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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	Board for Hearing Aid Specialists and Opticians
<b>Virginia Administrative Code (VAC) citation(s)</b>	18 VAC 80-30-20
<b>Regulation title(s)</b>	Opticians Regulations
<b>Action title</b>	Reduce length of optician apprenticeship
<b>Date this document prepared</b>	August 3, 2018

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

The Board for Hearing Aid Specialists and Opticians proposes to update the current optician apprenticeship from a three-year (6000-hour) program to a two-year (4000-hour) program. The recommended reduction is based on a review by the Board's Ad Hoc Committee on Optician Apprenticeship, formed in 2014 to review the apprenticeship program and suggest revisions to reflect current training and job requirements, industry practices, and minimum competencies to protect the public's health, safety, and welfare.

The length of the optician apprenticeship, administered under the Virginia Department of Labor and Industry (DOLI), is specified in the Board's regulations. Decreasing the hours requires regulatory action.

## 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.*

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"Board" means the Board for Barbers and Cosmetology.

"Department" means the Department of Professional and Occupational Regulation.

"DOLI" means the Virginia Department of Labor and Industry.

## 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.*

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On July 25, 2018, the Board authorized a fast-track regulatory action for the Opticians Regulations.

## 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.*

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Code of Virginia § 54.1-201 enumerates Board authority to promulgate regulations and to establish entry qualifications for licensure.

Subsection A.1 states, in part, that the Board is granted authority to "establish the qualifications of applicants." Subsection A.5 states, in part, that the Board has the power and duty:

To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board.

## 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.*

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The proposed amendment to the regulations is necessary to reduce the length of optician apprenticeship, which will decrease entry barriers to the profession while maintaining public protection. Attendant revisions to the apprenticeship work processes and standards (through DOLI training materials and sponsorship requirements) will better reflect current industry practices while maintaining a focus on

developing minimum competency. However, because the Board's regulations currently require the apprenticeship length be three years, this action is necessary in order to implement the two-year, 4000-hour program recommendation.

### 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?*

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The proposed regulatory change is best suited for the fast-track process for several reasons. First, the amendment is simple, easy to understand, and affects just one specific regulatory requirement: the length of the optician registered apprenticeship.

Second, the proposed change has been under discussion for more than four years in order to build consensus. The Board's ad hoc committee has held over a dozen public meetings, and incorporated industry stakeholders in the proposal's development, including participants from the education sector and trade associations.

Finally, the Board worked with DOLI in developing the revisions, and DOLI has confirmed it is prepared to initiate the revised apprenticeship once the proposed regulation becomes effective. Reducing the optician apprenticeship from three years to two years has been supported by all stakeholders who participated in the process, and imposes a less burdensome option for entry. For these reasons, the Board expects this rulemaking to be noncontroversial.

### 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.*

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**18 VAC 80-30-20. Qualifications of applicant.** The apprenticeship option (as an alternative to completing opticianry school) is reduced from a three-year program to a two-year program.

This action also makes two technical edits: one to update the name of the DOLI apprenticeship division, and the other with reference to the Board.

### 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.*

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1) The primary advantage to the public (applicants, licensees, and citizens) for implementing this proposed change is that updating the apprenticeship content will more accurately reflect industry practices while still maintaining a focus on developing minimum competency—better ensuring the protection of the public's health, safety, and welfare. The regulatory revision will reduce the length of the

apprenticeship by one year and 2000 hours, allowing individuals to gain entry into the profession substantially faster. In some cases, it will make the apprenticeship a more appealing option for those seeking to enter the profession. Businesses will benefit from faster training periods for prospective employees and potentially a larger pool of potential employees. There are no disadvantages of these amendments. Licensure is required by the Code of Virginia, and the proposed changes only set forth the qualifications for obtaining the license.

2) The primary advantage to the agency and Commonwealth is positive economic impact from the reduction of entry requirements for opticians, promoting Virginia's low regulatory burden and positive business climate. Additionally, these proposed changes will update the content of the apprenticeship so that it better reflects current industry practices and needs. There are no identified disadvantages to the Commonwealth.

3) There are no other pertinent matters of interest.

**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 requirements in the proposed regulations that would be more restrictive than those currently required in federal law.

**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.*

No localities will be particularly affected.

**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.*

1) The Board must promulgate regulations that provide an adequate level of protection to the public while simultaneously ensuring that individuals and businesses are not unnecessarily burdened. This proposed amendment will reduce the existing burden on individuals and businesses while maintaining adequate protection of the public by reducing the entry requirement into the profession.

- 2) This regulatory action reduces reporting requirements (e.g., tracking hours) for optician businesses that sponsor apprentices, by decreasing the length of apprenticeship by one year. No additional compliance deadlines or reporting requirements are created by this action.
- 3) This regulatory action simplifies reporting requirements (e.g., tracking hours) for optician businesses that sponsor apprentices, by decreasing the length of apprenticeship by one year. No additional compliance or reporting requirements are created by this action.
- 4) No design or operational standards are required by this action. However, performance standards are utilized in all cases where the Board believes it can provide an adequate level of protection to the health, safety, and welfare of the public.
- 5) This action is applicable only to individuals. Therefore, small businesses cannot be exempt.

**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.*

**Summary:**

The Board is revising its Opticians Regulations. The proposed regulatory change reduces the optional apprenticeship from a three-year program to a two-year program. As a result, DOLI would offer a two year apprenticeship for opticians, reducing the training time for individuals seeking to become an optician and reducing costs for opticianry businesses that sponsor apprenticeships. No state fiscal impact is expected as a result of the changes.

All costs incurred in support of Board activities and regulatory operations are paid by the Department and funded through fees paid by applicants and regulants. All Boards within the Department must operate within the Code provisions of the Callahan Act (§ 54.1-113) and the general provisions of § 54.1-201. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The Department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies. The Board has no other source of income.

**Economic Impact:**

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including:</b></p> <p>a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p> <p>See Fiscal Impact by year below:</p>	<p>No additional cost to the state is projected to implement the regulation change.</p>
<p><b>Projected cost of the new regulations or changes to existing regulations on localities.</b></p>	<p>No cost to localities is expected.</p>
<p><b>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</b></p>	<p>Individuals interested in obtaining an Optician license and Optician businesses that sponsor apprentices would be affected.</p>

<p><b>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.</b>                  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.</p>	<p>As of August 1, 2018, the Board licensed 1,897 Opticians. Of those, 85% (1,612) were apprenticeship completers. The Board licenses approximately 55 individuals by exam annually.</p> <p>Optician businesses that sponsor apprentices would be affected by the regulatory change. Most Optician businesses would be considered small businesses.</p>
<p><b>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:</b>                  a) the projected reporting, recordkeeping, and 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>Individuals affected by the changes will not see an economic impact or any additional costs.</p> <p>Optician businesses that sponsor apprentices are affected by the regulatory change. These businesses will have a reduction of costs due to one year less reporting, tracking hours and pay to the apprentice. No new costs are expected.</p>
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>The regulations will benefit individuals interested in obtaining an Optician license by reducing the training period under the apprenticeship program from three years to two. Businesses sponsoring apprentices will benefit by reducing the apprenticeship costs.</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.*

No viable less burdensome alternatives could be identified.

## 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.*

## 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.*

- 1) The proposed regulations will have no impact on the authority and rights of parents in the education, nurturing, and supervision of their children.
- 2) The proposed regulations should encourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents through easier and faster access into the profession of opticianry.
- 3) The proposed regulations will have no impact on marital commitment.
- 4) The proposed regulations should increase disposable family income due to the increased ease of access into the profession.

**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
20		Establishes the qualifications for applicants, including education requirements. The apprenticeship option, as an alternative to completing a two-year school, is required to be three years.	Subsection 5.b is amended to change the three-year apprenticeship requirement to a two-year apprenticeship requirement. This is intended to better reflect industry training requirements and reduce barriers to entry into the profession.  Two technical amendments are also made to Subsection 5.b. One updates the name of the DOLI division responsible for administering apprenticeship programs. The other updates the reference to the Board (which is no longer the Board for Opticians, but the Board for Hearing Aid Specialists and Opticians).