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Fast-Track Regulation Agency Background Document

Agency name	Department of Education
Virginia Administrative Code (VAC) citation(s)	8 VAC 20-160-10 et.seq.
Regulation title(s)	Regulations Governing Secondary School Transcripts (amending 8 VAC 20-160-30).
Action title	Amendment to Allow Flexibility to LEA's to add an Opt-Out Policy for Sending Standardized Test Scores to Postsecondary Institutions for 8 VAC 20-160-30, item #25.
Date this document prepared	June 1, 2016

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

Changes in professional practice in postsecondary institutions have necessitated a change to one item in the *Regulations Governing Secondary School Transcripts* (8 VAC 20-160-30). The regulations should be revised to allow for flexibility in the mandate regarding sending standardized test scores to postsecondary institutions.

The Virginia Board of Education is proposing an amendment to the wording of 8 VAC 20-160-30, Item #25 of the *Regulations Governing Secondary School Transcripts* to add an Opt-Out

policy to allow flexibility to certain students who do not want standardized test scores sent to postsecondary institutions.

The last revisions to the *Regulations Governing Secondary School Transcripts* were made by the Board of Education in 2007. The *Regulations Governing Secondary School Transcripts* are composed of the following sections: Definitions, Effective date, Format options, Profile data sheet, Advanced-level courses, and Elements for weighting.

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.

N/A

Statement of final agency action

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

The Board of Education authorized the Department of Education to proceed with the fast track revision to the regulation at its May 26, 2016 meeting.

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.

The Board of Education's authority for promulgating regulations governing standards for accrediting public schools may be found in § 22.1-253.13:3 of the *Code of Virginia*.

"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, but not be limited to, 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, course and credit requirements for graduation from high school, community relations, and the philosophy, goals, and objectives of public education in Virginia."

The Board's overall regulatory authority may be found in § 22.1-16. In the *Code of Virginia*: "The Board of Education may adopt bylaws for its own government and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of this title."

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The amendment to add the Opt-Out policy is a result of numerous educator and constituent calls expressing concern with the mandate to send standardized test scores as a part of the official transcript. Parents and students want the ability to choose whether the standardized test scores are sent by the school or through the College Board, or at all, based on college admission requirements.

Rationale for using fast-track process

Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

The fast track rulemaking process is for regulations expected to be noncontroversial. This revision is noncontroversial because its only purpose is to add flexibility to an already existing transcript item. Time is of the essence in amending these regulations because students send transcripts to postsecondary institutions continuously throughout the year and some postsecondary institutions have already omitted the requirement for sending standardized scores. In addition, it is probable that more postsecondary institutions will omit this requirement in the future.

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.

Changes in professional practice in postsecondary institutions have necessitated a change to one item in the regulations governing secondary school transcripts. The *Regulations Governing Secondary School Transcripts* should be revised to allow for flexibility in the mandate regarding sending standardized test scores to postsecondary institutions.

Currently, the required information for transcripts includes:

“25. Test record, to include at least the highest score earned, if available, on college performance-related standardized tests such as SAT and ACT, excluding *Standards of Learning* (SOL) test scores;”

The change to this required item is as follows:

“25. Test record, to include at least the highest score earned, if available, on college performance-related standardized tests such as SAT and ACT, excluding *Standards of Learning* (SOL) test scores; except that each local school board shall adopt a policy setting forth the procedure by which parents, guardians, or others having legal control or charge can elect in writing to have their child’s test record excluded from the student transcript ("opt-out").”

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.

There are no disadvantages to the public, the agency, or the Commonwealth. The amendment simply adds flexibility to an already existing transcript mandate. The Opt-Out policy will allow students to choose whether they have their standardized test scores sent to postsecondary institutions based on local policy rather than it being mandatory that the scores are sent.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

All local school boards and school divisions will be affected equally.

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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

This amendment is proposed to allow flexibility for students when sending transcripts to colleges where standardized test scores are “optional.” 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.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures	None
Projected cost of the new regulations or changes to existing regulations on localities.	Minimum
Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.	Local school boards and local school divisions
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 divisions and local school boards. No small businesses.
All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and	None

<p>other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The amendment will allow students to choose when and where their transcripts are sent based on local school board policy.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

There are no viable alternatives to revisions of the regulations.

Public participation notice

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.

Periodic review and small business impact review report of findings

If this fast-track is the result of a periodic review/small business impact review, use this form to report the agency's findings. Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review and (2) indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

This is not the result of a periodic review/small business impact review and will not affect small businesses.



Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulatory action is expected to impact the family by providing the flexibility to choose if standardized test scores are sent to postsecondary institutions. Currently it is mandated that "at least the highest score earned, if available" be sent as part of the transcript. Because some postsecondary institutions do not require standardized test scores be sent for admission purposes, it will be the choice of the family whether to send the scores with the transcript, according to division policy.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

For changes to existing regulation(s), please use the following chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
8 VAC 20-160-30, item #25		Test record, to include at least the highest score earned, if available, on college performance-related standardized tests such as SAT and ACT, excluding <i>Standards of Learning</i> (SOL) test scores;	Test record, to include at least the highest score earned, if available, on college performance-related standardized tests such as SAT and ACT, excluding <i>Standards of Learning</i> (SOL) test scores; <u>except that each local school board shall adopt a policy setting forth the procedure by which parents, guardians, or others having legal control or charge can elect in writing to have their child's test record excluded from the student transcript ("opt-out").</u>