



# COMMONWEALTH of VIRGINIA

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## MEMORANDUM

**TO:** The Honorable Richard D. Holcomb, Commissioner  
Department of Motor Vehicles

**FROM:** Jo Anne P. Maxwell  
Senior Assistant Attorney General and Chief

**DATE:** December 13, 2010

**SUBJECT:** Statutory Authority to Amend Regulations Governing Driver Training Schools,  
24 VAC 20-121

You have asked for a letter of assurance from this Office that the Department of Motor Vehicles ("DMV") has statutory authority to amend the existing regulations governing driver training schools, 24 VAC 20-121-10, *et. seq.* The proposed changes, in essence, will enable applicants and existing licensees of driver training schools to forward certain information to DMV electronically (e.g. applications, change of addresses, evidence of insurance coverage, copies of contracts, notice of traffic convictions, etc.) as opposed to paper copies. These changes have been made based on encouragement by the General Assembly during the 2009 Session. *See* Chapter 85, 2009 Acts of Assembly.

With regard to your request, it is my opinion that DMV has both the statutory authority and implied authority to promulgate regulations governing driver training schools pursuant to the provisions of Va. Code § 46.2-203 (general authority to adopt regulations), and § 46.2-1703 (specific authority to adopt regulations for driver training schools). Because the authority to promulgate regulations pursuant to each of those Code sections is permissive rather than mandatory, such authority, by implication, includes the authority to modify or amend or repeal such regulations as have been promulgated thereunder. Therefore, I believe that DMV can amend the existing regulations.

I would also note that the same legislation referenced above, *see* Chapter 85, 2009 Acts of Assembly, also exempted such changes from the requirements of the Administrative Process Act ("APA"). That legislation is now codified in § 2.2-4007.2 of the Code of Virginia (1950). Reference to this statute was not on the Virginia Regulatory Town Hall web site, but that omission does not render the Town Hall citation inaccurate, but merely incomplete. Nevertheless, I believe that DMV is also exempt from the APA requirements in making the proposed changes.

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In summary, I would conclude that DMV has the authority to amend the existing regulations as proposed. If I may be of any further assistance to you relating to this matter, please do not hesitate to contact me. As usual, I greatly appreciate your patience.