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Fast-Track Regulation Agency Background Document

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| Agency name | State Board of Education |
| Virginia Administrative Code (VAC) Chapter citation(s) | 8 VAC20-290 |
| VAC Chapter title(s) | Regulations Governing School Lunch Sale of Food Items |
| Action title | Repeal Chapter 290 following periodic review |
| Date this document prepared | October 24, 2024 |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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 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 intent of this regulatory action is to repeal the chapter governing School Lunch Sale of Food Items due to the chapter being outdated and in need of significant style and structure updates. The chapter was derived from VR270-01-0028 § 1 and was made effective September 1, 1980. This chapter does not use current terminology and current federal regulation supersede these specific regulations.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

"Board" means Virginia Board of Education.

“VDOE” means Virginia Department of Education.

Statement of Final Agency Action

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 State Board of Education approved the final review of the periodic review of Chapter 290, Regulations Governing School Lunch Sale of Food Items on August 28, 2024. The Board accepted that the periodic review of this regulation found that this chapter was outdated and no longer appeared to be in use.

The Board also accepted the VDOE staff recommends that this chapter should repealed.

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 the ORM procedures, “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.”

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

The impetus for the regulatory change is a periodic review. The Board believes the changes will be noncontroversial, as they improve consistency with federal and state law.

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.

The general regulatory authority for the State Board of Education is found in § 22.1-16 of the Code of Virginia, which authorizes the State Board of Education to “adopt bylaws for its own government and Town Hall Agency Background Document promulgate such regulations as may be necessary to carry out its powers and duties and the provisions” of title 22.1 of the Code of Virginia.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

This regulatory change is needed to implement periodic review recommendations.

The periodic review of this regulation found that this chapter was outdated and no longer appeared to be in use. These regulations are no longer essential to protect the health, safety, or welfare of citizens.

The goal of this regulatory change is to make the Board's regulations more readable and easier for the public and the Commonwealth to understand.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

VDOE has conducted a review of the contents of the regulations and found that all of the content in the regulations are outdated and existing federal regulations are more current and supersede this chapter.

Issues

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

By repealing this chapter, the Board is unaware of any disadvantages to the public or the Commonwealth. The primary advantage of the repeal of this chapter is to improve the Board's regulations by making the regulations easier for the public and the Commonwealth to understand.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

There are no requirements in this regulation that are more restrictive than applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

No state agencies, localities, or other entities are particularly affected by this change.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

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| <i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources | None. |
| <i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures. | None. |
| <i>For all agencies:</i> Benefits the regulatory change is designed to produce. | This regulatory action will repeal out-of-date and unnecessary regulations. |

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

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| Projected costs, savings, fees or revenues resulting from the regulatory change. | None. |
| Benefits the regulatory change is designed to produce. | This regulatory action will repeal out-of-date and unnecessary regulations. |

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

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| Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect. | None. |
| Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; | None. |

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| b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million. | |
| All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements. | None. |
| Benefits the regulatory change is designed to produce. | This regulatory action will repeal out-of-date and unnecessary regulations. |

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.

No alternatives can achieve the purpose of this regulatory repeal.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

This regulatory action is not expected to affect small businesses.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

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.

Consistent with § 2.2-4011 of the Code of Virginia, 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: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The State Board of Education is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

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 website at: <https://townhall.virginia.gov>. Comments may also be submitted by email Jim Chapman, Director of Board Relations, at Jim.Chapman@doe.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

| Current chapter-section number | New chapter-section number, if applicable | Current requirements in VAC | Change, intent, rationale, and likely impact of new requirements |
|--------------------------------|---|---|--|
| 8VAC20-290-10 | | 8VAC20-290-10. Sale of food items. The sale of food items in school during the lunch period shall be limited to those items recognized as being components of the school lunch program's Type | Change: 8VAC20-290-10 [Repeal] Intent: The intent of this repeal is to remove outdated regulations that fail to use current terminology and that are superseded by current federal regulation. |

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| | <p>A lunch and breakfast; the income from the sale of those items shall accrue to the school lunch account. The following provisions shall apply in implementing this chapter:</p> <ol style="list-style-type: none">1. "Food items" covers both food and drink.2. "Lunch period" is the time from the beginning of the first lunch period through the end of the last lunch period.3. This chapter does not prohibit the sale of a la carte items. It does limit the a la carte items to those which can be served as part of the Type A lunch and breakfast such as sandwiches, soup, salads, fruit, fruit juice, desserts, and chocolate milk. A review of the past Type A menus will provide guidance for a la carte items.4. All income from sale of food items during the lunch period in the lunchroom or other locations in the building shall accrue to the school lunch account.5. It is strongly recommended that food items sold in high school at times other than the lunch period be of recognized nutritional value and in keeping with federal requirements. | <p>Rationale: This chapter section is no longer used or relied upon by the regulating agency or the regulated population.</p> <p>Likely Impact: These changes will make the Board's regulations more readable and easier for the public and the Commonwealth to understand.</p> |
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Fast-Track Regulation Agency Background Document

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| Agency name | State Board of Education |
| Virginia Administrative Code (VAC) Chapter citation(s) | 8 VAC20-320 |
| VAC Chapter title(s) | Regulations Governing Physical and Health Education |
| Action title | Repeal of Chapter 320 following periodic review |
| Date this document prepared | October 24, 2024 |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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 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 intent of this regulatory action is the repeal the chapter governing physical and health education (8VAC20-320) which was found to be outdated. While physical and health education is required by statute, the goal this chapter is now accomplished via the SOL framework required by § 22.1-253.13:1.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

"Board" means the Virginia Board of Education.

"Department" means the Virginia Department of Education.

Statement of Final Agency Action

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 State Board of Education approved the final review of the periodic review of Chapter 320, Regulations Governing Physical and Health Education on August 28, 2024. The Board accepted that the periodic review of this regulation found that this chapter was outdated and while physical and health education is required by statute, this goal of this chapter is now accomplished via the SOL framework required by § 22.1-253.13:1.

The Board also accepted the VDOE staff recommends that this chapter should repealed.

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 the ORM procedures, "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."

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

The impetus for the regulatory change is a periodic review. The Board believes the changes will be noncontroversial, as they improve consistency with federal and state law.

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.

The general regulatory authority for the State Board of Education is found in § 22.1-16 of the Code of Virginia, which authorizes the State Board of Education to "adopt bylaws for its own government and Town Hall Agency Background Document promulgate such regulations as may be necessary to carry out its powers and duties and the provisions" of title 22.1 of the Code of Virginia.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

This regulatory change is needed to implement periodic review recommendations.

The periodic review of this regulation found that this chapter was outdated and that these regulations are no longer essential to protect the health, safety, or welfare of citizens.

The goal of this regulatory change is to make the Board's regulations more readable and easier for the public and the Commonwealth to understand.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

VDOE has conducted a review of the contents of the regulations and found that all of the content in the regulations are outdated, and while physical and health education is required by statute, this goal of this chapter is now accomplished via the SOL framework required by § 22.1-253.13:1.

Issues

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

By repealing this chapter, the Board is unaware of any disadvantages to the public or the Commonwealth. The primary advantage of the repeal of this chapter is to make the regulations easier for the public and the Commonwealth to understand.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

There are no requirements in this regulation that are more restrictive than applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

No state agencies, localities, or other entities are particularly affected by this change.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

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| <i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources | None. |
| <i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures. | None. |
| <i>For all agencies:</i> Benefits the regulatory change is designed to produce. | This regulatory action will repeal out-of-date and unnecessary regulations. |

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

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| Projected costs, savings, fees or revenues resulting from the regulatory change. | None. |
| Benefits the regulatory change is designed to produce. | This regulatory action will repeal out-of-date and unnecessary regulations. |

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

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| Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect. | None. |
| Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; | None. |

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| b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million. | |
| All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements. | None. |
| Benefits the regulatory change is designed to produce. | This regulatory action will repeal out-of-date and unnecessary regulations. |

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.

No alternatives can achieve the purpose of this regulatory repeal.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

This regulatory action is not expected to affect small businesses.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

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.

Consistent with § 2.2-4011 of the Code of Virginia, 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: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The State Board of Education is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

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 website at: <https://townhall.virginia.gov>. Comments may also be submitted by email Jim Chapman, Director of Board Relations, at Jim.Chapman@doe.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

| Current chapter-section number | New chapter-section number, if applicable | Current requirements in VAC | Change, intent, rationale, and likely impact of new requirements |
|--------------------------------|---|---|---|
| 8VAC20-320-10 | | 8VAC20-320-10. Health education program. Elementary and secondary schools shall present a comprehensive health education program which focuses on instruction related to alcohol and drug abuse, smoking and health, personal | Change: Health education program. [Repeal] Intent: The intent of this repeal is to remove outdated regulations that are now superseded by the SOL framework required by § 22.1-253.13:1. |

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| | | growth and personal health, nutrition, prevention and control of disease, physical fitness, accident prevention, personal and family survival, environmental health, mental health, and consumer education. These shall be developed in accordance with procedures outlined in the Curriculum Guide for Health Education. | <p>Rationale: This chapter section is no longer used or relied upon by the regulating agency or the regulated population.</p> <p>Likely Impact: These changes will make the Board's regulations more readable and easier for the public and the Commonwealth to understand.</p> |
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Fast-Track Regulation Agency Background Document

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| Agency name | State Board of Education |
| Virginia Administrative Code (VAC) Chapter citation(s) | 8 VAC20-730 [Repeal]; 8 VAC20-720 [Amend] |
| VAC Chapter title(s) | Regulations Governing the Collection and Reporting of Truancy-Related Data and Student Attendance Policies [Repeal]; Regulations Governing Local School Boards and School Divisions [Amend] |
| Action title | Repeal Chapter 730 and Amend Chapter 720 Following Periodic Review |
| Date this document prepared | October 24, 2024 |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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 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 periodic review found that chapter 730 overlaps with § 22.1-258 of the Code of Virginia as well as with chapter 110. Therefore, there is not a continued need for this regulatory chapter. The several definitions in subsection 8VAC20-730-10 and the requirements of subsection 8VAC20-730-30 will be retained in new subsection of chapter 720, Regulations Governing Local School Boards and School Divisions.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

"Board" means Virginia Board of Education.

"VDOE" means Virginia Department of Education.

Statement of Final Agency Action

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 State Board of Education approved the final review of the periodic review of Chapter 730, Regulations Governing the Collection and Reporting of Truancy-Related Data and Student Attendance Policies on August 28, 2024. The Board accepted the findings of this periodic review, which included finding that chapter 720 could be repealed in order to default to the statutory scheme while certain terms from section 10 (definitions for "excused absence," "instructional school day," "truancy," and "unexcused absence") and the data collection requirement in section 30 could be consolidated in chapter 720 (Regulations Governing Local School Boards and School Divisions) for efficiency.

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 the ORM procedures, "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."

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

The impetus for the regulatory change is a periodic review. The Board believes the changes will be noncontroversial, as they improve consistency with federal and state law.

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.

The general regulatory authority for the State Board of Education is found in § 22.1-16 of the Code of Virginia, which authorizes the State Board of Education to "adopt bylaws for its own government and Town Hall Agency Background Document promulgate such regulations as may be necessary to carry out its powers and duties and the provisions" of title 22.1 of the Code of Virginia.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

This regulatory change is needed to implement periodic review recommendations.

The periodic review of this regulation found there was no longer a continued need for chapter 730. These regulations as a separate chapter, were found to be no longer essential to protect the health, safety, or welfare of citizens because it conflicts with § 22.1-258.

The goal of this regulatory change is to make the Board's regulations more readable and easier for the public and the Commonwealth to understand.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The Board accepted the findings of this periodic review, which included finding that chapter 720 could be repealed in order to default to the statutory scheme while certain terms from section 10 (definitions for "excused absence," "instructional school day," "truancy," and "unexcused absence") and the data collection requirement in section 30 could be consolidated in chapter 720 (Regulations Governing Local School Boards and School Divisions) for efficiency.

Issues

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

The Board is unaware of any disadvantages to the public or the Commonwealth by repealing chapter 730 and by retaining subpart 8VAC20-730-30 and several definitions found under 8VAC20-730-10 in a new section of 8VAC20-720. The primary advantage of the repeal of this chapter is to improve the Board's regulations by making the regulations easier for the public and the Commonwealth to understand.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

There are no requirements in this regulation that are more restrictive than applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

No state agencies, localities, or other entities are particularly affected by this change.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

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| For your agency: projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources | None. |
| For other state agencies: projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures. | None. |
| For all agencies: Benefits the regulatory change is designed to produce. | This regulatory action will repeal out-of-date and unnecessary regulations. |

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

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| Projected costs, savings, fees or revenues resulting from the regulatory change. | None. |
| Benefits the regulatory change is designed to produce. | This regulatory action will repeal out-of-date and unnecessary regulations. |

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

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| Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect. | None. |
| Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million. | None. |
| All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements. | None. |
| Benefits the regulatory change is designed to produce. | This regulatory action will repeal out-of-date and unnecessary regulations. |

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.

No alternatives can achieve the purpose of this regulatory repeal.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

This regulatory action is not expected to affect small businesses.

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.

Consistent with § 2.2-4011 of the Code of Virginia, 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: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The State Board of Education is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

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 website at: <https://townhall.virginia.gov>. Comments may also be submitted by email Jim Chapman, Director of Board Relations, at Jim.Chapman@doe.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

| Current chapter-section number | New chapter-section number, if applicable | Current requirements in VAC | Change, intent, rationale, and likely impact of new requirements |
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| 8VAC20-730-10 | | 8VAC20-730-10. Definitions. | Change: Definitions. [Repeal] |

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| | <p>The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:</p> <p>"Attendance conference" means a face-to-face meeting, or an interaction that is conducted through the use of communication technology, scheduled with the student, parent, and school personnel after the seventh unexcused absence. The attendance conference shall be held no later than 10 school days after the 10th unexcused absence. The attendance conference is held by a multi-disciplinary team and may include the parents and student.</p> <p>"Attendance plan" means a plan developed jointly by a school representative, such as a school principal or the principal's designee; parent; and student to resolve the student's nonattendance and engage the student in regular school attendance. The plan shall identify reasons for nonattendance and academic, social, emotional, and familial barriers that impede daily attendance along with positive strategies to address such reasons and impediments and support regular attendance. This plan may include school-based activities or suggested referrals to community supports, or both.</p> <p>"Court referral" means filing a complaint with the Juvenile and Domestic Relations Court after the multi-disciplinary team has held an attendance conference and attempted interventions to address the student's continued nonattendance. Documentation of interventions regarding the</p> | <p>Intent: The intent of this repeal is to eliminate regulations that currently are in conflict with § 22.1-258 of the Code of Virginia.</p> <p>Rationale: The rationale for this repeal is that there is no longer a continued need for this regulatory chapter.</p> <p>Likely Impact: These changes will make the Board's regulations more readable and easier for the public and the Commonwealth to understand.</p> |
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| | | <p>student's unexcused absences, such as copies of the attendance plan and documentation of conference meetings, and compliance with § 22.1-258 of the Code of Virginia will be provided to the intake worker.</p> <p>"Excused absence" means an absence of an entire assigned instructional school day with a reason acceptable to the school administration that is provided by the parent. If circumstances permit, the parent should provide the school administration with the reason for the nonattendance prior to the absence. Examples of an excused absence may include, but are not limited to, the following reasons: funeral, illness (including mental health and substance abuse illnesses), injury, legal obligations, medical procedures, suspensions, religious observances, and military obligation. Suspended students continue to remain under the provisions of compulsory school attendance as described in § 22.1-254 of the Code of Virginia. An absence from school attendance resulting from a suspension shall be recorded in compliance with 8VAC20-730-30 for the period of the suspension.</p> <p>"Instructional school day" means the length of a regularly scheduled school day for an individual student.</p> <p>"Multi-disciplinary team" means a conference team that may be convened to review student records and to participate in prevention, early intervention, and provision of support services to address unexcused absences, including school-based case management.</p> | |
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| | | <p>These services should address academic, social, emotional, and familial issues in order to improve regular school attendance. Team members may include but are not limited to, the following: an administrator, school counselor, social worker or psychologist, student assistance specialist, special education and general education teacher, attendance officer, and community representatives.</p> <p>"Parent" means the parent or parents, guardian or guardians, legal custodian or legal custodians, or other person or persons having legal control or charge of the student.</p> <p>"Truancy" means the act of accruing one or more unexcused absences.</p> <p>"Unexcused absence" means an absence where (i) the student misses his scheduled instructional school day in its entirety and (ii) no indication has been received by school personnel within five days of the absence that the student's parent is aware and supports the absence, or the parent provides a reason for the absence that is unacceptable to the school administration. The school administration may change an unexcused absence to an excused absence when it determines that the parent has provided an acceptable reason meeting criteria for the student's absence or there are extenuating circumstances.</p> | |
| 8VAC20-730-20 | | <p>8VAC20-730-20. Unexcused absences intervention process and responsibilities.</p> <p>A. Each local school board shall provide guidance regarding what would constitute an excused</p> | <p>Change: Unexcused absences intervention process and responsibilities. [Repeal]</p> <p>Intent: The intent of this repeal is to eliminate regulations that currently are in conflict with § 22.1-258 of the Code of Virginia. For example, 8VAC20-730-20</p> |

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| | | <p>absence in order to address when the explanation provided by the parent will be determined to be reasonable and acceptable.</p> <p>B. Each local school board shall develop procedures to ensure that appropriate interventions will be implemented when a student engages in a pattern of absences less than a full day, the explanation for which, if it were a full-day absence, would not be deemed an excused absence.</p> <p>C. The following intervention steps shall be implemented to respond to unexcused absences from school and to engage students in regular school attendance.</p> <p>1. Whenever a student fails to report to school on a regularly scheduled school day and no information has been received by school personnel that the student's parent is aware of and supports the absence, or the parent provides a reason for the absence that is unacceptable to the school administration, the school principal or designee, attendance officer, or other school personnel or volunteer will notify the parent by phone or email or any other electronic means to obtain an explanation. The school staff shall record the student's absence for each day as "excused" or "unexcused." Early intervention with the student and parent or parents shall take place for repeated unexcused absences.</p> <p>2. When a student has received five unexcused absences, the school principal or designee shall make a reasonable effort to ensure that direct contact is</p> | <p>describes an unexcused absences intervention process in which a parent "will be notified by email or any other electronic means" after a student has failed to report to school on a regularly school day and no information has been received by school personnel that the student is aware of and supports the absence, or the parent provides a reason for the absence that is unacceptable to the school administration. The counterpart language in § 22.1-258 provides that a "reasonable effort to notify by telephone the parent" shall be made. Next, 8VAC20-730-20 provides that when a student accrues a "seventh unexcused absence"</p> <p>Rationale: The rationale for this repeal is that there is no longer a continued need for this regulatory chapter.</p> <p>Likely Impact: These changes will make the Board's regulations more readable and easier for the public and the Commonwealth to understand.</p> |
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| | | <p>made with the parent. The parent shall be contacted in a face-to-face conference, by telephone, or through the use of other communication devices. During the direct contact with the parent and the student (if appropriate), reasons for nonattendance shall be documented and the consequences of nonattendance explained. An attendance plan shall be made with the student and parent or parents to resolve the nonattendance issues. The student and parent may be referred to a school-based multi-disciplinary team for assistance implementing the attendance plan and case management.</p> <p>3. When the student accrues a seventh unexcused absence, the school principal or principal's designee shall schedule a face-to-face attendance conference, or an interaction that is conducted through the use of communication technology. The attendance conference must be held within 10 school days from the date of the 10th unexcused absence. The principal or principal's designee shall make reasonable efforts to contact the student's parent or parents to attend the attendance conference either in person or via communication technology. If the principal or principal's designee, after reasonable efforts have been made, is unable to contact the student's parent, the conference shall be held regardless of whether the student's parent approves of the conference. The conference shall include the principal or principal's designee and a</p> | |
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| | | <p>representative from the multi-disciplinary team.</p> <p>4. The multi-disciplinary team shall monitor the student's attendance and, as necessary, meet again to address concerns and plan additional interventions if the student's attendance does not improve. If additional meetings are necessary, the principal or principal's designee shall make reasonable efforts to contact the student's parent or parents and schedule a face-to-face meeting, or an interaction that is conducted through the use of communication technology. If the principal or principal's designee, after reasonable efforts have been made, is unable to contact the student's parent, the conference shall be held regardless of whether the student's parent approves of the conference.</p> <p>5. In circumstances in which the parent is intentionally noncompliant with compulsory attendance requirements or the student is resisting parental efforts to comply with compulsory attendance requirements, the school principal or principal's designee shall make a referral to the attendance officer. The attendance officer shall schedule a conference with the student and the student's parent or parents within 10 days of receiving the referral. The attendance officer may (i) file a complaint with the juvenile and domestic relations district court alleging the student is a child in need of supervision as defined in § 16.1-228 of the Code of Virginia or (ii) institute proceedings against the parent pursuant to § 18.2-</p> | |
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| | | <p>371 or 22.1-262 of the Code of Virginia. In addition to written documentation of the efforts to comply with the notice provisions of § 22.1-258 of the Code of Virginia, all records of intervention regarding the student's unexcused absences, such as copies of the conference meeting notes, attendance plan, and description of the supports offered or made available to the student shall be presented to the intake worker.</p> <p>D. A record shall be maintained of each meeting that includes the attendance plan, the name of individuals in attendance at each conference meeting (including via telephone or electronic devices), the location and date of the conference, a summary of what occurred, and follow-up steps.</p> | |
| 8VAC20-730-30 | | <p>8VAC20-730-30. Data collection and reporting. Data collection shall begin on the first day students attend for the school year. Each school division shall provide student level attendance data for each student that includes the number of unexcused absences in a manner prescribed by the Virginia Department of Education. A student's attendance is cumulative and begins on the first official day of the school year or the first day the student is officially enrolled. All nonattendance days are cumulative and begin with the first absence. For purposes of this data collection, truancy shall start with the first unexcused absence and will be cumulative. Data shall be reported to the Virginia Department of Education pursuant to § 22.1-258 of the</p> | <p>Change: Data collection and reporting. [Repeal]</p> <p>Intent: The intent of this repeal is to move the regulations to Chapter 720 for the purposes of consolidation.</p> <p>Rationale: While numerous requirements overlap and compete with the statutory requirements of § 22.1-258, the Board found that the data collection requirements in 8VAC20-730-30 should be retained and moved to 8VAC20-720.</p> <p>Likely Impact: These changes will make the Board's regulations more readable and easier for the public and the Commonwealth to understand.</p> |

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| | | Code of Virginia and 8VAC20-730-20. | |
| | 8VAC20-720-20 | | <p>Change: 8VAC20-720-20. Data collection and reporting. [new]</p> <p><u>"Excused absence" means an absence of an entire assigned instructional school day with a reason acceptable to the school administration that is provided by the parent. If circumstances permit, the parent should provide the school administration with the reason for the nonattendance prior to the absence. Examples of an excused absence may include, but are not limited to, the following reasons: funeral, illness (including mental health and substance abuse illnesses), injury, legal obligations, medical procedures, suspensions, religious observances, and military obligation. Suspended students continue to remain under the provisions of compulsory school attendance as described in § 22.1-254 of the Code of Virginia. An absence from school attendance resulting from a suspension shall be recorded in compliance with this section for the period of the suspension.</u></p> <p><u>"Instructional school day" means the length of a regularly scheduled school day for an individual student.</u></p> <p><u>"Truancy" means the act of accruing one or more unexcused absences.</u></p> <p><u>"Unexcused absence" means an absence where (i) the student misses his scheduled instructional school day in its entirety and (ii) no indication has been received by school personnel within five days of the absence that the student's parent is aware and supports the absence, or the parent provides a reason for the absence that is unacceptable to the school administration. The school administration may change an unexcused absence to an excused absence when it determines that the parent has provided an acceptable reason meeting criteria for the student's absence or there are extenuating circumstances.</u></p> <p><u>Data collection shall begin on the first day students attend for the school year. Each school division shall provide</u></p> |

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| | | <p><u>student level attendance data for each student that includes the number of unexcused absences in a manner prescribed by the Virginia Department of Education. A student's attendance is cumulative and begins on the first official day of the school year or the first day the student is officially enrolled. All nonattendance days are cumulative and begin with the first absence. For purposes of this data collection, truancy shall start with the first unexcused absence and will be cumulative. Data shall be reported to the Virginia Department of Education pursuant to § 22.1-258 of the Code of Virginia.</u></p> <p>Intent: The intent of retaining the regulatory language from 8VAC20-730-30 and the collateral definitions from 8VAC20-730-10 is to maintain the current data collection and reporting requirements for each school division.</p> <p>Rationale: While numerous requirements overlap and compete with the statutory requirements of § 22.1-258, the Board found that the data collection requirements in 8VAC20-730-30 as well as the definitions of “excused absence,” “instructional school day,” “truancy,” and “unexcused absence,” should be retained and moved to 8VAC20-720.</p> <p>Likely Impact: These changes will make the Board's regulations more readable and easier for the public and the Commonwealth to understand.</p> |
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