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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 41-20-270 18 VAC 41-70-270
VAC Chapter title(s)	Barbering and Cosmetology Regulations Esthetic Regulations
Action title	Antibacterial Soap
Date this document prepared	June 3, 2022

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 Board for Barbers and Cosmetology seeks to amend its current regulations to eliminate the antibacterial requirement for soap used by clients and employees. The existing regulation requires antibacterial soap for client usage. It also mandates all employees providing client services to cleanse their hands with an antibacterial product prior to providing services to each

client. According to the U.S. Food and Drug Administration (FDA), the benefits of using antibacterial hand soaps have not been proven, and there is little evidence that antibacterial soaps prevent diseases and infections better than non-antibacterial soaps.

Based on FDA studies, the Board for Barbers and Cosmetology determined antibacterial soaps provides no additional protection against infections than soap and water. The Board proposes to remove all references to “antibacterial” from the soap requirements in the regulations.

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.

“FDA” means the United States Food and Drug Administration

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.

The Board approved the proposed amendment to the 18 VAC 41-20-270 and 18 VAC 41-70-270 sanitation and safety standards on March 14, 2022, which removes the current requirement for the use of antibacterial soap and allows staff and clients to use soap instead.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

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

The purpose of this regulatory change is to align the regulations with evidence found by the FDA. The existing regulations requiring the use of “antibacterial” soap are misleading, as the product provides no protection benefits. According to studies published by the US Food and Drug Administration and Harvard University, antibacterial soap is not an advantage over soap.

This rulemaking is expected to be non-controversial because it is reducing a regulatory burden for licensees without disrupting the protection of the health, safety, and welfare of the public.

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.

The purpose of this action is to amend the regulations such that the current "antibacterial" criteria are no longer in place. Antibacterial soap is required for client and employee use under the current regulations. The antibacterial requirement was intended to safeguard licensed professionals and clients from infection. However, the FDA found there is little evidence that antibacterial cleansers are an improvement over non-antibacterial soaps at preventing diseases and infections.

The regulatory change intends to allow licensed professionals, salons, shops, and schools the ability to utilize non-antibacterial soap. The existing regulations antibacterial soap provision is unnecessary. There is no evidence that using antibacterial products is beneficial. After considering the facts, the Board determined that antibacterial products offer no more protection against infections than soap and water. All references to "antibacterial" soap requirements in the regulations must be removed with the amended regulation.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

18 VAC 41-20-270.C.4 Sanitation and Safety Standards for Shops, Salons, and Schools. The proposed amendments update this section removing the antibacterial soap requirement for client usage to soap.

18 VAC 41-20-270.F.1 Sanitation and Safety Standards for Shops, Salons, and Schools. The proposed amendments update this section removing the antibacterial soap requirement for employee usage to soap.

18 VAC 41-70-270.C.4 Sanitation and Safety Standards for Shops, Salons, and Schools. The proposed amendments update this section removing the antibacterial soap requirement for client usage to soap.

18 VAC 41-70-270.F.1 Sanitation and Safety Standards for Shops, Salons, and Schools. The proposed amendments update this section removing the antibacterial soap requirement for employee usage to soap.

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 amendment to the public and businesses is that it ensures the regulations and FDA findings on antibacterial soaps are consistent. Antibacterial cleansers ingredients, according to studies, may increase microorganisms resistant to antibiotics. The FDA halted the marketing of items containing certain antibacterial ingredients as a result of the study's findings. Because the FDA views antibacterial soap as no more effective than regular soap, and possibly more harmful by increasing antibiotic resistant bacteria, there is no clear need for this requirement. This change reduces an unnecessary burden. 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

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

No other state agencies 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.

Summary:

The Board for Barbers and Cosmetology is amending the Barbering and Cosmetology regulations and Esthetics regulations. The board proposes to amend and eliminate the current antibacterial requirement from the regulations. The amended regulation is needed to remove all references to antibacterial soap from the regulations. According to the U.S. Food and Drug Administration (FDA), the benefits of using antibacterial hand soaps have not been proven and found there is little evidence that antibacterial soaps are an improvement over non-antibacterial soaps at preventing diseases and infections. The board determined that antibacterial products provide no further protection against infections than soap and water. There is no economic or fiscal impact to state agencies. Individuals and businesses operating salons, shops, spas or schools may realize cost savings by not needing to purchase antibacterial hand soaps for their business.

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 individuals and small businesses by no longer having to purchase antibacterial products. The Board determined that antibacterial products provide no further protection against infections than soap and water. The regulatory change allows the utilization of soap and water for individuals and salons, shops, spas, and schools.</p>

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 other state agencies resulting from this regulatory change
Benefits the regulatory change is designed to produce.	None.

Impact on Other Entities

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	Barber, Cosmetology and Esthetic's individuals and businesses may be affected by this regulatory change.
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	As of May 1, 2022 there 63,711 individual licensees and are 875 Barber shops, 72 Barber Schools, 5,018 Cosmetology Salons, 160 Cosmetology Schools, 54 Esthetics Schools, 823 Esthetics Spas, 703 Nail Salons, 43 Nail Technician Schools, 146 Waxing Salons, and 16 Waxing Schools. Almost all salons, shops, spas and schools are considered small businesses.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	a) Individuals and small businesses will benefit from utilizing non-antibacterial products. Some cost savings may be realized 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) No specific additional time is required.
Benefits the regulatory change is designed to produce.	According to the FDA, the benefits of using antibacterial hand soaps have not been proven. The benefits of the regulatory change would remove all references of antibacterial soap from the regulations. Also, it allows individuals and businesses to use non-antibacterial (soap and water) rather than antibacterial products that provides no further protection against infections and diseases.

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.

This regulatory change is meant to implement a less intrusive alternative to the existing regulation. No other 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.

With this action, the Board is adopting a less stringent requirement. Alternatives would involve maintaining the current regulatory mandate for the use of antibacterial soap. The Board has amended the existing regulation to allow licensed professionals, businesses, and clients the use of non-antibacterial soap. The regulatory change will benefit licensed individuals and small businesses by no longer having to purchase antibacterial products. Removing the soap requirement entirely would create a significant increase in health and safety risks to the clients and licensees and is not a viable alternative.

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 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

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 41-20-270.C.4		This regulation requires antibacterial soap for the client's use.	<p>In subsection C.4, this action replaces the requirement to have "antibacterial soap for client use" with the requirement "to have soap for client use."</p> <p>The regulatory change intends to allow licensed professionals, salons, shops, and schools the ability to utilize non-antibacterial soap. The FDA halted the sale of items containing antibacterial ingredients. The regulatory change will benefit</p>

			licensed individuals and small businesses by no longer having to purchase antibacterial products.
18 VAC 41-20-270.F.1		This regulation requires employees providing client services to cleanse their hands with an antibacterial product prior to providing services to each client.	<p>In subsection F.1, this action replaces the requirement for employees to cleanse their hands with an “antibacterial product prior to providing services to each client” with the requirement to cleanse their hands with “soap prior to providing services to each client.”</p> <p>The regulatory change intends to allow licensed professionals and employees of salons, shops, and schools the ability to cleanse their hands with non-antibacterial soap prior to providing services to each client. The FDA found there is little evidence that antibacterial cleansers are an improvement over non-antibacterial soaps at preventing diseases and infections. The regulatory change will benefit licensed individuals and small businesses by no longer having to purchase antibacterial products.</p>
18 VAC 41-70-270.C.4		This regulation requires antibacterial soap for the client's use.	<p>In subsection C.4, this action replaces the requirement to have “antibacterial soap for client use” with the requirement “to have soap for client use.”</p> <p>The regulatory change intends to allow licensed professionals, salons, shops, and schools the ability to utilize non-antibacterial soap. The FDA halted the sale of items containing antibacterial ingredients. The regulatory change will benefit licensed individuals and small businesses by no longer having to purchase antibacterial products.</p>
18 VAC 41-70-270.F.1		This regulation requires employees providing client services to cleanse their hands with an antibacterial product prior	In subsection F.1, this action replaces the requirement for employees to cleanse their hands with an “antibacterial product prior to providing services to each client”

		<p>to providing services to each client.</p>	<p>with the requirement to cleanse their hands with “soap prior to providing services to each client.”</p> <p>The regulatory change intends to allow licensed professionals and employees of salons, shops, and schools the ability to cleanse their hands with non-antibacterial soap prior to providing services to each client. The FDA found there is little evidence that antibacterial cleansers are an improvement over non-antibacterial soaps at preventing diseases and infections. The regulatory change will benefit licensed individuals and small businesses by no longer having to purchase antibacterial products.</p>
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