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Regulatory
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Final Regulation
Agency Background Document

Agency name	Virginia Board of Education
Virginia Administrative Code (VAC) citation	8 VAC 20-340 and 8 VAC 20-60
Regulation title	*Regulations Governing Driver Education* and *Regulations Governing the Approval of Correspondence Courses for Home Instruction*
Action title	This action adds a new section to 8 VAC 20-340, *Regulations Governing Driver Education*, which regulates driver education correspondence courses used by students who are homeschooled and repeals 8 VAC 20-60, *Regulations Governing the Approval of Correspondence Courses for Home Instruction.*
Date this document prepared	July 22, 2014

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

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

The 1984 General Assembly adopted legislation amending the state's compulsory attendance laws (§ 22.1-254 of the *Code of Virginia*) to allow parents to teach their children at home in lieu of sending them to a public or private school. One of the provisions qualifying parents to home instruct their children permitted them to enroll a child in a correspondence course approved by the Board of Education. (§ 22.1-254.1 of the *Code*) In 1999, the General Assembly amended § 22.1-205 of the *Code* to permit the Board to approve correspondence courses in the classroom portion of driver education for parents who home school their children.

The 2008 General Assembly adopted HB 767 which removed the correspondence course approval requirements in § 22.1-254.1 so that parents who home instruct can use any correspondence course of their choosing to meet this option (with the exception of driver education) rendering the previous approval requirement moot. As a result of this action, the *Regulations Governing the Approval of Correspondence*

Courses for Home Instruction is no longer necessary and is being repealed. However, the requirement for the approval of correspondence courses for driver education by this Department remains. In order to ensure continued compliance with this requirement, a new section governing the approval of correspondence courses for driver education by this Department will be added to the *Regulations Governing Driver Education*; thus, consolidating the process for approval of correspondence courses for driver education in one set of regulations. This streamlines the current approval process and provides clarity for users.

The proposed new section of the revised regulation, the *Regulations Governing Driver Education*, includes the definition section from the repealed regulation with minor revisions and also adds a definition for the term "parent." In addition, the revised regulation requires the applicant to submit to the Department as part of the application process an affidavit; a schedule of tuition and fees, a description of its refund policy; and copies of all application forms and enrollment agreements used by the correspondence program. Broad language in the current regulation allows the Department to ask for this information, but the more specific language in the proposed regulation enables all users to be fully aware of the regulatory expectations. Moreover, the approval criteria have been expanded to add a requirement that the content of each course meets the requirements of the *Driver Education Standards of Learning* and the *Curriculum and Administrative Guide for Driver Education*. Changes also include the addition of a process by which the Board of Education may review and reconsider a correspondence school's application that has been denied or for which approval is revoked for good cause.

At its meeting on October 28, 2010, the Board of Education approved the Notice of Intended Regulatory Action (NOIRA) to repeal the *Regulations Governing the Approval of Correspondence Courses for Home Instruction* and amend the *Regulations Governing Driver Education.* At its meeting on September 22, 2011, the Board approved the proposed regulatory actions. At its meeting on October 24, 2013, the Board took final action to approve these regulations. However, when the Attorney General's Office conducted its review of the final regulations, it advised staff that the Board would need to make a number of changes regarding due process if a correspondence school's application is denied or if the approval is revoked for good cause.

On May 22, 2014, the Board accepted for first review the amendments to the *Regulations Governing Driver Education* and the repeal of *Regulations Governing the Approval of Correspondence Courses for Home Instruction* (Reconsideration of Final Stage). Because the proposed changes were substantive, a 30-day public comment period was conducted beginning on May 29, 2014 and ending on June 30, 2014. No comments were received during this period. At its meeting on July 24, 2014, the Board is expected to take final action on these regulations.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency or board taking the action, and (3) the title of the regulation.

At its July 24, 2014 meeting, the Board of Education is expected to take final action to repeal the *Regulations Governing the Approval of Correspondence Courses for Home Instruction* and to amend the *Regulations Governing Driver Education.* (Reconsideration of Final Stage).

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a

specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

Section 22.1-16 of the *Code of Virginia* vests the Board of Education with the authority to promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of Title 22.1. Section 22.1-254.1 was amended by the General Assembly and no longer requires the Superintendent of Public Instruction to approve correspondence courses for families who home school their children. Section 22.1-205 of the *Code* provides the Board with the authority to approve correspondence courses for the classroom training component of driver education.

Purpose

The proposed regulatory action is essential to protect the health, safety, and welfare of citizens in that it will ensure that courses offered by correspondence schools in driver education will meet state requirements for such programs. It will also help ensure that young aspiring drivers receive adequate instruction prior to seeking a driver's license.

A new section regarding approval of correspondence courses for driver education will be added to the *Regulations Governing Driver Education*; thus, consolidating the process for approval of correspondence courses for driver education in one set of regulations. This will streamline the current process and delete an obsolete set of regulations, *Regulations Governing the Approval of Correspondence Courses for Home Instruction*.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The proposed change will repeal an outdated regulation (the *Regulations Governing the Approval of Correspondence Courses for Home Instruction*) initially adopted by the Board of Education in 1985 and revise a current regulation (the *Regulations Governing Driver Education*) directed specifically at approving driver education courses offered as correspondence programs. The need for a separate set of regulations was eliminated by an amendment to § 22.1-254.1 of the *Code of Virginia* by the 2008 General Assembly.

The proposed new section of the revised regulation, the *Regulations Governing Driver Education*, includes the definition section from the repealed regulations with minor revisions and also adds a definition for the term "parent." In addition, the revised regulation requires the applicant to submit to the Department as part of the application process an Affidavit; a schedule of tuition and fees, a description of its refund policy; and copies of all application forms and enrollment agreements used by the correspondence program. All of the revisions are proposed to protect the parents and students who use these programs. Moreover, the approval criteria have been expanded to add a requirement that the content of each course meet the requirements of the *Driver Education Standards of Learning* and the *Curriculum and Administrative Guide for Driver Education*. Changes also include the addition of a process by which the Board of Education may review and reconsider a correspondence school's application that has been denied or for which approval is revoked for good cause.

Issues

Please identify the issues associated with the proposed regulatory action, including:
1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;
2) the primary advantages and disadvantages to the agency or the Commonwealth; and
3) other pertinent matters of interest to the regulated community, government officials, and the public.
If there are no disadvantages to the public or the Commonwealth, please indicate.

This proposal will ensure that courses approved by the Board of Education and offered by driver education correspondence programs will meet the minimal requirements for such programs offered in public schools. It will also help ensure that young aspiring drivers receive adequate instruction prior to seeking a driver's license. This should ensure better drivers and a safer public. In addition, the proposed revisions will protect the parents and students who use these programs.

This regulatory action does not pose a disadvantage to the public or to the Commonwealth in any way.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

The Board received no public comment on the proposed regulations, and there were no changes to the regulations when the Board took final action to approve them on October 24, 2013.

However, when the Attorney General's Office conducted its review of the final regulations, it advised staff that the Board would need to make a number of changes regarding due process if a correspondence school's application is denied or if the approval is revoked for good cause. The Attorney General's Office had reviewed the regulations at the proposed stage and had made no recommendations for changes.

These amendments made changes to the due process provisions. Instead of a fact-finding conference and a hearing before a hearing officer, the amendments would provide for the Board of Education to review and reconsider the decision.

On May 22, 2014, the Board accepted for first review the amendments to the *Regulations Governing Driver Education* and the repeal of *Regulations Governing the Approval of Correspondence Courses for Home Instruction* (Reconsideration of Final Stage). Because the proposed changes were substantive, a 30-day public comment period was conducted beginning on May 29, 2014 and ending on June 30, 2014. No comments were received during this period.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

None

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
N/A	8 VAC 20-340-5 and 8 VAC 20-340-40	N/A	The proposed change will revise a current regulation (the *Regulations Governing Driver Education*) directed specifically at approving driver education courses offered as correspondence programs. These programs are currently being regulated under an obsolete set of regulations (the *Regulations Governing the Approval of Correspondence Courses for Home Instruction*) initially adopted by the Board of Education in 1985. The need for a separate set of regulations was eliminated by an amendment to § 22.1-254.1 of the *Code of Virginia* by the 2008 General Assembly. The proposed new section of the revised regulation, the *Regulations Governing Driver Education*, includes the definition section from the repealed regulations with minor revisions and also adds a definition for the term "parent." In addition, the revised regulation requires the applicant to submit to the Department as part of the application process an Affidavit; a schedule of tuition and fees; a description of its refund policy; and copies of all application forms and enrollment agreements used by the correspondence program. All of the revisions are proposed to protect the parents and students who use these programs. Moreover, the approval criteria have been expanded to add a requirement that the content of each course meets the requirements of the *Driver Education Standards of Learning* and the *Curriculum and Administrative Guide for Driver Education*. Changes also include the addition of a process by which the Board of Education may review and reconsider a correspondence school's application that has been denied or for which approval is revoked for good cause.