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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 41-20-180 18 VAC 41-50-180 18 VAC 41-60-140 18 VAC 41-70-160
VAC Chapter title(s)	Barbering and Cosmetology Regulations Tattooing Regulations Body Piercing Regulations Esthetic Regulations
Action title	Easing licensing requirements for grandfathered licensees failing to renew licensure
Date this document prepared	April 14, 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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 Board for Barbers and Cosmetology seeks to revise its current requirement for individuals failing to renew licensure within two years following the expiration date. The existing regulations requires the former licensee or certificate holder to apply for licensure or certification as a new

applicant and meet all current entry requirements for the respective license or certificate. Frequently, individuals licensed under a grandfathering provision are unable to meet current training requirements. The revised regulations include language to allow a practitioner who obtained their initial license via a grandfathering provision but let the license expire to apply for re-licensure by demonstrating five years of licensed practice in the profession in lieu of current training requirements. As a result, individuals licensed under grandfathering conditions will be able to retake the exam after providing satisfying documentation to the Board verifying five years of work experience. This will enable them to swiftly reenter the profession without undergoing additional 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 July 11, 2022, the Board approved the proposed language to 18 VAC 41-20-180, 18 VAC 41-50-180, 18 VAC 41-60-140, and 18 VAC 41-70-160 allowing individuals who obtained a license through a grandfathering provision but let their license lapse, the ability to apply for a new license based on the original grandfathered license, five years of licensed experience, and passing required examinations.

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 the ORM procedures, "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."

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

The Board initiated this modification in response to several complaints received from practitioners who were initially granted a license under grandfathering provisions. The Board intended to provide grandfathered license holders with expired licenses the ability to obtain a new license without requiring additional training.

This proposal is expected to be non-controversial as it would resolve many of the complaints from practitioners licensed by grandfathered clauses. Currently, individuals originally licensed by grandfathering are required to meet entry requirements if their license expires. Meeting entry requirements requires additional training in a school or an apprenticeship. As a result, the practitioner is required to repeat numerous hours of training material they have already received training on. However, non-grandfathered license holders who hold expired licenses are permitted to retake the exam without acquiring additional training, which in effect puts a greater burden on individuals who have been practicing longer.

This rulemaking is also expected to be non-controversial because it reduces the regulatory burden for applicants without disrupting the protection of the health, safety, and welfare of the public. It accomplishes this by enabling those licensed under a grandfather clause who have expired to retake the exam after demonstrating five years of work experience. These individuals can swiftly reenter the profession without completing additional training.

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 is intended to solve.

The purpose of this action is to allow practitioners who obtained a license through grandfathering with expired licenses the ability to be eligible for a new license based on the original grandfathered license, five years of licensed experience, and passing required examinations. Currently, individuals initially licensed under grandfathered conditions are required to repeat Virginia training, even when they have been successfully practicing in that field for years. The Board reviewed this regulation in response to requests from the public in order to ensure best practices and minimally burdensome regulations.

The Board determined that practitioners with expired licenses, originally licensed during grandfathered conditions, comply with the regulatory requirements of initial licensure. The Board decided that prior licensed individuals with five years of work experience and who have passed the required examinations are equivalent to those who must meet the current entry requirements. The Board found that five years of experience adequately protected the health,

safety, and welfare of the public, without the overly burdensome requirement of forcing grandfathered licensees to complete unnecessary training.

The existing regulations are limited by restricting grandfathered practitioners with expired licenses from applying for a new license without acquiring additional training. Few individuals receiving their initial license during grandfathering provisions are eligible to qualify for a new license after the reinstatement period. To obtain licensure, they must complete additional training or education. Some opt to leave the profession. This regulatory revision incorporates a policy that is the least burdensome and benefits grandfathered licensees with expired licenses.

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.

18VAC41-20-180.B. Failure to Renew. Adds a subsection 1 and 2 to B. Section B states "When a licensed or certified individual or business entity fails to renew its license within two years following the expiration date, reinstatement is no longer possible. To resume practice:" Section B.1 will reference individuals licensed without a grandfathering provision, "The former licensee or certificate holder shall apply for licensure or certification as a new applicant and shall meet all current entry requirements for each respective license or certificate." Section B.2 will reference individuals licensed under a grandfathering provision " Individuals licensed under a grandfathering provision as per §54-83.2.b of the VA Code (1987), §54-112.15 of the VA Code (1970), §54.1-2.3.B of the VA Code (1992), and §54.1-703.1 (2002) of the VA Code shall submit a new application showing that they meet the requirements based on the grandfathering provisions, demonstrate five years of licensed experience, and pass required examinations."

18VAC41-50-180.B. Failure to Renew. Adds a subsection 1 and 2 to B. Section B states "When a tattooer, permanent cosmetic tattooer, or master permanent cosmetic tattooer fails to renew his license within two years following the expiration date, reinstatement is no longer possible. To resume practice:" Section B.1 will reference individuals licensed without a grandfathering provision, "The former licensee shall apply for licensure as a new applicant, shall meet all current application requirements, shall pass the board's current examination, and shall receive a new license." Section B.2 will reference individuals licensed under a grandfathering provision "Individuals licensed under a grandfathering provision as per 18 VAC41-50-20.A.6. shall submit a new application showing that they meet the requirements based on the grandfathering provisions, demonstrate five years of licensed experience, and pass required examinations."

18VAC41-60-140. B. Failure to Renew. Adds a subsection 1 and 2 to B. Section B states "When a body piercer or body piercer ear only fails to renew his license within two years following the expiration date, reinstatement is no longer possible. To resume practice:" Section B.1 will reference individuals licensed without a grandfathering provision, "The former body-piercer licensee shall apply for licensure as a new applicant, shall meet all current application requirements, shall pass the board's current examination, and shall receive a new license." Remove duplicative language. Section B.2 will reference individuals licensed under a

grandfathering provision “Individuals licensed under a grandfathering provision as per 18 VAC41-60-20-A.6. shall submit a new application showing that they meet the requirements based on the grandfathering provisions, demonstrate five years of licensed experience, and pass required examinations.”

18VAC41-70-160. B. Failure to Renew. Adds a subsection 1 and 2 to B. Section B states “When a licensee fails to renew its license within two years following the expiration date, reinstatement is no longer possible. To resume practice:” Section B.1 will reference individuals licensed without a grandfathering provision, “The former licensee or certificate holder shall apply for licensure or certification as a new applicant and shall meet all current entry requirements for each respective license or certificate.” Section B.2 will reference individuals licensed under a grandfathering provision “Individuals licensed under a grandfathering provision as per §54.1-703.3. of the VA Code shall submit a new application showing that they meet the requirements based on the grandfathering provisions, demonstrate five years of licensed experience, and pass required examinations.”

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 grandfathered practitioners with lapse licenses to retake the exam after providing documentation of five years of work experience. Currently, most grandfathered individuals with lapse licenses have to restart their training, which results in an economic loss from tuition and lost earnings due to the extra time spent repeating completed training. The modified regulations protect the health, safety, and welfare of the public while expanding economic benefits to individuals granted licensure under grandfathered provisions. Small businesses can benefit from hiring licensees returning to the workplace after fulfilling board requirements. There are no disadvantages to businesses and 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

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "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

Consistent with § 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 the proposed change versus the status quo.

Summary:

The Board for Barbers and Cosmetology is amending the Barbering and Cosmetology, Esthetics, Tattooing and Body Piercing regulations. The revised regulations include language to allow individuals who obtained a license through grandfathering with an expired license to be eligible for a new license based on the original grandfathered license. The grandfathered individuals must have five years of licensed experience and pass the required examinations. As a result, individuals receiving license under grandfathering conditions will be allowed to retake the exam after satisfying regulatory requirements to swiftly reenter the profession by not requiring additional training. This change will save individuals time and money. Also, small businesses will be able to hire licensees returning to the workplace after fulfilling Board requirements.

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.</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>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The regulatory change will benefit affected individuals with expired licenses. The regulatory change will allow a large number of the affected individuals to qualify for a Virginia license.</p>

Impact on Localities

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>There are no savings and no changes to costs, fees, or revenues of localities resulting from this regulatory change.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>None.</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>Individuals with expired licenses who previously obtained licenses by grandfathering under the Barbering and Cosmetology, Esthetics, Tattooing and Body Piercing regulations. Salons, shops, and spas that hire such individuals will be affected by this regulatory change.</p>
<p>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;</p>	<p>As of September 1, 2022 there are 798 licensees that have obtained licenses by grandfathering and their licenses are expired. Approximately 1,145 salons, shops, and spas are affected and almost all are considered small businesses.</p>

<p>b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	
<p>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.</p>	<p>a) Individuals and small businesses may realize some cost savings due to this change. 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) Grandfathered individuals will save time by not having to complete a training program and will save by not incurring the cost of the program.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The benefit of the regulatory change would allow affected individuals with expired licenses to obtain a license. Individuals must retake the exam after satisfying regulatory requirements to swiftly reenter the profession and will not be required to complete a training program. Also, it allows small businesses to hire licensees returning to the workplace after fulfilling board requirements.</p>

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 prior license holders originally licensed through grandfathered provisions. License holders previously licensed through grandfathering are not eligible to retake the exam for licensure.

Amending the regulations for grandfathered license holders with expired licenses will benefit about 798 grandfathered licensees currently expired. The amendment to the regulation includes

language allowing individuals who obtained a license through grandfathering eligibility for a new license based on the original grandfathered license, five years of licensed experience, and passing required examinations. Affected individuals will not have to complete a portion of their training to qualify for the Virginia exam.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B 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.

Maintaining the current provision is an option for the regulatory change. Grandfathered individuals must complete additional training and pass the examinations in order to apply for licensure. The process will remain burdensome if the regulations stay unaltered. The number of hours necessary for training and the cost for training is not cost-effective.

The new regulatory amendment provides a less burdensome and intrusive option. Grandfathered individuals with expired licenses will save time by not having to complete a training program and will save money by not incurring the cost of the program. After submitting proof of five years of employment, these people are eligible to retake the exam and reenter into the profession.

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.

Consistent with § 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.

A public hearing will not be held.

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
18VAC41-20-180		Failure to renew. Provides requirements for individuals who failed to renew licensure within two years following the expiration date.	Remove language from section B and insert the language to a subsection 1 allowing former licensee or certificate holder the ability to apply for license as a new applicant by meeting all current entry requirements for the respective license. Subsection 2 is inserted allowing individuals who obtained a license through grandfathering with expired

			<p>licenses the ability to be eligible for a new license based on the original grandfathered license, five years of licensed experience, and passing required examinations.</p> <p>The regulatory change is intended to provide a mechanism for grandfathered individuals with expired licenses an option for qualifying for the exam. The likely impact of this requirement will benefit practitioners licensed under grandfathered provisions the ability to qualify for the exam and license without additional and unnecessary training.</p>
<p>18VAC41-50-180</p>		<p>Failure to renew. Provides requirements for individuals who failed to renew licensure within two years following the expiration date.</p>	<p>Remove language from section B and insert the language to a subsection 1 allowing former licensee or certificate holder the ability to apply for license as a new applicant by meeting all current entry requirements for the respective license.</p> <p>Subsection 2 is inserted allowing individuals who obtained a license through grandfathering with expired licenses the ability to be eligible for a new license based on the original grandfathered license, five years of licensed experience, and passing required examinations.</p> <p>The regulatory change is intended to provide a mechanism for grandfathered individuals with expired licenses an option for qualifying for the exam. The likely impact of this requirement will benefit practitioners licensed under grandfathered provisions the ability to qualify for the exam and license without additional and unnecessary training.</p>

<p>18VAC41-60-140</p>		<p>Failure to renew. Provides requirements for individuals who failed to renew licensure within two years following the expiration date.</p>	<p>Remove language from section B and insert the language to a subsection 1 allowing former licensee or certificate holder the ability to apply for license as a new applicant by meeting all current entry requirements for the respective license. Remove duplicative language.</p> <p>Subsection 2 is inserted allowing individuals who obtained a license through grandfathering with expired licenses the ability to be eligible for a new license based on the original grandfathered license, five years of licensed experience, and passing required examinations.</p> <p>The regulatory change is intended to provide a mechanism for grandfathered individuals with expired licenses an option for qualifying for the exam. The likely impact of this requirement will benefit practitioners licensed under grandfathered provisions the ability to qualify for the exam and license without additional and unnecessary training.</p>
<p>18VAC41-70-160</p>		<p>Failure to renew. Provides requirements for individuals who failed to renew licensure within two years following the expiration date.</p>	<p>Remove language from section B and insert the language to a subsection 1 allowing former licensee or certificate holder the ability to apply for license as a new applicant by meeting all current entry requirements for the respective license.</p> <p>Subsection 2 is inserted allowing individuals who obtained a license through grandfathering with expired licenses the ability to be eligible for a new license based on the original grandfathered license, five years of licensed experience, and passing required examinations.</p>

			<p>The regulatory change is intended to provide a mechanism for grandfathered individuals with expired licenses an option for qualifying for the exam. The likely impact of this requirement will benefit practitioners licensed under grandfathered provisions the ability to qualify for the exam and license without additional and unnecessary training.</p>
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