



townhall.virginia.gov

Fast-Track Regulation Agency Background Document

| | |
|---|---|
| Agency name | Board for Hearing Aid Specialists and Opticians |
| Virginia Administrative Code (VAC) Chapter citation(s) | 18 VAC 80-30 |
| VAC Chapter title(s) | Optician Regulations |
| Action title | Removal of Related Instruction Language |
| Date this document prepared | August 6, 2020 |

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 proposed amendments to optician regulation 18 VAC 80-30-20 is needed to remove antiquated language that does not reflect the requirements of registered apprenticeships under the Department of Labor and Industry. The current training requirement in 18 VAC 80-30-20.B.2 is to complete a two year apprenticeship with “a minimum of one school year of related instruction or home study” while registered in the apprenticeship program in accordance with the standards established by the Department of Labor and Industry. However, Department of Labor and Industry apprenticeships require related technical instruction every year of the apprenticeship, and do not provide a “home study” alternative. This language is being removed to eliminate the conflict with state and federal apprenticeship requirements.

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.

"Board" means the Board for Hearing Aid Specialists and Opticians.

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

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

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 August 7, 2019, the Board for Hearing Aid Specialists and Opticians approved the proposed amendments regarding the related technical instruction component of the registered apprenticeship program in 18 VAC 80-30-20.5.b.

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.

This change is required to remove antiquated language and bring the Board's requirement in line current apprenticeship requirements. Specifically, the requirement that an apprenticeship include "one school year of related instruction or home study" does not match current federal or state apprenticeship requirements, nor does it match the Board's Standards of Apprenticeship. The apprenticeship is required to have 144 hours of related instruction each year of the apprenticeship, and "home study" is not authorized as a substitute for related instruction.

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.

This regulatory change is required because the current regulation regarding related instruction does not meet federal or state requirements, or the Board's standards of apprenticeship. The apprenticeship is required to have 144 hours of related instruction each year of the apprenticeship, and "home study" is not authorized as a substitute for related instruction. The related technical instruction requirements established by state and federal requirements is designed as the minimum necessary theory instruction to go along with the on-the-job training requirement of a registered apprenticeship. State and federal authorities have deemed this requirement necessary to ensure minimum competency for the protection of the health, safety, and welfare of the public. By simplifying the language, as proposed by this regulation, the language will fall into line with current requirements, and remain flexible for any unforeseen future state or federal revisions.

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 80-30-20. Qualification of Applicant. The proposed revision amends the apprenticeship training option by removing the reference to "one school year of related instruction or home study," and replaces it with the general language "all required related technical instruction."

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 of this change is that it brings the regulations into alignment with the state and federal apprenticeship requirements, and removes language from the regulations that inaccurately describes the requirements of a registered apprenticeship under DOLI. This will add clarity and reduce the likelihood of confusion by potential applicants. There are no disadvantages to the public.

There are no advantages or 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

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 changes that are 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 state agencies are particularly affected.

Localities Particularly Affected

No localities are particularly affected.

Other Entities Particularly Affected

No other entities are particularly 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.

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> |

| | |
|--|---|
| For all agencies: Benefits the regulatory change is designed to produce. | The regulatory change makes training requirements consistent with other state and federal requirements, which is already being followed by current apprentices. |
|--|---|

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. | None – Apprentices are already adhering to the requirements. |
| 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. | None. |
| 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. | None |
| Benefits the regulatory change is designed to produce. | Making apprentice requirements consistent with state and federal requirements, including the Department of Labor and Industry. |

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.

No viable alternatives could be identified.

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.

The Board is clarifying existing apprenticeship requirements with this action. Alternatives would involve either increasing requirements, maintaining erroneous information in the regulations, or eliminating the requirement all together. By creating the licensing system for opticians, the General Assembly has determined that licensure is need by practitioners in these fields to ensure the safety of the public. That purpose is subverted if licensees are not properly trained in the profession. Maintaining the current erroneous information creates confusion in 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: hasopt@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 |
|--------------------------------|---|--|--|
| 18 VAC 80-30-20 | | One training option is completing a two year registered apprenticeship “with a minimum of one school year of related instruction or home study.” | Section 5.b is amended to replace the quoted language with a requirement to complete “all required related technical instruction.” This change is necessary to conform the Board regulations to state and federal apprenticeship requirements. The optician registered apprenticeship requires 144 hours of related technical instruction each year of the apprenticeship. Home study cannot substitute for related technical instruction in a registered apprenticeship. This will not present a change in practice, as the registered apprenticeship, administered by DOLI, already follow state and federal guidelines. This change merely corrects erroneous information in the regulations. |