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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Department of Labor and Industry
<b>Virginia Administrative Code (VAC) citation</b>	16 VAC 20-20
<b>Regulation title</b>	Regulations Governing the Administration of Apprenticeship Programs in the Commonwealth of Virginia
<b>Action title</b>	This amendment makes language changes to clarify Regulations Governing the Administration of Apprenticeship Programs in the Commonwealth of Virginia.
<b>Date this document prepared</b>	March 23, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

The amendments add new definitions and clarifying language. Some language has been changed to update phrasing. For example, the phrase "Supervisor of apprentices" will be deleted and, in its place, will be added "Coordinator of Apprenticeship."

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2)*

*promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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The Virginia Voluntary Apprenticeship Act of April 1938 was promulgated after the National Apprenticeship Act (Fitzgerald Act), was passed in 1937. The purpose of the Virginia Act was to establish a recognized method of training the skilled workforce needed by manufacturers, the construction industry, defense industries and the shipbuilding industry.

The Code of Federal Regulations, Title 29, Part 29, Labor Standards for the Registration of Apprenticeship Programs, was published in the Federal Register in 1977, and established minimum standards that would have to be met by each state's council or agency to maintain or obtain recognition as a registration agency. Virginia's Voluntary Apprenticeship Act of 1938 was amended in 1978 so that the Virginia Apprenticeship Council would remain the authorized agency to register apprenticeship programs and apprentices in Virginia.

Sections 40.1-117 and 40.1-118 of the Code of Virginia require the Apprenticeship Council to establish standards for apprenticeship agreements. These standards shall not be lower than those prescribed by Chapter 6 of Title 40.1 and those established pursuant to Article 3 of Chapter 11 of Title 54.1. This regulation establishes those standards and does not exceed the minimum requirements of the state or federal mandates.

## Need

*Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.*

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Although this regulation is mandated by the Code of Virginia (Sections 40.1-117 and 40.1-118), the Department has also determined that this regulation is essential to protect the health, safety, and welfare of the citizens of Virginia. To that end, the regulation has three goals, which are listed below.

1. To protect the economic welfare of Virginia's citizens by maintaining a highly skilled workforce to compete globally in a changing economy.
2. To provide a method of transition from school to work for high school graduates.
3. To protect public health, safety and welfare with the least possible intrusiveness and cost to citizens and businesses within Virginia.

Virginia remains competitive in construction, manufacturing, and shipbuilding industries. The Commonwealth's skilled workers contribute to national defense and make Virginia a viable choice of locations for industry and corporate headquarters. Graduates in such varied service areas as cosmetology, barbering, nail technicians, opticians, and culinary occupations also contribute to the skilled workforce. During the last three years, an average of more than 1,650 graduates per year have completed apprenticeship training in Virginia. In addition, apprenticeship training has produced many entrepreneurs who now operate businesses in Virginia.

Traditional apprenticeship and student apprenticeship programs also facilitate transition from school to work for high school graduates. Student apprenticeships permit students to begin their training as part-time employees in local businesses and industries, while they attend academic and vocational classes. For Virginia's high school graduates who do not attend a four-year college, a seamless process which eases them into the workforce will help Virginia to compete in a globally changing economy. At the end of the process, these skilled workers will earn reasonable incomes, which will enable them to support themselves and their families. They will support the economy by purchasing goods and services. They will contribute to the financial stability of the Commonwealth by paying taxes.

In addition, properly managed apprenticeship programs protect public health and safety by assuring that the training is conducted according to approved safety and health standards. Training that meets approved standards for compensation of apprentices protects the public welfare and well-being of Virginia's citizens.

## Substance

*Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.*

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There are amendments to several subsections of the regulation.

Under 16 VAC 20-20-20. Definitions.

1. The definition of "Apprentice" has the following added language.

Virginia Apprenticeship Council considers all registered apprentices as apprentices until such times as the apprentices have either satisfactorily completed their apprenticeship program or have been cancelled by the sponsor from the apprenticeship program.

2. The following definitions are added:

"Job Site:" means

Construction: New/Renovation the approved building permit, Plan of Development contract number, or contractual agreement.

Non-Construction: The physical area within the walls that services are offered. The location that is identified on the license issued by the licensing board and/or the political locality.

“Supervision of Apprentices” means any supervisor/foreman/journeyworker/highly skilled mentor may be counted for direct supervision of an apprentice as long as they are of the same trade or occupation as the apprentice.

“Work Processes” means a defined industry specific skill set that must be mastered in the work environment during the term of the apprenticeship.”

3. ~~“Supervisor of apprentices”~~ is changed to “Coordinator of Apprenticeship.”

Under 16 VAC 20-20-40, the following subsections are changed.

B. 8. The phrase ~~supervisor of apprentices~~ is deleted and the phrase coordinator of apprenticeship is added.

B. 8. e. The phrase ~~vocational education authorities~~ is deleted and Related Instruction Provider is added.

B. 14. a. (Second paragraph) Registered is added and ~~Training~~ is deleted.

B. 14. a. 4. ~~Apprenticeship Training~~ is deleted and of Registered Apprenticeship is added.

B. 14. b. has the following changes.

1. The word ~~journeyman~~ is omitted and the word journeyworker is added; each occurrence of the word ~~journeymen~~ is deleted and, in each instance, replaced by journeyworkers.

2. The following language is added:

Two apprentices to the first five journeyworkers; (2:5)

Three apprentices to the first six journeyworkers; and (3:6)

and

(3:7; 4:8; 5:10; 5:11; 6:12; etc)

NOTE: The Virginia Apprenticeship Council considers all registered apprentices as apprentices until such times as the apprentices have either satisfactorily completed their apprenticeship program or have been cancelled by the sponsor from the apprenticeship program.

Under 16 VAC 20-20-60, the wording of subsection B.1.b. has trade, added before and the words or occupation added after “craft.”

Under 16 VAC 20-20-110, the word ~~trade~~ is deleted and the word occupation is added.

### Alternatives

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.*

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Because this regulation is mandated by the Code of Virginia (Sections 40.1-117 and 40.1-118), there are no alternatives for achieving the purpose of the regulation.

### Public participation

*Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.*

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The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to:

Reba O'Connor  
Virginia Department of Labor and Industry  
13 South 13<sup>th</sup> Street  
Richmond, Virginia 23219

(804) 371-2631  
Fax: (804) 371-6524  
e-mail: [reba.oconnor@doli.virginia.gov](mailto:reba.oconnor@doli.virginia.gov)

Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period.

In addition, the agency is seeking information on (1) the continued need for the regulation; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) 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.

A public hearing will not be held.

### Participatory approach

*Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.*

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The agency is not using the participatory approach in the development of the proposal at this time. The Public Participation Guidelines for the Safety and Health Codes Board (16 VAC 25-10-10, *et seq.*) allow for the formation of standing or ad hoc advisory groups to make recommendations on a proposed regulation (16 VAC 25-10-60), but the Board did not opt for such an approach when the NOIRA was approved.

### Family impact

*Assess the potential impact of the proposed 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.*

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This regulation should strengthen the authority and rights of parents in the education, nurturance, and supervision of their children by allowing parents who are skilled journeyworkers to earn sufficient income to educate, nurture and supervise their children. Furthermore, this regulation is expected to have a positive effect on the institution of the family and family stability because a skilled worker (journeyworker) has the ability to be employed as long as he/she is able to work in the trade and keeps his/her skills and educational needs current. Thus, this regulation and the registered apprenticeship program encourage economic self-sufficiency, self-esteem and the assumption of responsibility for oneself and one’s family.

To the extent that earning a reasonable income would strengthen the marital commitment, this regulation should accomplish that goal.

This regulation should facilitate an increase in disposable family income for the families of persons who complete registered apprenticeship programs.

**Periodic review – Public comment**

***If this NOIRA is not the result of a periodic review of the regulation, please delete this entire section.***

*If this NOIRA is the result of a periodic review, 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 36, e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.*

Commenter	Comment	Agency response

No public comments were received on this regulation during the public comment period. The agency and the Apprenticeship Council did not establish an informal advisory group for the purpose of assisting in the periodic review.

**Periodic review – Discussion**

***If this NOIRA is not the result of a periodic review of the regulation, please delete this entire section.***

*If this NOIRA is the result of a periodic review or if the periodic review is to be performed in combination with the NOIRA, please include a discussion of the agency’s consideration of: (1) the continued need for the rule; (2) the complexity of the regulation; (3) the extent to the which the regulation overlaps, duplicates, or conflicts with federal or*

*state law or regulation; and (4) 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. Also, include a discussion of the agency's determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.*

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There is a continued need for this regulation because it is mandated by both federal and state law. Labor Standards for the Registration of Apprenticeship Programs are under Title 29, Part 29 of the Code of Federal Regulations, which sets out minimum standards to be met by each state's council or agency to maintain or obtain recognition as a registration agency. Virginia's Voluntary Apprenticeship Act of 1938 was amended in 1978, so that the Virginia Apprenticeship Council would remain the authorized agency to register apprenticeship programs and apprentices in Virginia.

This regulation merely fulfills the requirements of state and federal law. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation.

This regulation was last reviewed in 2000. Although there have been advances in technology since that time, as well as some changes in economic conditions, the degree of change in technology, economic conditions, and other factors have not altered sufficiently as to require significant amendments to the regulation.

The Department has determined that the regulation should be amended in order to add clarifying language and new definitions. Some of the language has been changed to update phrasing. The impact of the amendments should not have a major economic impact on small businesses.