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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	Board for Barbers and Cosmetology
<b>Virginia Administrative Code (VAC) citation(s)</b>	18 VAC 41-20 18 VAC 41-70
<b>Regulation title(s)</b>	Barbering and Cosmetology Regulations Esthetics Regulations
<b>Action title</b>	Reduction in License Display Requirements
<b>Date this document prepared</b>	May 28, 2019

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 (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

### Brief Summary

*Please 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 Department of Labor and Industry (DOLI) Division of Registered Apprenticeship notified the Board that it will no longer utilize apprenticeship cards for its registered apprenticeships. As a result, the Board proposes to update its existing regulation that currently requires barber, cosmetology, nail technician, esthetics, and master esthetics apprentices to display such DOLI-issued cards in the public area.

The amendment updates the requirement to display “proof of apprenticeship registration” (not cards per se) in the shop/salon/spa public area and also eliminates the requirement for apprentices to wear an identification badge. The regulatory action also corrects a typographical error in the esthetics regulations.

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

“Board” means the Board for Barbers and Cosmetology.

“DOLI” means the 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 March 11, 2019, the Board for Barbers and Cosmetology adopted the fast-track action to amend the Barbering and Cosmetology Regulations and the Esthetics Regulations to reduce license display requirements. On May 13, 2019, the Board approved the proposed typographical correction to 18 VAC 41-70-260 as part of the same fast-track action.

### Mandate and Impetus

*Please 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, board decision, etc.). 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, please also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.*

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This regulatory action is necessary to accommodate the corresponding change DOLI is making in eliminating the use of apprenticeship cards. Without changing the Board’s regulatory requirement, registered apprentices in these professions will find themselves in a situation where the Board requires apprentices to hold and display an apprenticeship card issued by DOLI that DOLI no longer issues.

This rulemaking is expected to be non-controversial because it is reducing a regulatory burden on licensees and streamlining intra-agency coordination while maintaining protection of the health, safety, and welfare of the public.

### Legal Basis

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

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Code of Virginia § 54.1-201 enumerates Board authority to promulgate regulations. 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 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 fast-track action is to align Board regulations that rely on DOLI issuing apprenticeship cards with the new procedures being used by DOLI, which no longer include issuing apprenticeship cards. Without this change, apprentices will be unable to comply with the Board's regulatory requirement.

In establishing the licensing system for barbers, cosmetologists, nail technicians, estheticians, and master estheticians, the General Assembly determined that occupational regulation of practitioners in these fields is necessary to ensure the safety of the public. However, that purpose is subverted if the public has no way to determine whether the practitioner providing services has demonstrated minimum competency and obtained the requisite license. The Board has required the display of licenses or proof of apprenticeship in a public area of the salon, or at the employees work station, so the public can easily determine if their practitioner is minimally competent to perform those services. The proposed change is necessary for the public to continue to have access to the license or trainee status of their practitioner. If the current regulation is not amended as proposed by this fast-track action, apprentices will not be able to document their legitimate status in a legally compliant manner.

The Board also proposes to eliminate the requirement for apprentices to wear a badge identifying themselves as an apprentice. The current requirement to wear an apprenticeship badge is duplicative of the aforementioned requirement of posting proof of apprenticeship, and removing it aligns with the legislative directive for the Boards under DPOR to eliminate unnecessary regulatory requirements.

## 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.*

**18 VAC 41-20-260. Display of License.** Changes the display requirement to "proof of apprenticeship registration" from "apprenticeship card," and eliminates the requirement for apprentices to wear badges.

**18 VAC 41-70.260. Display of License.** Changes the display requirement to "proof of apprenticeship registration" from "apprenticeship card;" eliminates the requirement for apprentices to wear badges; and corrects a reference to "shops and salons" with the term "spa."

## Issues

*Please 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 that customers will continue to have a way to verify the credential status and minimum competency of the practitioner providing services. There are no disadvantages for the public.

The primary advantage to the agency and Commonwealth is that the Board will continue to protect the health, safety, and welfare of the public using the least restrictive means. There are no disadvantages to the agency or Commonwealth.

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

### Requirements More Restrictive than Federal

*Please 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 in the proposed regulations that would be more restrictive than those currently required in Federal Law.

### Agencies, Localities, and Other Entities Particularly Affected

*Please 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

DOLI will be particularly affected by this change. By amending the Board's regulations to align with DOLI's practices, DOLI will not have to field questions and complaints regarding apprenticeship cards from the more than 1,000 registered apprentices in the barber, cosmetology, nail technology, esthetics, and master esthetics professions.

#### Localities Particularly Affected

No localities will be particularly affected.

#### Other Entities Particularly Affected

No other entities will be particularly affected.

### Economic Impact

*Pursuant to § 2.2-4007.04 of the Code of Virginia, please 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. Please keep in mind that this is change versus the status quo.*

**Summary:**

No state fiscal impact is expected as a result of the change. 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.

**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>DPOR does not expect any cost savings resulting from this regulatory change.</p> <p>DPOR does not expect any changes to costs, fees or revenues 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>No cost savings by other state agencies are expected as a result of the regulatory change.</p> <p>No changes to costs, fees or revenues for other state agencies are expected as a result of the regulatory change.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The change reduces regulatory requirements on apprentices.</p>

**Impact on Localities**

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>No cost savings by localities are expected as a result of the regulatory change.</p> <p>No changes to costs, fees or revenues for localities are expected as a result of the regulatory change.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>No benefits specific to localities are expected as a result of the regulatory change.</p>

**Impact on Other Entities**

<p>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.</p>	<p>Cosmetology salons, nail salons, esthetics spas, and barber shops may be affected by this regulatory change.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses</p>	<p>As of May 1, 2019, the Board licensed:</p> <ul style="list-style-type: none"> <li>• 863 barber shops,</li> <li>• 687 nail salons,</li> </ul>

<p>affected. Small business means a business entity, including its affiliates, that:</p> <p>a) is independently owned and operated and;</p> <p>b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<ul style="list-style-type: none"> <li>• 5,139 cosmetology salons, and</li> <li>• 655 esthetics spas.</li> </ul> <p>All of the shops, salons, and spas could be affected by this action and are considered small businesses.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please be specific and include all costs including, but not limited to:</p> <p>a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;</p> <p>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change;</p> <p>c) fees;</p> <p>d) purchases of equipment or services; and</p> <p>e) time required to comply with the requirements.</p>	<p>Salons, spas, and shops that sponsor apprentices will no longer need to ensure apprentices are wearing badges identifying them as DOLI-registered apprentices.</p> <p>a) There are no cost changes or other economic changes resulting from the change.</p> <p>b) There are no real estate development costs resulting from the change.</p> <p>c) There are no fees related to the change.</p> <p>d) No equipment or services are needed to be purchased from this change.</p> <p>e) No additional time is required as a result of the change.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The change reduces regulatory requirements on apprentices. The DOLI apprenticeship card is being replaced by a letter proving apprenticeship and the ID badge requirement is eliminated.</p>

## Alternatives

*Please 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.*

No viable alternatives could be identified.

## 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) 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.*

The Board is establishing less stringent regulatory requirements for license display with this action. Alternatives would involve either increasing regulatory requirements, or eliminating public safety protections altogether.

By creating the licensing system for barbers, cosmetologists, nail technicians, estheticians, and master estheticians, the General Assembly determined that licensure is needed by practitioners in these fields to ensure the safety of the public. That purpose is subverted if the public has no way to determine whether the practitioner providing them services possesses minimum competency and holds the requisite license. The Board requires credentials be displayed in a public area of the salon, or at the employees' work station, so that the public can easily determine if their practitioner is minimally competent to perform those services. The proposed change is necessary for the public to continue to have access to the license or trainee status of their practitioner.

### Public Participation

*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.*

### Detail of Changes

*Please 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.*

*If the regulatory change will be 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 change. Delete inapplicable tables.*

*If the regulatory change is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below. Please include citations to the specific section(s) of the regulation that are changing.*

For changes to existing regulation(s), please use the following chart:

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
18 VAC 41-20-260.E		Requires apprentices to display an apprenticeship card issued by DOLI in the reception area or at individual work stations, and each apprentice is required to wear a badge indicating their status as a registered apprentice.	Replaces the requirement to display an "apprenticeship card" with the requirement to display "proof of apprenticeship registration," as determined by DOLI. The intent is to address DOLI's decision to stop issuing apprenticeship cards, and instead send letters as proof of apprenticeship.  Removes the requirement that apprentices wear a badge that identifies

			<p>them as a registered apprentice. The intent is to eliminate a requirement that is duplicative of the proof of apprenticeship display requirement.</p> <p>These changes are needed to ensure that the public continues to have access to the licensee or trainee status of their practitioner.</p>
<p>18 VAC 41-70-260.C</p>		<p>Requires apprentices to display an apprenticeship card issued by DOLI in the reception area or at individual work stations of the shop or salon, and each apprentice is required to wear a badge indicating their status as a registered apprentice.</p>	<p>Replaces the requirement to display an “apprenticeship card” with the requirement to display “proof of apprenticeship registration,” as determined by DOLI. The intent is to address DOLI’s decision to stop issuing apprenticeship cards, and instead send letters as proof of apprenticeship.</p> <p>Removes the requirement that apprentices wear a badge that identifies them as a registered apprentice. The intent is to eliminate a requirement that is duplicative of the proof of apprenticeship display requirement.</p> <p>These changes are needed to ensure that the public continues to have access to the licensee or trainee status of their practitioner.</p> <p>Additionally, replaces the words “shop and salon” with the correct term “spa.” On February 1, 2017, substantial revisions to the esthetics regulations and barber and cosmetology regulations became effective. Both regulatory actions contained largely similar language, and one of the reasons for those actions was to bring both sets of regulations in line with one another. After these changes took effect, the Board became aware of this instance in the esthetics regulations where the terms “salon” and “shop” had been inadvertently transposed from the cosmetology regulations into the esthetics regulations. The Board seeks to correct these errors by replacing these terms with the appropriate esthetics “spa” terms.</p>