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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 18 VAC 41-70
VAC Chapter title(s)	Barbering and Cosmetology Regulations Esthetics Regulations
Action title	Transfer Hours
Date this document prepared	August 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.

The Barbers and Cosmetology regulations currently do not provide a rule regarding transfer policies, and the existing language restricts transfers between schools. This proposal will create specific rules for schools to accept transfer students. The proposal is based on the esthetics regulation governing student transfers, and would allow transfers between schools based on a competency exam and transcripts from the prior school. The number of hours awarded may not exceed the actual number of hours of instruction, or the number of hours specified for a topic in the Board approved curriculum. This proposal also removes the limit on hours that can be transferred in the esthetics regulations.

This change will supersede a guidance document limiting transfer hours, and resolves longstanding complaints about transfer hour limitations. The Department believes it will not be controversial and is appropriate for the fast-track rulemaking process.

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 approved the adoption a uniform transfer hours policy across its Barbers and Cosmetology Regulations and Esthetics Regulations.

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 considered several changes to training in Virginia and recommended the Board adopt a uniform transfer hours policy across its Barbers and Cosmetology Regulations and Esthetics Regulations.

This proposal is expected to be non-controversial as it would resolve many of the complaints about the current guidance document which limits transfers between schools under the Barbers and Cosmetology regulations. The proposal is based on the esthetics regulation governing student transfers, and would allow transfers between schools based on a competency exam and transcripts from the prior school. The number of hours awarded may not exceed the actual number of hours of instruction, or the number of hours specified for a topic in the Board approved curriculum. This proposal also removed the limit on hours that can be transferred in the esthetics regulations.

This rulemaking is also 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. It does so by expanding an existing transfer policy that is effective, well accepted, and available to all licensees.

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.A.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 decrease the regulatory burden placed on applicants for licensure by providing them a more uniform method for transferring between licensed programs. Currently, applicants may only transfer between accredited and licensed schools and the transfer period is limited to two years. This limits the number of students eligible for transfer, as only 15% of the Board’s licensed schools are accredited. The Board’s Standing Committee on Training reviewed this area in response to requests from the public, and as part of its general goal of reviewing its training requirements to ensure best practices and minimally burdensome regulations. The Board approved this change along with several others that reduce the burden on the licensees while still protecting the health, safety and welfare of the public.

For almost 15 years, the esthetics regulations have allowed for transfers, and the Board has not encountered any negative impacts on health, safety, and welfare of the public under the esthetics transfer rules. The Board agreed that expanding the esthetics transfer policy to also cover barbering, cosmetology, nail care, or waxing schools would not reduce the health, safety, and welfare of the public. It strengthens those protections by requiring the school to utilize specific controls before awarding hours, including a competency exam and confirmation of completed hours.

The current transfer student guidance for barbering, cosmetology, nail care, or waxing schools is limited both in its status as a guidance documents and its restrictive qualifications. Few students can qualify for transfers under the guidance. Non-accredited schools frequently complain that they should be allowed to accept transfer students, but the Board does not feel comfortable allowing this under the current regulation. This change incorporates a transfer policy that is effective, well accepted, and available to all licensees.

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 41-20-50. Exceptions to Training Requirements. Removes the combined education and prior experience requirement for Master Barber students enrolling in Virginia Cosmetology training schools.

18 VAC 41-20-210. Curriculum requirements. Allows a school to conduct an assessment of a student’s competence in the respective profession, and based on the assessment, give credit towards the hours requirements.

18 VAC 41-70-190.D, Curriculum and hours of instruction requirements. Removes the limit on the maximum number of hours a student can transfer into a new program.

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 students to transfer between schools without losing all of their completed training hours. Currently, most students have to restart their training if they transfer schools, which results in an economic loss from tuition and lost earning due to the extra time spent repeating completed training. The new transfer policy maintains protection of public health and safety while expanding economic benefits to students. Schools will also benefit economically from the increased access to transfer students. Additionally, schools that cannot accept transfer students are not eligible for federal Veterans Administration funding for veteran students. A uniform transfer policy will level the playing field for all Virginia schools to have access to these students and funding. There are no disadvantages to the public.

The Commonwealth will benefit by becoming a more welcoming environment for students, including students who wish to transfer from out-of-state schools. It will also improve its relationship with licensed, unaccredited schools, which largely hold negative views regarding the current policy. 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 known 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.

The Board for Barbers and Cosmetology is amending the Barbering and Cosmetology regulations for Barbers, Cosmetologists, Nail Technicians and Wax Technicians. The Board proposes to add requirements allowing transfers between schools based on a competency exam and transcripts from a prior school. The number of hours awarded may not exceed the actual number of hours of instruction or a number of hours specified for a topic in a board approved curriculum. In addition, amending the Esthetics regulations by removing the cap of 300 hours to any credit amount to transfer. There is no economic or fiscal impact to state agencies, individuals, or businesses.

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 your agency:</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.</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 regulatory change incorporates a transfer policy that is effective, well accepted, and available to all licensees.
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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.	Barber and Cosmetology schools, nail schools and wax schools may be affected by this regulatory change.
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.	As of August 1, 2021 there are 67 barber schools, 155 cosmetology schools, 40 nail schools and 13 wax schools that could be affected by this regulatory change. All schools are considered small businesses.
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.	There will be no fee for the board review and approval process. a) A minor fee for administrative cost to create the document and send it to the board electronically that can be offset by the additional revenue of the transfer student's tuition. b) There are no real estate development costs resulting from the change, c) There are no fees related to the change, d) No equipment or services are needed to be purchased from this change, and e) The competency exam will have to administered, which will consume some staff time for the school.
Benefits the regulatory change is designed to produce.	The regulatory change incorporates a transfer policy that is effective, well accepted, and available to all licensees.

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 alternatives to this regulatory change. One 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 complaints from current schools that are not eligible for transfers. The Board regularly receives complaints from schools negatively impacted by this. The transfer policy the Board adopted has proven to be effective and well received by esthetics schools, and is accessible by all the regulated schools. Other alternatives would be to allow transfers with less requirements in place. However, these alternatives do not offer the same level of protection for the public due to weaker assurances that students are only given credit for completed content and demonstrate competency.

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. The current limitations on transfer credit limit economic opportunities of students and schools. The proposed changes would not present a health risk to the public. Further, it increases the ability for schools and students to engage in economically beneficial behavior of students seeking out better education alternatives and schools accepting new students. There is not a specific reporting requirement in the new regulation, but the proposal does require schools to document the basis for transfer using a transcript and competency exam. These steps are easily completed by the school, are minimally burdensome, and need to occur for the school to have a rational basis for how they award credit. Alternatives either do not adequately protect the health and safety of the public, or limit the number of schools that can accept transfer students. The current proposal allows access for all licensees, while maintaining health and safety protections for the public.

Most of the schools operating in Virginia are small businesses, many operated by owner/practitioners. This change will actually reduce the burden for owner/practitioners that wish to accept transfer students. Exempting small businesses from the regulation would substantially increase the health and safety risks to the public.

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
18VAC41-20-50.B.		Virginia licensed master barbers with less than two years of work experience and Virginia master barber students enrolling in a Virginia cosmetology training school shall be given educational credit for the training received for the performances completed at	The proposed change eliminates this provision. The proposed transfer regulation offers a detailed description of how credit can be awarded, so this provision becomes extraneous. The removal of this section should not have

		<p>a barber school; likewise, licensed Virginia cosmetologists with less than two years of work experience and Virginia cosmetology students enrolling in a Virginia barber or master barber training school shall be given educational credit for the training received for the performances completed at a cosmetology school.</p>	<p>an impact because all of the hours that can be transferred under this provision will still be eligible for transfer under the new transfer requirement.</p>
<p>18 VAC 41-20-210</p>		<p>Schools are not provided a way to conduct an assessment of transfer student's skills. The requirement in 18 VAC 41-20-20. B that student's complete "a" training program is interpreted by the Board to limit transfers between schools accept in circumstances provided in Board guidance.</p>	<p>New section G. creates a specific transfer hours policy that would allow transfers between schools based on a competency exam and transcripts from the prior school. The number of hours awarded may not exceed the actual number of hours of instruction, or the number of hours specified for a topic in the Board approved curriculum. The intent is to create a uniform policy for transfer hours that is accessible to all licensed schools and ensures are rational basis for awarding hours. This language mirrors the transfer requirement in the esthetics regulations which are proven to be effective and well received. The impact will be that hundreds of licensed schools will be able to be approved to accept transfer students if they desire.</p>
<p>18 VAC 41-70-190.D</p>		<p>Students are prevented from transferring more than 300 hours to a new school.</p>	<p>Section D is amended to remove the hours cap in the transfer regulation. The Board determined that the hours cap created a burden on students and schools that was not justified by the available evidence. There was no available evidence that the hours cap on</p>

			<p>transfers increased the protection of the health, safety, and welfare of the public, and evidence showed that this cap was an economic burden on students. The impact will be that esthetics schools can award students more transfer hours based on completed content and a competency exam.</p>
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