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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	Department of Education
<b>Virginia Administrative Code (VAC) citation(s)</b>	8 VAC20-131
<b>Regulation title(s)</b>	Regulations Establishing Standards for Accrediting Public Schools in Virginia
<b>Action title</b>	Amendments to permit students entering the ninth grade prior to the 2018-19 school year to be awarded locally-awarded verified credit in English and mathematics when certain Board of Education - established criteria are met.
<b>Date this document prepared</b>	April 2, 2019

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

### Brief Summary

*Please 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.*

This regulatory action allows students that entered the ninth grade prior to the 2018-19 school year to be awarded locally-awarded verified credits in English and mathematics when certain Board of Education-established criteria are met. Prior to the implementation of emergency regulations that became effective on May 9, 2018, these students could only receive locally-awarded verified credits in science and history/social science. These proposed amendments would finalize these emergency regulations.

Changes to the *Regulations Establishing Standards for Accrediting Public Schools in Virginia* that became effective for the 2018-19 school year allowed students entering the ninth grade in 2018-2019 and thereafter to receive locally-awarded verified credits in English, mathematics, science, and history/social science.

The proposed amendments will ensure locally-awarded verified credits in English, mathematics, science, and history/social science will remain available for all students after the expiration of the emergency regulations on November 8, 2019.

## Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

**Locally-awarded verified credits** provide students that opportunity to receive verified credits required for graduation in a course that they have passed, but failed the related end-of-course Standards of Learning test. To receive a locally-awarded verified credit, a student must fail the end-of-course test twice, scoring between 375 and 399 on one of the attempts, and demonstrate achievement and mastery in the academic content area through an appeal that is reviewed by a local school division-established committee.

**Standards of Accreditation**, or **SOA**, refers to 8VAC20-131, the Board of Education's Regulations Establishing Standards for Accrediting Public Schools in Virginia.

## 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 approved the fast track revisions to the *Regulations Establishing Standards for Accrediting Public Schools in Virginia* on April 25, 2019.

## Mandate and Impetus

*Please 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, board decision, etc.). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."*

*As required by Virginia Code § 2.2-4012.1, please also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.*

These amendments to the SOA are necessary to replace emergency regulations adopted by the Board of Education that became effective on May 9, 2018, and are set to expire on November 8, 2019. This regulatory action is expected to be noncontroversial because the emergency regulations that became effective May 9, 2018 are currently being implemented and have not generated any public

comment since their adoption. The changes proposed by this fast-track regulatory action are substantially the same as those that were included in the emergency regulations.

## Legal Basis

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

The Board of Education is the promulgating entity.

The Board's authority to establish graduation requirements through its Standards of Accreditation are established in § 22.1-253.13:3 of the Code:

*A. The Board of Education shall promulgate regulations establishing standards for accreditation pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), which shall include student outcome measures, requirements and guidelines for instructional programs and for the integration of educational technology into such instructional programs, administrative and instructional staffing levels and positions, including staff positions for supporting educational technology, student services, auxiliary education programs such as library and media services, requirements for graduation from high school, community relations, and the philosophy, goals, and objectives of public education in Virginia.*

The Board's authority to establish graduation requirements are further referenced in § 22.1-253.13:4 of the Code:

*A. Each local school board shall award diplomas to all secondary school students, including students who transfer from nonpublic schools or from home instruction, who meet the requirements prescribed by the Board of Education and meet such other requirements as may be prescribed by the local school board and approved by the Board of Education...*

## Purpose

*Please 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's intended to solve.*

Comprehensive revisions to the *Regulations Establishing Standards for the Accreditation of Public Schools in Virginia*, more commonly referred to as the Standards of Accreditation or SOA, became effective for the 2018-2019 academic year. One component of these revisions changed the availability of locally-awarded verified credits, which provide students the opportunity to receive a verified credit in a course that they have passed, but failed the related end-of-course Standards of Learning test twice within a narrow margin. To receive a locally-awarded verified credit, the student must take the test twice, score between 375 and 399 on one of the attempts, and demonstrate achievement and mastery in the academic content through a local appeal process.

After the comprehensive revisions to the SOA were approved through the Administrative Process Act, it became apparent that the revisions would have established inequitable opportunities to earn locally-awarded verified credits for students that will be attending high school at the same time. The revised regulations would have provided that students that entered the ninth grade prior to the 2018-2019 school year that struggled to pass either the English or mathematics end-of-course test could not earn locally-

awarded verified credits in English or mathematics, while students entering the ninth grade beginning in the 2018-2019 school year would have access to locally-awarded verified credits in those subjects.

To provide parity among these high school cohorts, and to help current students earn their diplomas for graduation in the spring of 2018, the Board adopted emergency regulations to extend the availability of a locally-awarded verified credit to English and mathematics for students who entered the ninth grade prior to the 2018-2019 school year. In addition, the Board's guidance document governing the award of locally-awarded verified credit was updated to extend the use of locally-awarded verified credits in English and mathematics for these students.

Under the Administrative Process Act, the emergency regulations that were approved by the Board became effective on May 9, 2019, and will expire on November 8, 2019. To ensure that the Board's regulations continue to permit all students to access locally-awarded verified credits in English and mathematics, these permanent regulations are proposed to replace the emergency regulations, using the fast-track provisions of the Administrative Process Act.

If no action were taken, the emergency regulations would expire, and students that entered the ninth grade prior to the 2018-19 school year will not be able to access locally-awarded verified credit in English or mathematics. This means that these students, if they are unable to pass an English or mathematics assessment needed for graduation, may not be able to graduate, while a younger peer facing the same situation would be able to graduate from high school.

## Substance

*Please 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 proposed changes would allow all students to access locally-awarded verified credits in English, mathematics, science and history/social sciences in accordance with the Board of Education's regulations and guidance.

For students that entered the ninth grade for the first time prior to the 2018-2019 school year, the existing regulations make locally-awarded verified credits available only for science and history/social science. Under the existing emergency regulations, those students may now be awarded locally-awarded verified credits in English, mathematics, science, and history/social science, the same is as permitted for their peers that entered the ninth grade in 2018-2019 and thereafter. These proposed fast-track regulations would finalize those emergency provisions.

## Issues

*Please 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.*

There are no disadvantages to the public, the agency, or the Commonwealth. The advantages to these revisions include providing parity among high school student cohorts, and helping students earn their high school diplomas.

## Requirements More Restrictive than Federal

*Please 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 applicable federal requirements.

## Agencies, Localities, and Other Entities Particularly Affected

*Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "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.*

Other State Agencies Particularly Affected: none

Localities Particularly Affected: All local school boards and school divisions will be affected because they will be able to provide these opportunities to earn credit needed for students to graduate.

Other Entities Particularly Affected: no other entities are anticipated to be affected.

## Economic Impact

*Pursuant to § 2.2-4007.04 of the Code of Virginia, please 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. Please keep in mind that this is change versus the status quo.*

### Impact on State Agencies

<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

For all agencies: Benefits the regulatory change is designed to produce.	None
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**Impact on Localities**

Projected costs, savings, fees or revenues resulting from the regulatory change.	None
Benefits the regulatory change is designed to produce.	None

**Impact on Other Entities**

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.	All local school boards and school divisions will be affected.
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: 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.	132 local school boards and school divisions. No small businesses should be affected.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please 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.	The amendments in the regulations are designed to provide parity among school division cohorts and increase students' ability to graduate.

**Alternatives**

*Please 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.*

If the regulations are not adopted, students that entered high school prior to the 2018-2019 school year would not be able to access locally-awarded verified credit in English or mathematics. Students that are unable to pass SOL tests in these subject areas, but are scoring within a narrow margin of passing, will be unable to graduate from high school. Because the aforementioned emergency regulations have already been in effect, some students would lose the ability to earn locally-awarded verified credits in English and mathematics if these fast-track changes are not adopted.

Another alternative would be to utilize the Board's authority established in § 22.1-253.13:4.D.11 of the Code, and promulgated through 8VAC20-131-420.B. This regulation allows the Board of Education to waive certain graduation requirements on a case-by case basis either upon the Board's initiative or upon request from a local school board. To accomplish waivers for locally-awarded verified credits would create an unnecessary administrative burden for local school boards, local division staff, the Board of Education, and Department of Education staff, because these case-by-case waivers would have to be submitted and automatically approved.

### Regulatory Flexibility Analysis

*Pursuant to § 2.2-4007.1B of the Code of Virginia, 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) 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.*

These amendments are proposed to revise the current regulations before the Emergency Regulations expire on November 8, 2019. Therefore, there are no alternative regulatory methods that will accomplish the objectives of the statutory requirements. In addition, there is no adverse impact on small businesses.

### Public Participation

*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.*

### Detail of Changes

*Please 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.*

*If the regulatory change is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below. Please include citations to the specific section(s) of the regulation that are changing.*

If the regulatory change is intended to replace an emergency regulation, but includes changes made since the emergency regulation, please create two charts:

1. A chart describing changes from the **pre-emergency** regulation to the regulatory change, as described in the paragraph above; or if a new chapter is being promulgated, a chart describing the proposed new regulation.
2. A chart describing changes from the **emergency** regulation to the regulatory change. For the second chart please use the following title: "Changes from the Emergency Regulation." In this case "current section number" or "current chapter-section number" would refer to the **emergency** regulation.

**Changes from the pre-emergency regulation to this regulatory change:**

Current section number	Current requirement	Proposed change, intent, and likely impact of proposed requirements
8VAC20-131-110	Students that enter the ninth grade for the first time prior to the 2018-19 school year and do not pass SOL tests in science or history/social science may receive locally awarded verified credits from the local school board in accordance with Board of Education guidelines. Students that enter the ninth grade for the first time in the 2018-19 school year and thereafter may receive not more than one locally-awarded verified credit in English, mathematics, science, or history/social science.	The proposed change would add English and mathematics to the list of subject areas for which a locally-awarded verified credit can be awarded for students that entered the ninth grade for the first time before the 2018-19 school year. The limit of one locally-awarded verified credits for students entering ninth grade in 2018-19 and thereafter is established in the regulation. The Board’s guidance includes a limit on the number of verified credits for students that entered the ninth grade prior to 2018-19. Currently, the limit is three.
8VAC20-131-430	The revised SOA will become effective beginning in the 2018-19 school year, with certain exceptions. Availability of locally-awarded verified credits established in 8VAC20-131-110 is repeated in this section for clarity.	This amendment is proposed to comport with the amendments proposed for 8VAC20-131-110.

**Changes from the emergency regulation to this regulatory change:**

Current section number	Current requirement	Proposed change, intent, and likely impact of proposed requirements
8VAC20-131-110 (as it is effective until the 2018-19 school year)	Until the beginning of the 2018-2019 school year, students who do not pass Standards of Learning tests in English, mathematics, science, or history/social science may receive locally-awarded verified credits from the local school board in accordance with Board of Education guidelines.	Section 8VAC20-131-110 was set out twice in the emergency regulations because the previous version of this regulation ( <i>Va. Register</i> , Volume 31, Issue 26) was still in effect when the emergency regulation became effective. This version of the regulation was superseded at the beginning of the 2018-2019 school year (see 8VAC20-131-430); therefore it no longer needs to be set out in its previous version in the final version of the regulation.
8VAC20-131-110 (as it will be)	Students that enter the ninth grade for the first time prior to the	No changes are proposed from the emergency regulation to the final version



<p><del>effective beginning with the 2018-19 school year)</del></p>	<p>2018-19 school year and do not pass SOL tests in science or history/social science may receive locally awarded verified credits from the local school board in accordance with Board of Education guidelines.</p> <p>Students that enter the ninth grade for the first time in the 2018-19 school year and thereafter may receive not more than one locally-awarded verified credit in English, mathematics, science, or history/social science.</p>	<p>proposed through this regulatory action, except to remove the effective date from the section title, because the effective date has since passed.</p> <p>***See note below***</p>
<p>8VAC20-131-430 <del>(as it will be effective beginning with the 2018-19 school year)</del></p>	<p>The revised SOA will become effective beginning in the 2018-19 school year, with certain exceptions. Availability of locally-awarded verified credits established in 8VAC20-131-110 is repeated in this section for clarity.</p>	<p>No changes are proposed from the emergency regulation to the final version proposed through this regulatory action, except to remove the effective date from the section title, because the effective date has since passed.</p>

\*\*\*\*NOTE\*\*\*\* There is another pending regulatory action impacting 8VAC20-131-110 (Action 5187). That action would delete subdivision 8VAC20-131-110.B.4, eliminating the option for a student to earn a verified credit through an authentic performance assessment in social science.

This action impacts 8VAC20-131-110.B.3.a, by adding English and mathematics to the subject areas for which a locally awarded verified credit may be awarded.

Both of these changes are independent of one another and should not cause any conflict if one becomes effective before the other.