

Board of Education Agenda Item

Item: _____ D. _____

Date: _____ May 21, 2008 _____

Topic: First Review of a Notice of Intended Regulatory Action (NOIRA) to Amend and Consolidate Regulations Governing Textbook Adoption State Level (8 VAC 20-220-10 et seq.), Regulations Governing Textbook Adoption Local Level (8 VAC 20-230-10 et seq.), and Regulations Governing Textbook Fund Management and Handling on Local Level (8 VAC 20-270-10 et seq.)

Presenter: Ms. Anne D. Wescott, Assistant Superintendent for Policy and Communications

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Origin:

Topic presented for information only (no board action required)

Board review required by
 State or federal law or regulation
 Board of Education regulation
 Other: _____

Action requested at this meeting Action requested at future meeting: _____

Previous Review/Action:

No previous board review/action
 Previous review/action
date _____
action _____

Background Information: The Board of Education currently has three regulations governing textbooks. They are the *Regulations Governing Textbook Adoption State Level*, 8 VAC 20-220-10 et seq., *Regulations Governing Textbook Adoption Local Level*, 8 VAC 20-230-10 et seq., and *Regulations Governing Textbook Fund Management and Handling on Local Level*, 8 VAC 20-270-10, et seq. All of these regulations were adopted on or before September 1, 1980, have not been amended since that time and are out of date.

During the 2008 General Assembly, three bills were passed that impact the purchasing and provision of textbooks for Virginia's public school students. These bills were HB 137, patroned by Delegate Chris Peace, HB 354, patroned by Delegate Mark Cole and SB 356, patroned by Senator John Watkins. HB 137 and SB 356 are identical and were proposed by the Department of Education. HB 354 is identical, with the addition of a provision making it possible for any private school within a school division to purchase textbooks from the local school board's contract. These bills will all take effect on July 1, 2008.

The purpose of this proposal is to repeal the three current regulations and create a new regulation. The three current regulations would be repealed simultaneously with the adoption of the new regulation. The new regulation would capture the requirements of the bills passed by the 2008 General Assembly as well any appropriate requirements in the three current regulations.

Summary of Major Elements: The attached Notice of Intended Regulatory Action (NOIRA) Background Document summarizes the major elements of this project. As noted above, this proposal is to repeal the three current regulations and create a new regulation. The new regulation will capture the requirements of HB 137, HB 354 and HB 356, all passed by the 2008 General Assembly, relating to textbook purchasing. The regulation will include provisions for the approval of textbooks, basal textbooks, contracts with textbook publishers, and the distribution of textbooks and consumable materials. The three current regulations to be consolidated into the new regulation and then repealed are attached. They are:

8 VAC 20-220-10 et seq.	Regulations Governing Textbook Adoption State Level
8 VAC 20-230-10 et seq.	Regulations Governing Textbook Adoption Local Level
8 VAC 20-270-10 et seq.	Regulations Governing Textbook Fund Management and Handling on Local Level

When these regulations have been consolidated, the current individual regulations will be repealed simultaneously with the promulgation of the new regulation.

Superintendent's Recommendation: The Superintendent of Public Instruction recommends that the Board of Education waive first review and authorize the Department of Education staff to proceed with the requirements of the Administrative Process Act.

Impact on Resources: The administrative impact for the review and revision of these regulations is not expected to be unduly burdensome on the Department of Education and is expected to have a minimal to no fiscal or administrative impact on the local school divisions.

Timetable for Further Review/Action: The timetable for further action will be governed by the requirements of the Administrative Process Act.

Regulations Governing Textbook Adoption State Level

8VAC20-220-10. Adoption period established.

Textbooks shall be adopted for a six-year period, according to a schedule to be determined by the Department of Education and approved by the Board of Education in the following areas:

1. Elementary:
 - a. Language and grammar;
 - b. Social studies;
 - c. Mathematics;
 - d. Health;
 - e. Dictionaries;
 - f. Science;
 - g. Reading;
 - h. Spelling; and
 - i. Handwriting.
2. Secondary:
 - a. Literature;
 - b. Speech;
 - c. Drama;
 - d. Journalism;
 - e. English, grammar, and composition;
 - f. Physical science;
 - g. Earth-space science;

- h. Biology;
- i. Chemistry;
- j. Physics;
- k. World history;
- l. United States history;
- m. United States government;
- n. Economics;
- o. Mathematics;
- p. Health;
- q. Dictionaries;
- r. Sociology;
- s. Geography; and
- t. Foreign Languages.

8VAC20-220-20. Deletion from approved lists within adoption period; extension of contracts for adopted books.

An adopted book may be deleted from the approved list within the six-year period in accordance with statutory provisions; and contracts for certain books currently adopted as well as those which may be adopted from such areas as writing, spelling, and literature (anthologies) may be extended up to four years in accordance with statutory provisions.

8VAC20-220-30. Types of materials adopted.

Only those materials which are designed to provide basic support for the instructional program of a particular content area at an appropriate level will be adopted.

8VAC20-220-40. Wholesale prices.

Contracts with the publishers shall be made for all textbooks at the wholesale prices free on board publishers' nearest shipping point.

8VAC20-220-50. Allowance for delivery costs.

A percentage determined by the Board of Education will be added to the wholesale prices of textbooks, free on board publishers' nearest shipping point, to cover the cost of delivering the books to division school boards in Virginia.

8VAC20-220-60. Maximum retail prices.

A percentage, in addition to that mentioned above, shall be added to establish the maximum retail prices of textbooks.

8VAC20-220-70. Price adjustment requests.

At the time of adoption (December of even years), the Board of Education also will consider requests from publishers for adjustments in contract prices for materials already under contract but not involved in the current adoption.

Regulations Governing Textbook Adoption Local Level

8VAC20-230-10. Authority.

The Constitution of Virginia gives the Board of Education authority to adopt textbooks for use in the public schools of Virginia. To fulfill its duty, the Board adopts a multiple list of textbooks in each grade and subject in which basal adoptions are made. In turn, local school boards select materials to meet local needs from this multiple listing. In addition, the Code of Virginia provides that any local school board may use textbooks not approved by the board, provided the school board selects such books in accordance with regulations promulgated by the Board of Education.

8VAC20-230-20. Local adoptions of state-adopted texts.

Following the announcement of adoptions, the Board of Education authorizes a period of five to seven months in which localities may examine and select materials from the list chosen by the board. Such local adoptions are reported to the Department of Education on forms provided by the department.

8VAC20-230-30. Local adoptions of nonstate adopted material.

The Board of Education has set forth the following regulations for the selection of textbooks not on the state-adopted list:

1. An evaluation committee shall be appointed by the school board to review and evaluate textbooks in one or more of the subject areas for which adoptions are effective beginning July 1 of odd-numbered years.
2. The evaluation committee shall be representative of the supervisory staff of the central office, elementary or secondary school administrators or both, and classroom teachers of the subject fields in which adoptions are to be made, and shall be nondiscriminatory with respect to sex and race.

3. Before recommending a textbook not on the state-adopted list, the committee shall first have examined and evaluated the appropriate textbooks on the state-adopted list.
4. The evaluation committee shall submit in writing its recommendations and supporting data via the division superintendent to the school board for action in sufficient time for the adoptions by the local school boards to be effective July 1 of odd- numbered years.
5. Criteria to be used by the evaluation committee in the review and assessment of textbooks must have the official approval of the local school board. The criteria, as approved, shall be on file in the office of the local school board.
6. The division superintendent shall certify to the Superintendent of Public Instruction or his representative, on forms prescribed by the Department of Education, a list of all books adopted by the local school board and state that such books have been adopted in full compliance with this chapter and that information as to prices paid for such books is available upon request.
7. Evidence shall be on file in the office of the local school board that the price charged for any textbook adopted under this chapter is not in excess of that charged elsewhere in the United States.

8VAC20-230-40. Local adoptions for materials for subject areas not included in basal adoptions.

For use in vocational classes and for other subject areas in which no material is adopted, localities may select textbooks from lists of recommended texts furnished by the Department of Education.

Regulations Governing Textbook Fund Management and Handling on Local Level

8VAC20-270-10. General.

Although most school systems distribute textbooks to students on a free or rental basis, some systems still use retail sales to students. In the following sections, references to "retail sales" or "unsold textbooks on hand" refer to this type of distribution. Books are secured from publishers on a consignment basis and payment is made quarterly as the books are sold. Books not sold may be held until the end of an adoption period and returned to the publisher for credit.

Only those textbooks selected by school divisions from the list of state-adopted texts are subject to the prices and regulations set forth in contracts between the publishers having books on the adopted list and the Virginia Board of Education.

8VAC20-270-20. Establishment and designation of special fund; establishment of special bank account.

A separate fund shall be established by the school board and the chief fiscal officer of the county, city, or town (of which the school board is a part), to which shall be credited all proceeds received from the sale of textbooks in the local school system. This special fund shall be designated:

County, City, or Town of.....

School Textbook Fund

The chief fiscal officer is requested to establish a special bank account titled as follows:

County, City, or Town of.....

School Textbook Fund

By.....

(Treasurer/Director of Finance or such title as he may have.)

8VAC20-270-30. Textbook sales, receipts, and disbursements; bonds for clerk and other personnel handling funds.

The school board shall designate the clerk of the school board, who shall be bonded as provided by law, to handle the sale of textbooks. Additional personnel employed to assist the clerk in handling textbook funds shall be covered by a fidelity and faithful performance bond, a copy of which shall be filed in the school board office.

The local school board shall require the clerk to deposit intact, with the treasurer or the director of finance or in any bank designated by the chief fiscal officer, all moneys received from the sale of textbooks; and the treasurer or the director of finance, in turn, will deposit these sums to the credit of the special bank account aforementioned. When ordering payments to publishers, or the payment of any expense from the proceeds of the sale of textbooks, the county, city, or town school board shall issue its warrant made payable to the publisher, agency, or individual to whom the payment is being made; this warrant shall be signed by the chairman of the school board and countersigned by the clerk of that board.

In each instance, each warrant shall indicate that it is payable from the school textbook fund as set forth above. All expenditures shall be approved and a warrant in payment thereof authorized by the school board in accordance with the procedure for the expenditure of regular school funds. The procedure to be followed for the disbursement of funds credited to the school textbook fund in cities shall conform to the procedure in effect for the disbursements of school funds; the only distinction being that the school board and the chief fiscal officer shall maintain a separate fund and separate bank account for the receipts and disbursements incident to the handling of textbooks.

8VAC20-270-40. Accounting and records; verification of book shipments received.

The school board shall require the clerk of the board to maintain a record of receipts and disbursements of the textbook fund and to reconcile the balance in this fund each month with the chief fiscal officer of the county, city or town. It shall also require the maintenance of a ledger account with each publisher to which will be credited the value of books received for sale and to which will be charged all payments made to the publisher on account and all transactions for exchanged and returned books. This account shall be reconciled with the reports of unsold books on hand. The invoices received from the publishers for books shipped to the school board shall be filed in separate folders by the names of publishers. Each shipment of books received shall be verified by actual count and the date and quantity of books received should be written on the invoice opposite each title and signed by the person making the count.

8VAC20-270-50. School systems having free or rental textbook systems and also selling textbooks.

In counties, cities, and towns where free or rental textbook systems are in operation in some schools and textbooks are sold to pupils in other school systems, all textbooks purchased from the publishers should be handled through the textbook fund. Books which are used for that portion of the school system from which rental or free textbooks are furnished should be purchased from the textbook fund and be paid for with a warrant drawn on the regular school operating fund or the school textbook rental fund.

8VAC20-270-60. Transfers between school operating fund and textbook fund.

If the school board makes an appropriation for the operation of the school textbook fund, a warrant should be drawn on the regular school operating fund and deposited to the credit of the school textbook fund. If the school board authorizes the use of surplus

school textbook funds for general school operation, a warrant should be drawn on the textbook fund and credited to the regular school operating fund.

8VAC20-270-70. Reports and payments to publishers; unsold textbooks on hand as of June 30.

Copies of reports to publishers listing all new unsold textbooks on hand and showing balances due for all books sold as of October 15, January 15, March 31, and June 30 shall be kept by the school board. The school board shall forward the original of each periodic report, together with its remittance, directly to the publishers on the dates designated. Each report to the publisher certifying unsold textbooks on hand as of the date of the report shall be certified by the persons responsible for the handling of the textbooks and the superintendent, or some person designated by the superintendent, who shall verify the accuracy of the report by an actual count of the books on hand. Unsold textbooks on hand as of June 30 of each year shall be listed on the Virginia textbook requisition (elementary and high) for the current year.

8VAC20-270-80. Books for resale to be segregated from those owned by the school board.

Books received from the publishers for resale shall be segregated and maintained under a separate inventory control from books which are owned outright by the school board and used in a rental or a free- textbook system.

8VAC20-270-90. Responsibility for books placed in specific schools.

Where the school board finds it necessary to place books in a school for resale to pupils, the principal of the school (or other person approved by the school board) shall be required to sign a receipt listing the titles and retail sale prices of all books placed in his or her custody; the individual shall be responsible for the total value of books received and be required to account to the school board not less than quarterly in

money and value of books returned equal to the total value of books received for by him.

8VAC20-270-100. Audits; preservation of records.

The school textbook fund shall be audited annually on order of the school board or by the governing board as a part of the overall county, city, or town audit. A copy of the audit report shall be furnished to the Board of Education. The records required by this chapter shall be preserved in the same manner as other public records.

8VAC20-270-110. Fire insurance on textbooks in stock.

The entire stock of textbooks shall be adequately covered by fire insurance and any loss shall be payable to the school board. A copy of the policy shall be filed with the school board and satisfactory proof of coverage submitted to the Board of Education.

8VAC20-270-120. Retail sales of textbooks to be for cash.

Textbooks shall be sold at retail for cash only.

8VAC20-270-130. Issuance of warrants between board meetings.

The school board may provide, by resolution, for the issuance of warrants drawn on the textbook fund in payment of amounts due publishers and for freight, or drayage falling due between meeting of the board. All such warrants shall be signed by the chairman and countersigned by the clerk of the school board and presented to the school board for approval at the next meeting following the issuance of such warrants.



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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Education
Virginia Administrative Code (VAC) citation	8 VAC 20-720-80
Regulation title	Regulations Governing Textbooks
Action title	Promulgation of new regulation
Date this document prepared	May 5, 2008

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

During the 2008 General Assembly, three bills were passed that impact the purchasing and provision of textbooks for Virginia's public school students. These bills were HB 137, patroned by Delegate Chris Peace, HB 354, patroned by Delegate Mark Cole and SB 356, patroned by Senator John Watkins. HB 137 and SB 356 are identical and were proposed by the Department of Education. HB 354 is identical, with the addition of a provision making it possible for any private school within a school division to purchase textbooks from the local school board's contract. These bills will all take effect on July 1, 2008.

The Board of Education currently has three regulations governing textbooks. They are the *Regulations Governing Textbook Adoption State Level*, 8 VAC 20-220-10 et seq., *Regulations Governing Textbook Adoption Local Level*, 8 VAC 20-230-10 et seq., and *Regulations Governing Textbook Fund Management and Handling on Local Level*, 8 VAC 20-270-10, et seq. All of these regulations were adopted on or before September 1, 1980, have not been amended since that time and are out of date.

The purpose of this proposal is to repeal the three current regulations and create a new regulation. The three current regulations would be repealed simultaneously with the adoption of the new regulation. The new regulation would capture the requirements of the bills passed by the 2008 General Assembly as well any appropriate requirements in the three current regulations.

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., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 22.1-16 of the *Code of Virginia* provides that “The Board of Education may adopt bylaws for its own governance and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of this title.” Additionally, § 22.1-242 of the *Code of Virginia*, effective July 1, 2008, requires the Board of Education to “adopt regulations governing (i) the purchase of textbooks approved by it for use in the public schools directly from the publishers by school boards and (ii) the distribution of such textbooks for the use by children attending public schools in Virginia. (Until July 1, 2008, the requirement that the Board of Education adopt regulations governing textbooks is found in § 22.1-242 of the *Code*.) Additionally, § 22.1-38 of the *Code* permits local school boards to use textbooks not approved by the Board of Education so long as the school board selects the books in accordance with regulations promulgated by the Board.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

These regulations are required by the *Code of Virginia*. Effective July 1, 2008, the provisions of the *Code* will be revised, pursuant to legislation passed by the 2008 General Assembly and signed by the Governor. The regulations need to be revised to comport with the new provisions of the *Code*.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

As noted above, this proposal is to promulgate a new regulation and to simultaneously repeal the following regulations:

- 8 VAC 20-220-10 et seq. Regulations Governing Textbook Adoption State Level
- 8 VAC 20-230-10 et seq. Regulations Governing Textbook Adoption Local Level
- 8 VAC 20-270-10 et seq. Regulations Governing Textbook Fund Management and Handling on Local Level

The new regulation will capture the requirements of HB 137, HB 354 and HB 356, all passed by the 2008 General Assembly, relating to textbook purchasing. The regulation will include provisions for the approval of textbooks, basal textbooks, contracts with textbook publishers, and the distribution of textbooks and consumable materials.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

There is no viable alternative to this regulatory action. The Board of Education is required to promulgate regulations governing the purchase of textbooks approved by it for use in the public schools directly from publishers by local school boards and the distribution of such textbooks for the use of children attending Virginia's public schools in accordance with § 22.1-242 of the *Code of Virginia*, effective July 1, 2008. Additionally, § 22.1-38 of the *Code* permits local school boards to use textbooks not approved by the Board of Education so long as the school board selects the books in accordance with regulations promulgated by the Board.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the *Code of Virginia*. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to Anne Wescott, Assistant Superintendent for Policy and Communications, Virginia Department of Education, P. O. Box 2120, Richmond, VA 23218-2120, (804) 225-2403, fax (804) 786-5389, e-mail Anne.Wescott@doe.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period. A public hearing on the NOIRA will not be held.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach.

Family impact

Assess the potential 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 proposed regulatory action is not expected to have a negative impact on the institution of the family and family stability. Provisions requiring local school boards that sell consumable materials to students to develop a policy ensuring that such consumables are furnished to students who are unable to afford them at a reduced price or free of charge will be beneficial to low income families.