for Submitting Proposals to Consolidate School Divisions
Action title	Submission of proposed regulations that will governing the proposals for the consolidation of school divisions.
Document preparation date	August 2, 2005

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) 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.

This is a new regulation that is required by the amendment of § 22.1-25 of the Code of Virginia by the 2004 General Assembly. The amendment directs the Board of Education to promulgate regulations providing for a process by which school divisions may submit proposals for consolidation. The new regulation must be promulgated to comply with the terms of the amendment. Section 22.1-25, as amended, stipulates the information and data to be submitted by school divisions in their proposals for consolidation, the criteria that must be considered by the Board of Education in reviewing the proposals and a process for public participation in the process. The proposed regulations also include a section detailing the statutory authority, a definitions section, and additional administration and consolidation process requirements.

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.

The Code of Virginia, § 22.1-25, requires the Board of Education to promulgate regulations that provide for a process whereby school divisions may submit proposals for the consolidation of such school divisions. This mandate is the result of actions taken by the 2004 General Assembly, Chapter 917, 2004 Acts of Assembly.

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 and the problems the proposal is intended to solve.

The purpose of this proposed regulation is to provide a process whereby school divisions may submit proposals for the consolidation of school divisions. The regulatory action is essential because it is required by action taken by the 2004 General Assembly that amended § 22.1-25 of the Code of Virginia to require these regulations. It is intended to address situations where school divisions wish to consolidate.

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.)

This is a new regulation required by § 22.1-25 of the Code of Virginia, as amended by the 2004 General Assembly. The substantive provisions include the required components of school division consolidation proposals, the criteria that the Board of Education must consider in determining appropriate school divisions for consolidation, timelines for required submission of the request for consolidation and notification by the Superintendent of Public Instruction and an opportunity for public comment on the proposed consolidation.

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.

The proposed regulation action does not pose any disadvantages to the public or the Commonwealth. It is intended to facilitate the consolidation of school divisions at their request. The public is afforded the opportunity to participate in the process and officials of each locality must consent to the consolidation.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

The impact on resources of the development and implementation of these regulations is not expected to be significant. However, the regulations are required by § 22.1-25 to provide for an incentive for the consolidation of school divisions by providing for the adjustment of the composite index of local ability to pay, as provided in the appropriation act. If school divisions choose to take advantage of this provision, there would be an increase in general fund costs, and a corresponding decrease in local costs for the applicable school divisions.

<p>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</p>	<p>The projected cost to implement this regulation cannot be quantified for several reasons.</p> <ul style="list-style-type: none"> • The number of divisions choosing to enter into consolidation agreements is not known. • If a division chooses to enter into such agreements, it must meet the criteria outlined in the regulation and have the agreement approved by the Board. • Each division has a unique composite index based upon a number of factors, including Average Daily Membership (ADM), adjusted gross income, and state and local population. Every proposal for consolidation has a different fiscal impact depending upon these factors. <p>Consequently, the fiscal impact of proposed consolidations would be examined on a case-by-case basis. Furthermore, the current Appropriation Act (Chapter 951, 2005 Acts of Assembly) states the following:</p> <p style="padding-left: 40px;">b.1) Pursuant to § 15.2-1302, Code of Virginia, and in the event that two or more school divisions become one school division, whether by consolidation of only the school divisions or by consolidation of the local governments, such resulting division shall be paid Standard of Quality payments for all pupils in the combined division on the basis of a composite index determined by the Board of Education, which shall not be less than the lowest nor higher than the highest composite index of any of the individual school divisions involved in such consolidation. In the event of a consolidation of</p>
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	<p>local governments, this index shall remain in effect for a period of fifteen years, unless a lower composite index is calculated through the process for computing an index figure for each locality as set forth above. The Governor shall approve the composite index determined by the Board of Education prior to disbursement of funds under such index. The Department shall annually report to the Chairmen of the House Appropriations and Senate Finance Committees the composite indices approved by the Governor and the Board under this provision.</p> <p>The Appropriation Act currently allows for the practice of school division consolidation and for the use of an alternative composite index of local ability-to-pay.</p> <p>Any consolidation proposals approved by the Board and implemented by school divisions would result in a long-term fiscal impact.</p>
<p>Projected cost of the regulation on localities</p>	<p>This information cannot be estimated for the purposes noted above.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>School division consolidations would impact students, parents, and the local governing bodies of the respective divisions, as well as local businesses and school board employees.</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>This information cannot be estimated for the purposes noted above.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>Projected costs are unknown. However, it is assumed that costs will be incurred related to the development of consolidation proposals and public hearings related to the proposals.</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.

There are no alternatives to this regulation. It is required by § 22.1-25 of the Code of Virginia, as amended by the 2004 General Assembly.

Public comment

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

Commenter	Comment	Agency response

No comments were received.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

There does not appear to be an impact on the institution of the family and family stability.

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

These are new regulations. Most of the provisions are required by § 22.1-25 of the Code of Virginia, as amended by the 2004 General Assembly.

The first section of the regulation, 8 VAC 20-710-10, provides the statutory authority for their promulgation. The second section, 8 VAC 20-710-20, provides definitions. The third section, 8 VAC 20-710-30, provides for the administration of the regulations. This section details consent and notice requirements and the following criteria that the Board of Education is required to consider in determining appropriate school divisions.

- The school-age population of the school division proposed to be divided or consolidated;

- The potential of the proposed school division to facilitate the offering of a comprehensive program for kindergarten through grade 12 at the level of the established standards of quality;
- The potential of the proposed school division to promote efficiency in the use of school facilities and school personnel and economy of operation;
- Anticipated increase or decrease in the number of children of school age in the proposed school division;
- Geographical area and topographical features as they relate to existing or available transportation facilities designed to render reasonable access by pupils to existing or contemplated school facilities; and
- The ability of each existing school division to meet the standards of quality with its own resources and facilities or in cooperation with another school division or divisions if arrangements for such cooperation have been made.

The fourth section of the regulation, 8 VAC 20-710-40, prescribes the consolidation process, including the date by which the proposal must be submitted to the Board of Education, a list of information and data that must be included in each proposal and an opportunity for public comment on the proposed consolidation. The list includes:

- The criteria set forth above;
- Evidence of the cost savings to be realized by the consolidation;
- A plan for the transfer of title to school board property to the resulting combined school board governing the consolidated division;
- Procedures and a schedule for the proposed consolidation, including completion of current division superintendent and school board member terms;
- A plan for proportional school board representation of the localities comprising the new school division, including details regarding the appointment or election processes currently ensuring such representation and other information as may be necessary to evidence compliance with federal and state laws governing voting rights;
- Evidence of local support for the proposed consolidation;
- A plan for maintaining and/or combining schools;
- A plan to continue meeting the standards of accreditation; and
- Documentation that both governing bodies and both school boards consent to the proposed consolidation.