

Virginia Board of Education Agenda Item



Agenda Item: B

Date: February 28, 2013

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| Title | Final Review of Proposed Revised <i>Regulations Governing Local School Boards and School Divisions</i> (8 VAC 20-720-170.) under the Fast Track Provision of the Administrative Process Act to Incorporate Provisions Regarding Local Selection of Textbooks Other Than Those Approved by the Board of Education | | |
| Presenter | Dr. Linda M. Wallinger, Assistant Superintendent for Instruction | | |
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Purpose of Presentation:

Action required by state or federal law or regulation.

Previous Review or Action:

Previous review and action. Specify date and action taken below:

Date: January 10, 2013

Action: First Review

Action Requested:

Final review: Action requested at this meeting.

Alignment with Board of Education Goals: Please indicate (X) all that apply:

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| | Goal 1: Accountability for Student Learning |
| | Goal 2: Rigorous Standards to Promote College and Career Readiness |
| | Goal 3: Expanded Opportunities to Learn |
| | Goal 4: Nurturing Young Learners |
| | Goal 5: Highly Qualified and Effective Educators |
| X | Goal 6: Sound Policies for Student Success |
| | Goal 7: Safe and Secure Schools |
| | Other Priority or Initiative. Specify: |

Background Information and Statutory Authority:

Goal 6: The *Regulations Governing Local School Boards and School Divisions* set forth the responsibilities of local school boards in the selection of instructional materials and textbooks. These regulations will be strengthened by the addition of language that requires local school boards that opt to use a textbook that has not been approved by the Board of Education to conduct a local textbook review that includes a certification from the publisher that the content of the textbook is accurate and an agreement that the publisher will correct all factual and editing errors found in the textbook at its own expense.

Summary of Important Issues:

On March 24, 2011, the Virginia Board of Education adopted a [revised state textbook review process](#) that places primary responsibility on publishers to ensure the accuracy of their textbooks. A publisher must: 1) certify that textbooks it has submitted for review have been thoroughly examined for content accuracy; and 2) agree that if factual or editing errors are identified, it will submit a corrective action plan to the Department of Education for review and approval by the Board of Education or by the superintendent of public instruction for plans not involving significant errors.

On September 22, 2011, the Board of Education adopted [Guidelines for Local Textbook Approval](#) to assist school divisions as they review and approve textbooks at the local level. The *Guidelines* encourage local school boards that opt to use a textbook that has not been approved by the Board of Education to conduct a local textbook review that includes components similar to the state level review. Such components include a correlation with the Standards of Learning for the particular subject area and a review of strengths and weaknesses in instructional planning and support. Additionally, the publisher of the textbook must certify the accuracy of the content of the textbook and sign an agreement to correct all factual and editing errors found in a textbook, at its expense. Finally, the publisher must certify that the books meet other requirements of the *Code of Virginia* related to textbooks.

Following first review of the proposed revisions to the *Regulations*, the Department of Education received public comment from the Virginia School Boards Association expressing concern over the fact that the requirement for the local school board’s attorney to review and approve all publishers’ certification and agreement forms would cause local school boards to incur increased legal costs. There were also questions about whether or not local school boards would be required to abide by the proposed *Regulations* in reviewing and selecting textbooks in content areas where the Board of Education may not have an approved list of textbooks. While both the *Virginia Constitution* and the *Code of Virginia* grant authority to the Board of Education to approve textbooks, they do not require such action. In past years, the Board of Education has typically approved textbooks in the core subject areas of English, mathematics, science, and history and social science, as well as in foreign languages for which there are Standards of Learning (French, German, Latin, and Spanish).

Virginia Constitution, Article VIII, § 5 (d)

It **[the Board of Education]** shall have authority to approve textbooks and instructional aids and materials for use in courses in the public schools of the Commonwealth.

Code of Virginia, § 22.1-238

- A. The Board of Education shall have the authority to approve textbooks suitable for use in the public schools and shall have authority to approve instructional aids and materials for use in the public schools. The Board **[of Education]** shall publish a list of all approved textbooks on its website and shall list the publisher and the current lowest wholesale price of such textbooks.
- B. Any **[local]** school board may use textbooks not approved by the Board **[of Education]** provided the **[local]** school board selects such books in accordance with regulations promulgated by the Board **[of Education]**.
- C. For the purposes of this chapter, the term "textbooks" means print or electronic media for student use that serve as the primary curriculum basis for a grade-level subject or course.

In response to the public comment, the proposed revisions to the *Regulations Governing Local School Boards and School Divisions* presented in Attachment A include the deletion of the requirement to have publishers' certifications and agreements reviewed and approved by the local school board attorney. The proposed *Regulations* do not differentiate among content areas for which local school boards are required to develop procedures for textbook review, and they maintain the requirement that the local review process must include a correlation of the content to the Virginia Standards of Learning in the content area and an analysis of strengths and weaknesses of the textbook in terms of instructional planning and support. Additionally, they maintain the requirement that publishers must provide to the local school board a certification that the content of the textbook is accurate, and sign an agreement with the local school board to correct all factual and editing errors found in a textbook, at their expense.

Language has also been clarified to specify which board, the Board of Education or the local school board, has certain responsibilities associated with the textbook review and selection process.

The Board of Education's current *Guidelines for Local Textbook Approval* are available in Attachment B. A Fast Track Proposed Regulation Agency Background Document for the Virginia Town Hall is found in Attachment C.

Impact on Fiscal and Human Resources:

The administrative impact required in promulgating these regulations will be absorbed within existing resources.

Timetable for Further Review/Action:

The timetable for further action will be governed by the requirements of the Administrative Process Act.

Superintendent's Recommendation:

The Superintendent of Public Instruction recommends that the Board of Education approve the proposed revised *Regulations Governing Local School Boards and School Divisions* under the Fast Track provision of the Administrative Process Act to incorporate provisions regarding local selection of textbooks other than those approved by the Board of Education.

Virginia Administrative Code
Chapter 720
Proposed Revised *Regulations Governing Local School Boards and School Divisions*
(8 VAC 20-720-170)

8VAC20-720-170. Textbooks.

A. Textbook approval.

1. The Board of Education shall have the authority to approve textbooks for use in the public schools of Virginia.
2. In approving basal textbooks for reading in kindergarten and first grade, the **Board of Education board** shall report to local school boards those textbooks with a minimum decodability standard based on words that students can correctly read by properly attaching speech sounds to each letter to formulate the word at 70% or above for such textbooks in accordance with § 22.1-239 of the Code of Virginia.
3. Any local school board may use textbooks not approved by the **Board of Education board** provided the **local** school board selects such books in accordance with this chapter.
4. Contracts and purchase orders with publishers of textbooks approved by the **Board of Education board** for use in grades 6-12 shall allow for the purchase of printed textbooks, printed textbooks with electronic files, or electronic textbooks separate and apart from printed versions of the same textbook. Each **local** school board shall have the authority to purchase an assortment of textbooks in any of the three forms listed in this subdivision.

B. Procedures for ~~§~~selection of textbooks by local school boards. Local school boards shall adopt procedures for the selection of textbooks. These procedures shall include, at a minimum, the following:

1. Appointment of evaluation committees by the local school board to review and evaluate textbooks in each of the subject areas.
2. Notice to parents that textbooks under consideration for approval will be listed on the school division's website and made available at designated locations for review by any interested citizens.
3. Opportunities for those reviewing such textbooks to present their comments and observations, if any, to the **local** school board through locally approved procedures.
4. Procedures to ensure appropriate consideration of citizen comments and observations.
5. Selection criteria.

C. Local school board selection of textbooks other than those approved by the Board of Education.

1. The selection process for non-Board of Education approved textbooks is subject to the procedures outlined in Section B.
2. The selection process for such textbooks shall include at the local level a correlation of the content to the Virginia Standards of Learning in the content area and an analysis of strengths and weaknesses of the textbook in terms of instructional planning and support.

3. The publisher of such textbooks shall:
 - a. provide to the local school board a certification that the content of the textbook is accurate; and
 - b. sign an agreement with the local school board to correct all factual and editing errors found in a textbook, at its own expense.

~~4. **The local school board's attorney shall review and approve all certification and agreement forms used for the purposes noted in C.3 above.**~~

~~€D.~~ Purchasing Board of Education approved textbooks.

1. Local school divisions shall purchase textbooks approved by the Board of Education directly from the publishers of the textbooks by either entering into written term contracts or issuing purchase orders on an as-needed basis in accordance with § 22.1-241 of the Code of Virginia.
2. Such written comments or purchase orders shall be exempt from the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia).

~~ÐE.~~ Purchasing non-Board of Education approved textbooks. The purchase of textbooks other than those approved by the **Board of Education board** is not exempt from the Virginia Public Procurement Act.

~~ÆF.~~ Distribution of textbooks. Each **local** school board shall provide, free of charge, such textbooks required for courses of instruction for each child attending public schools.

~~£G.~~ Certifications.

1. The division superintendent and chairperson of the local school board shall annually certify to the Virginia Department of Education that:
 - a. All textbooks were selected and purchased in accordance with this chapter; and
 - b. The price paid for each textbook in accordance with § 22.1-241 of the Code of Virginia.
2. The certification shall include a list of all textbooks adopted by the local school board.

Guidelines for Local Textbook Approval

Adopted by the Virginia Board of Education

September 22, 2011

Guidelines for Local Textbook Approval

Introduction

The Board of Education's authority for approving textbooks and other instructional materials is prescribed in the *Virginia Constitution* and in the *Code of Virginia*.

Virginia Constitution, Article VIII, § 5 (d)

It [the Board of Education] shall have authority to approve textbooks and instructional aids and materials for use in courses in the public schools of the Commonwealth.

Code of Virginia, § 22.1-238

- D. The Board of Education shall have the authority to approve textbooks suitable for use in the public schools and shall have authority to approve instructional aids and materials for use in the public schools. The Board **[of Education]** shall publish a list of all approved textbooks on its website and shall list the publisher and the current lowest wholesale price of such textbooks.
- E. Any **[local]** board school may use textbooks not approved by the Board **[of Education]** provided the **[local]** school board selects such books in accordance with regulations promulgated by the Board **[of Education]**.
- F. For the purposes of this chapter, the term "textbooks" means print or electronic media for student use that serve as the primary curriculum basis for a grade-level subject or course.

On March 24, 2011, the Virginia Board of Education adopted a revised state textbook review process that places primary responsibility on publishers to ensure the accuracy of their textbooks. Publishers must: 1) certify that textbooks they have submitted for review have been thoroughly examined for content accuracy; and 2) agree that if factual or editing errors are identified, the publisher will submit a corrective action plan to the Department of Education for review and approval by the Board of Education or by the superintendent of public instruction for plans not involving significant errors. A flow chart outlining the steps in Virginia's state textbook review process is provided in Appendix A. Further details about the Board of Education's textbook review process and the state forms that are used to submit textbooks for review are available on the Virginia Department of Education's Web site at http://www.doe.virginia.gov/instruction/textbooks/review_process/index.shtml

Definition of "Textbooks"

Section 22.1-238 of the *Code of Virginia* defines "textbooks" as "print or electronic media for student use that serve as the primary curriculum basis for a grade-level subject or course."

Selection of Textbooks by Local School Boards

The process used by local school boards to review and approve textbooks should be similar to that used by the Virginia Board of Education. A textbook that has been approved by the Board of Education has been reviewed using the steps outlined in Appendix A.

The *Code of Virginia* permits local school boards to use textbooks not approved by the Virginia Board of Education. If a local school board opts to use a textbook that has not been approved by the Board of Education, a local textbook review process should be conducted that includes components similar to the state level review. The textbook must be reviewed for correlation with the Standards of Learning for the particular subject area and for strengths and weaknesses in instructional planning and support. Further, the publisher of the textbook should certify the accuracy of the content of the textbook and sign an agreement to correct all factual and editing errors found in a textbook, at its expense. Additionally, the publisher should certify that the books meet other requirements of the *Code of Virginia* related to textbooks.

The publisher's submission forms approved by the Virginia Board of Education for the state textbook approval process are good models for the certification and agreement and embody the quality assurance protections created by the Board **of Education**. If local **school** boards opt to use the state-approved forms, they would benefit from these same protections. These forms are available electronically at http://www.doe.virginia.gov/instruction/textbooks/review_process/index.shtml. However, the local school board's attorney should also review and approve all certification and agreement forms used for this purpose at the local level.

Purchase of Textbooks by Local School Boards

Local school boards may purchase textbooks approved by the Board of Education directly from the publishers of the textbooks using either a contract or a purchase order, and these purchases are exempt from the *Virginia Public Procurement Act*. If a local school board wishes to purchase textbooks that have not been approved by the Board of Education, it must adhere to the requirements of the *Virginia Public Procurement Act*. The local school board's attorney should review and approve all contracts developed for the purpose of purchasing textbooks.

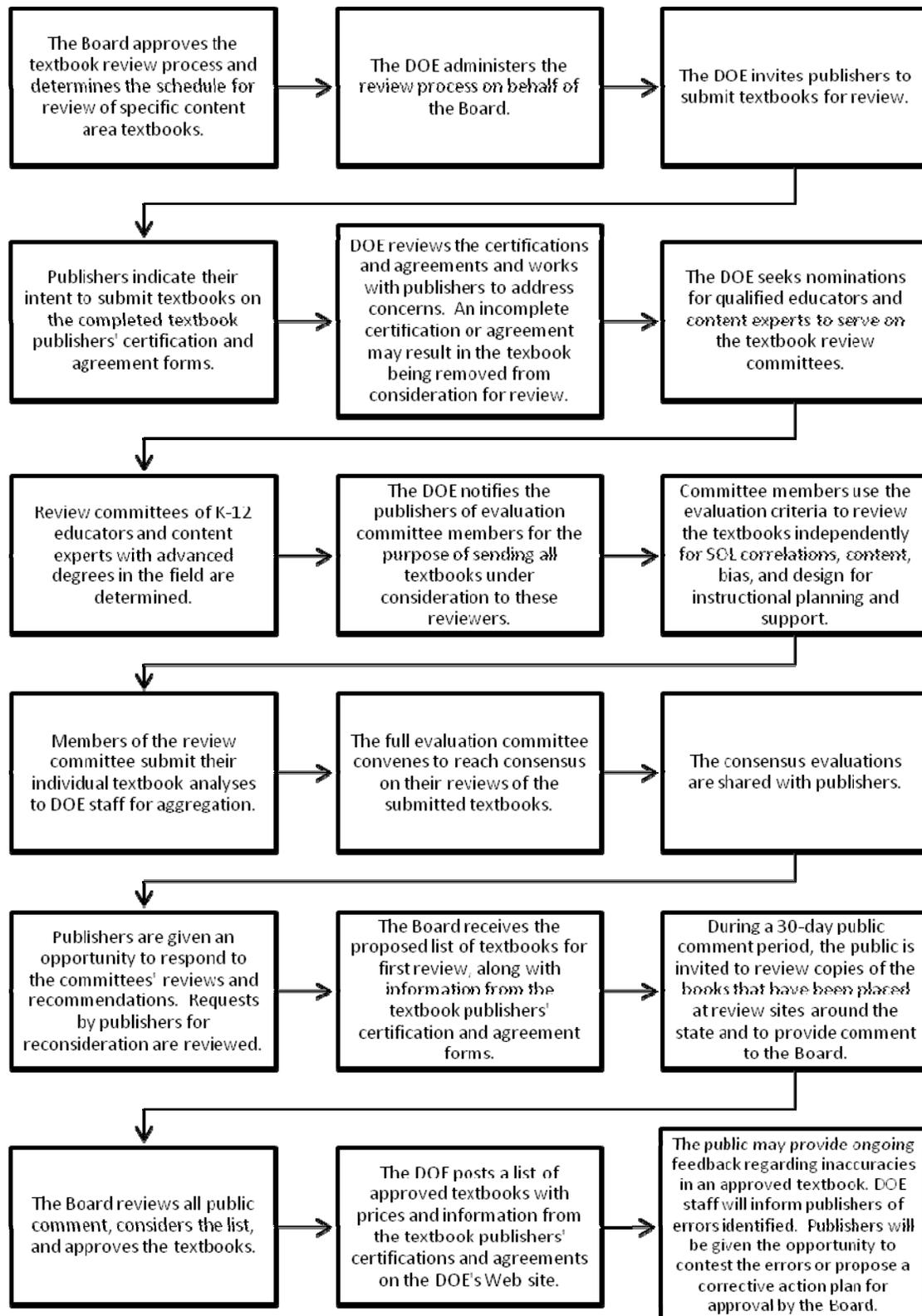
Certification of Textbooks to the Virginia Department of Education

The school division superintendent and the chairperson of the local school board must certify annually to the Virginia Department of Education that:

1. All textbooks were selected and purchased in accordance with the Board **of Education**'s regulations; and
2. The price paid for each textbook did not exceed the lowest wholesale price at which the textbook involved in the contract was currently bid under contract in the United States, in accordance with § 22.1-241 of the *Code of Virginia*.

Additionally, the certification must include a list of all textbooks adopted by the local school board in the subject areas where the Board of Education approves textbooks.

**Overview of Virginia's State Textbook Approval Process
Adopted by the Virginia Board of Education on March 24, 2011**





Virginia
Regulatory
Town Hall

townhall.virginia.gov

Fast Track Proposed Regulation Agency Background Document

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| Agency name | Department of Education |
| Virginia Administrative Code (VAC) citation | 8 VAC 20-720-170 |
| Regulation title | <i>Regulations Governing Local School Boards and School Divisions</i> |
| Action title | Revisions to the <i>Regulations Governing Local School Boards and School Divisions</i> would include the addition of the Board of Education's <i>Guidelines for Local Textbook Approval</i> , thus changing them from optional guidelines to required regulations. |
| Date this document prepared | December 7, 2012 |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short 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.

On September 22, 2011, the Board of Education adopted [Guidelines for Local Textbook Approval](#) to assist school divisions as they review and approve textbooks at the local level. The *Guidelines* encourage local school boards that opt to use a textbook that has not been approved by the Board of Education to conduct a local textbook review that includes components similar to the state level review. Revisions to the *Regulations Governing Local School Boards and School Divisions* would include the addition of the Board of Education's *Guidelines for Local Textbook Approval*, thus changing them from optional guidelines to required regulations.

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.

The Board of Education is expected to receive the proposed revised *Regulations Governing Local School Boards and School Divisions* for first review on January 10, 2013, with final approval on February 28, 2013.

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.

Constitution of Virginia (Article VIII, Section 5): “[The Board of Education] . . . shall have authority to approve textbooks and instructional aids and materials for use in courses in the public schools of the Commonwealth. . . .”

Code of Virginia, Section 22.1-16. Bylaws and regulations generally. The Board of Education may adopt bylaws for its own government and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of this title.

Purpose

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

On September 22, 2011, the Board of Education adopted [Guidelines for Local Textbook Approval](#) to assist school divisions as they review and approve textbooks at the local level. The *Guidelines* encourage local school boards that opt to use a textbook that has not been approved by the Board of Education to conduct a local textbook review that includes components similar to the state level review. Revisions to the *Regulations Governing Local School Boards and School Divisions* would include the addition of the Board of Education’s *Guidelines for Local Textbook Approval*, thus changing them from optional guidelines to required regulations.

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?

Please note: 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 (i) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The Board of Education is adding to existing regulations guidelines **it has already reviewed and approved.** ~~that have already been through the review process and approved by the Board.~~

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the “Detail of changes” section.) Please be sure to define any acronyms.

The changes in the regulations would require local school boards that opt to use a textbook that has not been approved by the Board of Education to conduct a local textbook review that includes components similar to the state level review. Such components include a correlation with the Standards of Learning for the particular subject area and a review of strengths and weaknesses in instructional planning and support. Additionally, the publisher of the textbook must certify the accuracy of the content of the textbook and sign an agreement to correct all factual and editing errors found in a textbook, at its expense. Finally, the publisher must certify that the books meet other requirements of the *Code of Virginia* related to textbooks.

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.

The *Regulations Governing Local School Boards and School Divisions* set forth the requirements for local school boards and school divisions to review and approve instructional materials and textbooks. The primary advantage of the review of the regulations is that they address the quality of materials used in Virginia classrooms.

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 for review of textbooks.

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.

These regulations will affect all localities that opt to use textbooks that are not on the list of textbooks approved by the Board of Education.

Regulatory flexibility analysis

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.

No specific alternatives exist. Revisions to the *Regulations Governing Local School Boards and School Divisions* require regulatory action.

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.

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| 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 | None |
| Projected cost of the <i>new regulations or changes to existing regulations</i> on localities. | There would be minimal cost for local school divisions to seek from textbook publishers a certification that the content of their textbooks is accurate and an agreement to correct errors at their own expense. |
| Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>. | Textbook publishers will have to certify the accuracy of their textbooks and agree to correct errors at their own expense. |
| 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. | Approximately 20 publishing companies are listed as having one or more books on the list of textbooks approved by the Board of Education. There are numerous other publishing houses that may market their materials directly to local school divisions. |
| All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential | There would be minimal cost for local school divisions to seek from textbook publishers a certification that the content of their textbooks is accurate and an agreement to correct errors at their own expense. There would be minimal cost to publishers to complete the certifications and agreements. The cost to publishers to correct errors in textbooks would depend on the number of errors that must be corrected in textbooks |

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| <p>purposes that are a consequence of the proposed regulatory changes or new regulations.</p> | <p>purchased by school divisions.</p> |
| <p>Beneficial impact the regulation is designed to produce.</p> | <p>To ensure the quality of textbooks used in Virginia's classrooms.</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. 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.

No specific alternatives exist. Revisions to the *Regulations Governing Local School Boards and School Divisions* require regulatory action.

Family impact

Please assess the 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 *Regulations Governing Local School Boards and School Divisions* set forth the requirements for local school boards and school divisions to review and approve instructional materials and textbooks. The review of the regulations will have a positive impact on the family since the requirements will address the quality of materials used in Virginia classrooms.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. 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 |
|------------------------|--|---|--|
| 8VAC20-720-170 | NA | Any local school board may use textbooks not approved by the Board of Education board provided the local school board selects such books in accordance with this chapter. | <p>C. Local school board selection of textbooks other than those approved by the Board of Education.</p> <ol style="list-style-type: none"> 1. The selection process for non-Board of Education approved textbooks is subject to the procedures outlined in Section B. 2. The selection process for such textbooks shall include at the local level a correlation of the content to the Virginia Standards of Learning in the content area and an analysis of strengths and weaknesses of the textbook in terms of instructional planning and support. 3. The publisher of such textbooks shall: <ol style="list-style-type: none"> a. provide to the local school board a certification that the content of the textbook is accurate; and b. sign an agreement with the local school board to correct all factual and editing errors found in a textbook, at its own expense. 4. <u>The local school board's attorney shall review and approve all certification and agreement forms used for the purposes noted in C.3 above.</u> <p><u>Intent, Rationale, and Impact</u> The additions to the regulations are intended to ensure quality textbooks for students in Virginia. These regulations will provide protections to school divisions that adopt textbooks that are not on the list of textbooks approved by the Board of Education.</p> |