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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board for Barbers and Cosmetology
Virginia Administrative Code (VAC) Chapter citation(s)	18 VAC 41-20
VAC Chapter title(s)	Barbering and Cosmetology Regulations
Action title	General Review of Barbering and Cosmetology Regulations
Date this document prepared	October 4, 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 the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The Board for Barbers and Cosmetology (“the Board”) intends to undertake a general regulatory review of the Barbering and Cosmetology Regulations. The regulation provides for the (i) licensure of barbers, master barbers, cosmetologists, nail technicians, and wax technicians; (ii) licensure of shops and salons; (iii) licensure of schools for these professions; and (iv) certification of instructors.

The goals of the action include:

1. Review of discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program, in accordance with the regulatory reduction goal of Executive Directive Number One (2022);
2. Review to ensure the regulation compliments current Virginia law and meets applicable federal requirements, if any;

3. Review to ensure the regulation is organized, clear, and understandable; and
4. Review to ensure the regulation provides minimal burdens on regulants while still protecting the public.

In addition, the review will ensure the regulation reflects current DPOR procedures and policies, along with any other changes determined to be necessary and appropriate.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

"DOLI" means Department of Labor and Industry.

"DPOR" means Department of Professional and Occupational Regulation.

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."

The impetus for this regulatory action is Executive Directive Number One (2022), which directs Executive Branch entities under the authority of the Governor "...to initiate regulatory processes to reduce by at least 25 percent the number of regulations not mandated by federal or state statute, in consultation with the Office of the Attorney General, and in a manner consistent with the laws of the Commonwealth."

This action is not the result of a mandate.

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.

The agency is Board for Barbers and Cosmetology.

Section 54.1-201 of the Code of Virginia provides, in part:

A. The powers and duties of regulatory boards shall be as follows:

1. To establish the qualifications of applicants for certification or licensure by any such board, provided that all qualifications shall be necessary to ensure either competence or integrity to engage in such profession or occupation.

5. 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. The regulations shall not be in conflict with the purposes and intent of this chapter or of Chapters 1 (§ 54.1-100 et seq.) and 3 (§ 54.1-300 et seq.) of this title.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The General Assembly has charged the Board with the responsibility for regulating those who engage in the practice of barbering or master barbering, cosmetology, nail care or waxing by requiring that such individuals obtain a license in order to engage in these occupations for compensation.

As mandated by the General Assembly, the Board protects the public welfare, in part, by establishing through regulation (i) the minimum qualifications of applicants for certification or licensure, provided that all qualifications are necessary to ensure either competence or integrity to engage in the profession or occupation; (ii) minimum standards to assure continued competency and to prevent deceptive or misleading practices by practitioners; and (iii) requirements to effectively administer the regulatory system administered by the Board.

As the regulation is developed, the Board, in accordance with Executive Directive Number One (2022), will review discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program. To the extent any such current requirement may not be necessary to protect the public health, safety, and welfare, or not necessary to effectively administer the licensure program, the Board will consider eliminating the requirement.

These issues are not inclusive of all potential issues that may be addressed during development of the regulation.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

The Board formed a regulatory review committee composed of members of the Board to conduct a review of this regulation. The committee’s membership includes individuals who are licensed to practice each of the regulated disciplines falling under the Board’s jurisdiction (barbering, cosmetology, nail care, waxing, tattooing, body-piercing, and esthetics). Most of these committee members either own or operate schools, or previously owned or operated schools.

The regulatory review committee has performed a review of the regulation. The Board is expected consider the substantive changes detailed below. However, the Board may consider other changes prior to adoption of the proposed regulation.

Part I – Definitions (18 VAC 41-20-10 et seq.):

Definitions (18 VAC 41-20-10):

Revising the section to specifically incorporate statutory terms from § 54.1-700 of the Code of Virginia that are used in the regulation. Currently, the section incorporates all terms that are defined in this section of the Virginia Code, including many terms that are not used in the regulation. Adding a definition for the following terms or phrases: “clock hours;” “each and every location for school licensure;” “reasonable hours;” and “wet disinfection unit.” Removing definitions for the following terms: “endorsement;” and “reciprocity.”

Part II – Entry (18 VAC 41-20-20 et seq.):

Adding a new section – Gratuitous Services (18 VAC 41-20-15). The new section would provide clarification regarding the exemption from licensure in § 54.1-701(5) of the Code of Virginia for those who provide “gratuitous services.” The statute does not provide a meaning for the term “gratuitous services.” The new section would provide clarification as to what are considered gratuitous services.

General Requirements for a Barber, Master Barber, Cosmetologist, Nail Technician, or Wax Technician License (18 VAC 41-20-20):

- Revising the provisions of subdivision A.1 to clarify that an applicant only disclose prior disciplinary actions that pertain to services within the scope of practice for the license for which the individual is applying (i.e. barber, cosmetology, etc.).
- Revising the provisions of subdivision A.1 to remove a requirement that an applicant disclose whether the applicant previously held a license in Virginia as a barber, master barber, cosmetologist, nail technician, or wax technician. This requirement is not necessary.
- Revising the provisions of subdivision A.2 to allow applicants to provide a post office box address as a secondary address to a physical address. Currently, applicants are not permitted to provide a post office box address.
- Revising the provisions of subdivision A.4 to only require disclosure of felony convictions occurring within 10 years of the date of application. Currently, applicants must disclose felony convictions occurring within 20 years of the date of application.
- Adding a new subdivision that will require any change of name or address to be reported to the Board in writing within 30 days of the change.
- Revising the provisions of subdivision B.1 to:
 - Add a provision that those completing a registered apprenticeship are eligible to sit for the license examination. Currently, this provision is located in 18 VAC 41-20-40, and will be relocated.
 - Add provisions that an applicant with a minimum of two (2) years of documented experience in the in the practice of the profession in United States armed forces is eligible for the respective license examination. Currently, these provisions are located in 18 VAC 41-20-50, and will be relocated.
 - Add provisions allowing for (i) a licensed cosmetologist with a minimum of two (2) years of work experience to be eligible for the master barber examination; and (ii) a licensed master barber with a minimum of two (2) years of work experience to be eligible for the cosmetology examination. Currently, these provisions are located in 18 VAC 41-20-50, and will be relocated.
 - Add a provision that an applicant that has received training in the profession in any Virginia state institution is eligible for the respective license examination. Currently, this provision is located in 18 VAC 41-20-50, and will be relocated.
- Revising the provisions of subdivision B.2 to reduce from five (5) years to three (3) years the amount of required experience for applicants who received training outside of Virginia in a training program that is not substantially equivalent to Virginia training.
- Revising the provisions of subdivision B.2 to provide that applicants who have received training outside of the United States must have their degree translated, authenticated, and evaluated by an education evaluation service if credit is being sought for such education.

License by Endorsement (18 VAC 41-20-30): Revising the section to (i) reduce the amount of work experience required in lieu of training from five (5) to three (3) years for applicants who completed a training program that is not substantially equivalent to Virginia's training requirements; and (ii) add provisions enabling individuals endorsing from other states who have completed one examination (written or practical) that is substantially equivalent to the Virginia examination to take the other examination (written or practical, as applicable) in Virginia.

Apprenticeship Training (18 VAC 41-20-40): Revising the section to (i) remove a provision that those completing a registered apprenticeship are eligible to sit for the license examination. This provision will be relocated to 18 VAC 41-20-20; and (ii) provide that responsible management, rather than owners, of shops or salons who train apprentices comply with standards for apprenticeship training established by DOLI.

Exceptions to training requirements (18 VAC 41-20-50): Repealing this section as it is no longer necessary. Certain provisions of this section would be relocated to 18 VAC 41-20-20 as detailed above.

Examination Requirements and Fees (18 VAC 41-20-60): Revising the section to (i) clarify that the license examination consists of both a practical and a written portion, as opposed to separate examinations; (ii) remove a provision that failing to appear for a scheduled examination results in forfeiting of the examination fee, as this provision is unnecessary; (iii) removing a provision that the examination is administered by the Board or a designated testing services, as this provision is unnecessary; and (iv) removing a provision that examination records will be maintained for a maximum of five years, as this provision is unnecessary.

Examination Administration (18 VAC 41-20-80): Revising the section to incorporate previous Board guidance by adding a provision that a licensed cosmetologist may serve as an examiner for any discipline that falls within the scope of the cosmetology profession, such as nail technician and wax technician.

Barber, Master Barber, Cosmetology, Nail Technician, and Wax Technician Temporary Permits (18 VAC 41-20-90): Revising the section to (i) extend the term of a temporary permit to 90 days from the current 45 days; and (ii) providing that no subsequent temporary permit will be issued. The Board has previously authorized this change as a fast-track action.

General Requirements for a Barber Instructor Certificate, Cosmetology Instructor Certificate, Nail Technician Instructor Certificate, or Wax Technician Instructor Certificate (18 VAC 41-20-100):

- Revising subdivision A.1 to remove a requirement that an applicant disclose whether the applicant has been previously certified in Virginia as a barber, master barber, cosmetology, nail technician, or wax technician instructor. This provision is not necessary.
- Revising subdivision A.3 to require that an applicant either (i) pass a teaching course in teaching techniques at the post-secondary education level; or (ii) pass an instructor examination to qualify for an instructor certificate. A provision allowing for an applicant to qualify based on completing a Board-approved instructor training course is removed.
- Revising subdivision A.4 to only require disclosure of felony convictions occurring within 10 years of the date of application. Currently, applicants must disclose felony convictions occurring within 20 years of the date of application.
- Adding a new subdivision that will require any change of name or address to be reported to the Board in writing within 30 days of the change.
- Revising subsection B to remove the requirement that a certificate holder maintain their underlying professional license as a barber, cosmetologist, etc., in order to qualify for an instructor certificate. Instructors would not be required to renew the professional license if the instructor certificate is currently active.
- Adding a new subsection that provides certified instructors may teach in any profession for which they hold the underlying license.

Student Instructor Temporary Permit (18 VAC 41-20-110): Revising the section to add a provision that student instructors may teach in any profession for which they hold the underlying license.

General Requirements for a Shop or Salon License (18 VAC 41-20-120):

- Revising the provisions of subdivision A.1 to clarify that an applicant only disclose prior disciplinary actions that pertain to services within the scope of practice for the license for which the firm is applying (i.e. barber, cosmetology, etc.).
- Revising the provisions of subdivision A.1 to remove a requirement that an applicant disclose whether the applicant or a member of the firm's responsible management previously held a license in Virginia as a barbershop, cosmetology salon, nail salon, or waxing salon. This requirement is not necessary.
- Revising the provisions of subdivision A.2 to allow applicants to provide a post office box address as a secondary address to a physical address. Currently, applicants are not permitted to provide a post office box address.
- Revising the provisions of subdivision A.4 to only require disclosure of felony convictions occurring within 10 years of the date of application. Currently, applicants must disclose felony convictions occurring within 20 years of the date of application.
- Revising the provisions of subsection C to require that a licensed firm notify the Board within 30 days of a change of business entity (e.g. formation of a new firm, dissolution of an existing firm) and destroy the license. Currently, a firm is required to return the license to the Board within 30 days of a change of business entity.
- Adding a new subsection that requires mobile shops and salons to have a shop or salon license and provide the Board with a physical address.
- Revising subsection E to remove provisions defining the term "reasonable hours." The term "reasonable hours" will be added to the definitions section in 18 VAC 41-20-10.

General Requirements for a School License (18 VAC 41-20-130):

- Revising the provisions of subdivision A.1 to clarify that an applicant only disclose prior disciplinary actions that pertain to services within the scope of practice for the license for which the firm is applying (i.e. barber, cosmetology, etc.).
- Revising the provisions of subdivision A.1 to remove a requirement that an applicant disclose whether the applicant or a member of the firm's responsible management previously held a license in Virginia as a barbering, cosmetology, nail, or wax school. This requirement is not necessary.
- Revising the provisions of subdivision A.2 to allow applicants to provide a post office box address as a secondary address to a physical address. Currently, applicants are not permitted to provide a post office box address.
- Revising subdivision A.4 to only require disclosure of felony convictions occurring within 10 years of the date of application. Currently, applicants must disclose felony convictions occurring within 20 years of the date of application.
- Revising the provisions of subsection C to require that a licensed firm notify the Board within 30 days of a change of business entity (e.g. formation of a new firm, dissolution of an existing firm) and destroy the license. Currently, a firm is required to return the license to the Board within 30 days of a change of business entity.
- Revising subsection F to remove provisions defining the term "reasonable hours." The term "reasonable hours" will be added to the definitions section in 18 VAC 41-20-10.

Part III – Fees (18 VAC41-20-140 et seq.):

Fees (18 VAC41-20-140): Incorporating provisions from 18VAC41-20-150, which specifies that fees are nonrefundable and shall not be prorated.

Refunds (18 VAC 41-20-150): Repealing this section as it is no longer necessary.

Part IV – Renewal/Reinstatement (18 VAC41-20-160 et seq.):

Failure To Renew (18 VAC 41-20-180): Revising the provisions of subsection B to require that an individual that fails to reinstate a license or certificate within two (2) years of the expiration date must either (i) apply for licensure or certification as a new applicant, and meet current entry requirements; or (ii) if the individual has been licensed for a minimum of three (3) years, submit a new application and pass the required examination.

Part V – Barber and Cosmetology Schools (18 VAC 41-20-200 et seq.):

General Requirements (18 VAC 41-20-200):

- Revising the provisions of subdivision 3 to require that instructor programs be taught by a certified instructor. This change is also part of a separate pending action that is currently in Proposed stage.
- Revising the provisions of subdivision 3 to require that any change in instructors be reported to the Board within 30 days of the change.
- Revising the provisions of subdivision 5 to reduce the number of minimum clock hours for barber, master barber, dual barber/master barber, and cosmetology curricula:
 - Reduce barber curricula to a minimum of 750 clock hours from the current 1,100 clock hours requirement;
 - Reduce master barber curricula to a minimum of 250 clock hours from the current 400 clock hours requirement;
 - Reduce dual barber/master barber curricula to a minimum of 1,000 clock hours from the current 1,500 clock hours requirement; and
 - Reduce cosmetology curricula to a minimum of 1,000 clock hours from the current 1,500 clock hours requirement. This change is also part of a separate pending action that is currently in Proposed stage.

Curriculum Requirements (18 VAC 41-20-210):

- Revising the minimum curriculum requirements for a barber training program in subsection A to align with the reduced minimum clock hours for a barber training program in 18 VAC 41-20-200.
- Revising the minimum curriculum requirements for a master barber training program in subsection B to align with the reduced minimum clock hours for a master barber training program in 18 VAC 40-20-200.
- Revising the minimum curriculum requirements for a dual barber/master barber training program in subsection C to align with the reduced minimum clock hours for a dual barber/master barber training program in 18 VAC 40-20-200.
- Revising the minimum curriculum requirements for a cosmetology training program in subsection D to align with the reduced minimum clock hours for a cosmetology training program in 18 VAC 40-20-200. This change is also part of a separate pending action that is currently in Proposed stage.
- Revising the minimum curriculum requirements for a nail technician training program in subsection E to specify the minimum number of hours required for each training subject.
- Revising the minimum curriculum requirements for a wax technician training program in subsection F to specify the minimum number of hours required for each training subject.
- Adding a new subsection to provide for instructor curriculum. This change is also part of a separate pending action that is currently in Proposed stage.
- Revising the provisions pertaining to the student assessment a school may conduct to give a student credit toward required training hours to allow for schools to make the assessment based on (i) review of the student's transcript; (ii) documentation of hours and performances provided by the student; or (iii) completion of a competency examination. Currently, schools are required to review the student's transcript and conduct a board-approved competency examination.

Hours of Instruction and Performances (18 VAC 41-20-220):

- Revising the minimum performance requirements for a barber training program in subsection B to reduce the total number of required performances from 370 to 350.

- Revising the minimum performance requirements for a master barber training program in subsection C to reduce the total number of required performances from 120 to 100.
- Revising the minimum performance requirements for a dual barber/master barber training program in subsection D to reduce the total number of required performances from 490 to 450.
- Revising the minimum performance requirements for a cosmetology training program in subsection E to reduce the total number of required performances from 525 to 385. This change is also part of a separate pending action that is currently in Proposed stage.
- Revising the minimum performance requirements for a nail technician training program in subsection F to reduce the total number of required performances from 275 to 255.
- Revising the minimum performance requirements for a wax technician training program in subsection G to reduce the total number of required performances from 36 to 30.

Records (18 VAC 41-20-240): Revising the provisions of the section to (i) require course descriptions as a record that a school must maintain for each student for five (5) years after the student's completion of the curriculum, termination, or withdrawal; and (ii) remove provisions requiring a school to provide a student with documentation of the student's hours and performances upon request for a period of one year after the school changes ownership.

Part VI – Standards of Practice (18 VAC 41-20-260 et seq.):

Sanitation and Safety Standards for Shops, Salons, and Schools (18 VAC 41-20-270):

- Sanitation requirements in this section will be adjusted based on current industry standards.
- Revising the provisions of subdivision B.1 to remove the definition of "wet disinfection unit." This definition will be added to the definitions section of the regulation in 18 VAC 41-20-10.
- Revising the provisions of subdivision B.8 to provide for specific sanitation requirements for sinks and bowls used for nail care. A new subdivision addressing sanitation requirements specific to foot tubs, whirlpool units, air-jetted basins, pipe-less units and non-whirlpool basins used for nail care will be created.
- Revising the provisions of subsection D to provide (i) that any multiuse article, tool, or product that cannot be disinfected by full immersion or cleaned according to manufacturer's instructions, such as natural hair brushes or neck dusters, are prohibited from use; and (ii) any disposable material making contact with blood or other body fluid must be disposed of in a manner compliant with Occupational Safety and Health Administration ("OSHA") Bloodborne Pathogens standard (29 CFR 1910.1030).

Grounds for License Revocation or Suspension; Denial of Application, Renewal or Reinstatement; or Imposition of a Monetary Penalty (18 VAC 41-20-280):

- Revising the prohibited act in subdivision 1 to prohibit the inability to practice with skill or safety as a result of any mental or physical condition. Currently, this subdivision prohibits mental or physical incapability to practice.
- Revising the prohibited act in subdivision 11 to provide that failure to notify the Board within 30 days of any final disciplinary action taken against a license, registration, certificate, or permit by any local, state, or national regulatory body is prohibited.

As the regulation is developed, the Board, in accordance with Executive Directive Number One (2022), will review discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program. To the extent any such current requirement may not be necessary to protect the public health, safety, and welfare, or not necessary to effectively administer the licensure program, the Board will consider eliminating the requirement.

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.

A goal of this regulatory action is to review of discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program, in accordance with the regulatory reduction goal of Executive Directive Number One (2022). As the regulation is developed, the Board will consider potential alternatives to existing requirements that may be less burdensome or intrusive while still meeting the essential purpose of the regulation.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”

This NOIRA is not being used to announce a periodic review or a small business impact review.

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. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Board formed a regulatory review committee composed of members of the Board to conduct a review of this regulation. The committee held multiple meetings between September 2022 and September 2023. These meetings included opportunities for public comment. The committee has received public comment from interested parties at several of these meetings.

The Board for Barbers and Cosmetology is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

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:

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866-245-9693 (fax)

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 be held following the publication of the proposed stage, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.