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Fast-Track Regulation Agency Background Document

Agency name	Board for Barbers and Cosmetology
Virginia Administrative Code (VAC) Chapter citation(s)	18 VAC 41-20
VAC Chapter title(s)	Barbering and Cosmetology Regulations
Action title	Exception to Training Requirement
Date this document prepared	September 18, 2020 (revised July 27, 2021)

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

Current regulations require individuals with out of state training to complete “substantially equivalent” training to Virginia’s required training, however, substantially equivalent training is not defined, nor is there a pathway for otherwise competent individuals without substantially equivalent training to obtain a license. The Board seeks to revise its regulations to provide a definition of substantially equivalence for training and examinations, as well as allow individuals who have five years of licensed experience in another state to substitute their experience for substantially equivalent training.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

“Department” means the Department of Professional and Occupational Regulation.

“Board” means the Board for Barbers and Cosmetology.

Statement of Final Agency Action

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.

On January 13, 2020, the Board for Barbers and Cosmetology approved the proposed amendments to the Barbers and Cosmetology Regulations (18 VAC 41-20) regarding experience as a substitute for substantially equivalent training.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

As required by Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

The Board initiated this change based on a recommendation from its Standing Committee on Training. The Committee received comments regarding the difficulty for individuals with out-of-state training in obtaining a Virginia cosmetology license. Often, individuals practicing cosmetology in other states for decades are unable to qualify for the Virginia license because their training is not substantially equivalent to Virginia's.

The Committee, recognizing the statutory requirement that any abridgement to the right to engage in cosmetology must be no greater than necessary, determined that five years of licensed experience in another state was a sufficient substitute for Virginia's training requirements.

This rulemaking is expected to be non-controversial because it is reducing a regulatory burden for applicants without disrupting the protection of the health, safety, and welfare of the public.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Code of Virginia § 54.1-201.5 gives authority to the Board to promulgate regulations. It 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

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The purpose of this action is to provide an alternative method of qualifying for the cosmetology, barber, nail, and waxing licenses when applicants with out-of-state training are unable to demonstrate their training is substantially equivalent to Virginia's training requirements. Currently, these applicants are required to repeat a portion of the Virginia training, even when they have been successfully practicing in that field for, in some cases, decades.

The Board's Standing Committee on Training reviewed this area in response to requests from the public, failed 2019 legislation covering the same issue, and as part of its general goal of reviewing its training requirements to ensure best practices and minimally burdensome regulations. The Committee reviewed best practices among the 50 states regarding training requirements for out-of-state trained applicants. About 40 states allow experience to substitute for equivalent training in some form or another. To conform Virginia's requirements to national best practices, as well as ensure that individuals who have demonstrated professional competence in other states are not overly burdened, the Board desires to allow five years of licensed experience to substitute for substantially equivalent training.

This change is essential to protect the health, safety, and welfare of citizens in the least burdensome way possible. The Board establishes its training requirements as minimum competency standards because, under the statutory authority granted in § 54.1-100, it cannot abridge an individual's right to engage in the profession of their choosing except to the extent necessary to protect the health, safety and welfare of the public. The Board determined that completion of an out-of-state training program and five years of licensed experience was equivalent to the training requirements set out in its regulations for in-state applicants. In doing so, the Board found that this standard of five years of experience adequately protected the health, safety and welfare of the public, without the overly burdensome requirement of forcing out-of-state applicants to complete unnecessary training.

Without this change, under the current regulations, applicants who completed out-of-state training and have vast amounts of professional experience may still be required to complete their training again in Virginia, not based on their ability to safely work on the public, but because they have less than a set number of hours of formal training. This change narrowly tailors the regulations to better conform to the statutory standard of limiting entry into the profession only to the extent necessary to protect the health, safety, and welfare of the public.

The Board also proposes to eliminate several subsections of its entry requirements, using simplified language and clear requirements in lieu of the current highly specific requirements using undefined terms. This change is also in line with the 2018 Regulatory Reduction Pilot Program requested by the General Assembly to streamline regulations and reduce regulatory burdens on entry into the profession.

Substance

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.

18 VAC 41-20-10. Definitions. Definitions of substantially equivalent training and substantially equivalent examinations are added.

18 VAC 41-20-20. General Requirement for License. The language is simplified and repetitive language is eliminated. Removed requirement of six months' work experience for those with substantially equivalent training, but less than the required hours. Added a provision to allow those who completed a training program that was not substantially equivalent, whether conducted in the United States or Outside the Country, to obtain a license based on five years of licensed experienced in that profession in the United States.

18 VAC 41-20-30. Endorsement. The language is clarified. A provision allowing endorsement for those who completed a training program that was not substantially equivalent, whether conducted in the United States or Outside the Country, to substitute five years of licensed experienced in that profession in the United States for substantially equivalent training.

Issues

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

The primary advantage to the public is the economic opportunity it provides by allowing otherwise qualified individuals to be able to move to and work in Virginia without having to complete additional training. It allows individuals moving to Virginia, particularly military spouses, to begin working quickly, without incurring time or expenses for additional training. This also allows employers to more easily transfer employees into Virginia. There are no disadvantages to the public.

The Commonwealth will benefit by becoming a more welcoming environment for out-of-state practitioners, and increase its competitiveness among employers. The agency will benefit with a reduction in staff time in handling these applications, as applicants in this situation are usually unhappy with the current Board requirements and frequently involve multiple staff and supervisors in trying to argue that their experience should qualify them for the license. There are no disadvantages to the agency.

There are no other pertinent matters of interest to the regulated community, government officials, and the public.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

There are no requirements more restrictive than federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or

regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

No other state agencies will be affected.

Localities Particularly Affected

No localities will be affected.

Other Entities Particularly Affected

No other entities will be affected.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.

Summary:

The Board for Barbers and Cosmetology is amending the regulations for Barbers, Cosmetologists, Nail Technicians and Wax Technicians. The Board proposes to allow five years of licensed experience to serve as a substitute qualification method for those who completed an out-of-state training program that is not substantially equivalent to the Board's. This is for both exam and endorsement applicants. The Board is also adding definitions of substantially equivalent exams and training. There is no economic or fiscal impact to state agencies or businesses. Some individuals will realize an economic benefit.

All costs incurred in support of board activities and regulatory operations are paid by the Department of Professional and Occupational Regulation (DPOR) and funded through fees paid by applicants and regulants. All boards within DPOR 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. DPOR allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies. The Board has no other source of income.

Impact on State Agencies

<p><i>For DPOR:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>There are no savings and no changes to costs, fees, or revenues of DPOR resulting from this regulatory change. Any increase in applications can be absorbed by current staffing resources.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There are no savings and no changes to costs, fees, or revenues of other state agencies resulting from this regulatory change</p>

<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	The benefits of this regulatory change are for the individual applicants affected. No benefit is expected to be realized for state agencies.
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Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	There are no savings and no changes to costs, fees, or revenues of localities resulting from this regulatory change.
Benefits the regulatory change is designed to produce.	None.

Impact on Other Entities

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	The individual barber, cosmetologist, nail technician, and wax technician applicants who have been trained in and licensed by Texas, Massachusetts, Vermont, and New York or out of the country and are applying for licensure in Virginia. These applicants must have at least five years of work experience.
Agency's best estimate of the number of such entities that will be affected. 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.	There are currently approximately 20 applicants per year that are affected by the regulatory change. It is also expected that up to 50 applicants may be affected in the future years. No businesses are affected by this change.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	The affected applicants are likely to have less training to take, which will result in savings by avoiding the training enrollment costs and the time to take the training courses. Training costs vary by training provider. Some applicants will experience a reduction in examination costs.
Benefits the regulatory change is designed to produce.	Affected applicants could become eligible to apply by endorsement, potentially avoiding the need to take additional training and taking an exam. Affected applicants would be able to become licensed sooner and therefore start working in Virginia sooner.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the

regulatory change. 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 regulatory change.

The Board reviewed multiple alternatives to this regulatory change. The first alternative is to not make any changes, and continue to operate as the Board has for the past several decades. However, this solution does not address the problem for individuals who are proficient in the profession, but do not meet the Board's training requirements. The Board regularly receives complaints from applicants negatively impacted by this. In the past two years, legislation has been proposed to address this concern from a statutory perspective (2019 HB 1876, 2020 HB 982), though, these bills did not pass.

The Board conducted a comprehensive review of how other states handle the issue of applicants with non-equivalent training. Over 40 states allow applicants to apply based on experience, with varying levels of experience required. The most common requirement is five years of experience, which is what the Board selected. The risk of allowing too little experience is that individuals may not have achieved the necessary level of competence to work on the public safely.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

There are no regulatory alternatives that would be less stringent that are consistent with protecting the health of the public in the salon environment. Elimination of the training requirements would present a significant health risk to the public. This change reduces the regulatory burden on applicants with out-of-state training while maintaining protection for the public in the salon environment by ensuring the practitioners are minimally competent to engage in the profession.

Most of the businesses operating salons, shops, and spas in Virginia are small businesses, many operated by owner/practitioners. This change will actually reduce the burden for owner/practitioners that want to transfer from other states into Virginia.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

As required by § 2.2-4011 of the Code of Virginia, 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.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Board is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>.

Comments may also be submitted by mail, email or fax to:

Stephen Kirschner, Executive Director
 9960 Mayland Drive, Suite 400
 Richmond, Virginia 23233

Fax: 866-245-9693

Email: barbercosmo@dpor.virginia.gov

In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
41-20-10		Definitions. Provides definitions for commonly used terms in the regulations.	Two new definitions are added, defining “substantially equivalent” training and examinations. The intent of this change is to add clarity to the Board’s requirements for applicants coming from other states. Currently, the regulations use these terms but do not define them. Board practice and guidance documents have clarified these items over the past decades, but there is no way for

			<p>applicants to know specifically what is required without contacting staff. The impact of this change will be that applicants will have the specific requirements in writing, and can access them without assistance of Department staff.</p>
41-20-20		<p>General Requirements for Licensure. Provides requirements for licensure for those with out-of-state training that is either substantially equivalent or substantially equivalent but less than Virginia’s required hours.</p>	<p>Subsections B.2.a-d are consolidated into one section (B.2). References to “substantially equivalent training” that is less than the required hours is eliminated. New language is inserted that allows individuals with five years of licensed experience in their respective profession to qualify for the exam. The intent of this change is to simplify and consolidate duplicative language, as well as provide a mechanism for individuals with non-equivalent out-of-state training an option for qualifying for the exam. The likely impact of this requirement is that individuals with many years of experience but non-equivalent training will be able to qualify for the exam and license without additional and unnecessary training.</p>
41-20-30		<p>License by Endorsement. Provides a method for practitioners licensed in another state to endorse their license into Virginia if they meet certain requirements.</p>	<p>Existing language is moved into New Subsection A, and modified for clarity.</p> <p>New Subsection B is added to allow individuals without substantially equivalent training to substitute training for five years of licensed experience in their respective profession. The intent of this section is to provide a mechanism for individuals with non-equivalent out-of-state training an option for qualifying for the exam. The likely impact of this requirement is that individuals with many years of experience but non-equivalent training will be able to qualify for the license without additional and unnecessary training.</p>