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Fast-Track Regulation Agency Background Document

Agency name	Board for Barbers and Cosmetology
Virginia Administrative Code (VAC) citation(s)	18 VAC 41-20 18 VAC 41-70
Regulation title(s)	Barbering and Cosmetology Regulations Esthetics Regulations
Action title	Update of disinfectant terminology
Date this document prepared	April 18, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The proposed amendments to 18 VAC 41-20-270 and 18 VAC 41-70-270 are needed to adapt to changes in the industry related to labeling disinfectants as "tuberculocidal." Currently, licensees are required to use disinfectants identified as tuberculocidal. Disinfectant manufacturers, however, are moving away from labeling products as "tuberculocidal," in large part because tuberculosis is an airborne disease not transmitted through surface contact.

Because several prominent manufacturers of industry products no longer label, or have announced plans to stop labeling, their products "tuberculocidal," without this amendment, licensees may encounter significant barriers in obtaining disinfectants that comply with the regulations. The proposed action replaces the regulatory requirement for a tuberculocidal and hospital grade disinfectant with the requirement for an "EPA registered disinfectant that is bactericidal, virucidal and fungicidal."

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

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

“Board” means the Board for Barbers and Cosmetology.

“EPA” means the U.S. Environmental Protection Agency.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On March 11, 2019, the Board for Barbers and Cosmetology approved the proposed amendment to the 18 VAC 41-20-270 of the Barbering and Cosmetology Regulations and 18 VAC 41-70-270 of the Esthetics Regulations.

Mandate and Impetus

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

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

The regulatory action is the result of a Board decision that continued inclusion of the term “tuberculocidal” in its regulatory description of disinfectant would create an unreasonable compliance burden on licensees while providing no additional health, safety, or welfare protection to the public.

This action is expected to be noncontroversial because without taking action through the fast-track process, licensees will soon find it more difficult and expensive to remain in compliance with the regulations.

Legal Basis

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

Code of Virginia § 54.1-201 enumerates Board authority to promulgate regulations. Subsection A.5 states, in part, that the Board has the power and duty:

To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board.

Purpose

Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

Currently, Board regulations require the use of a “hospital grade and tuberculocidal disinfectant solution registered with the [EPA].” However, manufacturers of disinfectant solutions marketed toward barbers and cosmetologists are moving away from including “tuberculocidal” in the description and function of their solutions. The primary rationale for dropping the term “tuberculocidal” within the industry is that tuberculosis is an airborne disease, making it somewhat misleading to suggest that the use of the product prevents the transmission of tuberculosis. Additionally, the National Interstate Council of State Boards of Cosmetology (NIC) Infection Control Best Practices intentionally avoids the use of this term. NIC’s Best Practices recommend the use of the terms bactericidal, virucidal, and fungicidal. As manufacturers move away from commonly using this term, the supply of “tuberculocidal” products will decrease as their expense increases, creating an unnecessary burden on licensees.

The proposed regulatory amendments update the disinfectant standards to require the use of an EPA-registered disinfectant that is bactericidal, virucidal and fungicidal—still protecting the health, safety and welfare of the public. Thirty-two other states currently use the “bactericidal, virucidal and fungicidal” requirement in lieu of tuberculocidal, and five more states use some combination of those three terms. Additionally, several more states are in the process of updating their requirements to EPA-registered bactericidal, virucidal and fungicidal disinfectants. This change will align Virginia with national best practices for the professions.

The goal of the fast-track action is to ensure Board regulations accurately reflect industry practices and the changes in the market of disinfectant solutions. It will also allow Virginia to implement a more accurate description of the disinfection requirement and align with national standards, without imposing additional regulatory burdens.

Substance

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

Section 18 VAC 41-20-270. Sanitation and Safety Standards for Shops, Salons and Schools. The proposed amendment will replace the regulatory requirement for a tuberculocidal disinfectant with the requirement of an EPA-registered disinfectant that is bactericidal, virucidal and fungicidal.

Section 18 VAC 41-70-270. Sanitation and Safety Standards for Spas and Schools. The proposed amendment will replace the regulatory requirement for a tuberculocidal disinfectant with the requirement of an EPA-registered disinfectant that is bactericidal, virucidal and fungicidal.

Issues

Please identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

The primary advantage to the public is that this regulatory change will allow barber, cosmetology, nail technician, wax technician, and esthetics professionals to avoid an unintended increase in the cost of doing business. There are no disadvantages to the public.

The primary advantage to the agency and Commonwealth is that the Board will continue to protect the health, safety, and welfare of the public using the least restrictive means. This change will also allow the agency to adopt best practices for sanitation in these professions. There are no disadvantages to the agency or Commonwealth.

Requirements More Restrictive than Federal

Please identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no requirements in the proposed regulations that would be more restrictive than those currently required in Federal Law.

Agencies, Localities, and Other Entities Particularly Affected

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

Other State Agencies Particularly Affected

No state agencies will be particularly affected.

Localities Particularly Affected

No localities will be particularly affected.

Other Entities Particularly Affected

No other entities will be particularly affected.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, please identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that this is change versus the status quo.

Summary:

No state fiscal impact is expected as a result of the change. All costs incurred in support of Board activities and regulatory operations are paid by the Department and funded through fees paid by applicants and regulants. All Boards within the Department must operate within the Code provisions of the Callahan Act (§ 54.1-113) and the general provisions of § 54.1-201. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The Department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies. The Board has no other source of income.

Impact on State Agencies

<p><i>For DPOR:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:</p> <ul style="list-style-type: none"> 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>DPOR does not expect any cost savings resulting from this regulatory change.</p> <p>DPOR does not expect any changes to costs, fees or revenues resulting from this regulatory change.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>No cost savings by other state agencies are expected as a result of the regulatory change.</p> <p>No changes to costs, fees or revenues for other state agencies are expected as a result of the regulatory change.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The goal of the regulatory change is to ensure the regulations accurately reflect the changes in the market of disinfectant solutions. It will also allow Virginia to implement a more accurate description of the disinfection requirement and align with national standards, without imposing additional regulatory burdens.</p>

Impact on Localities

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

Impact on Other Entities

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>Individuals and businesses licensed in professions for barbering, cosmetology, nail technician, wax technician, and esthetics are affected.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses 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.</p>	<p>As of April 1, 2019, the Board licensed:</p> <ul style="list-style-type: none"> • 2,905 barbers, 893 barber shops, 60 barber schools, • 8,491 nail technicians, 78 nail salons, 35 nails schools, • 42,090 cosmetologists, 5,142 cosmetology salons, 167 cosmetology schools, • 3,415 estheticians, 651 esthetics spas, 43 esthetics schools, and • 1,598 wax technicians, 124 waxing salons, and 14 waxing schools. <p>All of the shops, salons, spas, and schools are considered small businesses.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please be specific and include all costs including, but not limited to: 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>Individuals and businesses affected by the changes will not see an economic impact or any additional costs.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The goal of the regulatory change is to ensure the regulations accurately reflect the changes in the market of disinfectant solutions. It will also allow Virginia to implement a more accurate description of the disinfection requirement and align with national standards, without imposing additional regulatory burdens.</p>

Alternatives

Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

The Board considered several alternatives to this regulatory action. Leaving the regulation unchanged would ultimately increase the cost of business for licensees as “tuberculocidal” disinfectants become less common in the marketplace. The Board considered simply removing the term “tuberculocidal” from the regulations, but remained concerned that EPA registration alone would not necessarily include fungicidal disinfection, which is one of the primary infectious pathogens in the industry. Additionally, hospital grade disinfectant is not defined by the EPA, and would leave the licensees with an unclear standard for disinfection.

Rather than leave licensees with an unclear and less effective requirement, or maintain a requirement that will become more costly to meet, the Board chose to align with national best practices and maintain options that are widely available in the market while protecting the health, safety, and welfare of the public from the primary infectious pathogens in the salon environment.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

There are no regulatory alternatives that would be less stringent that are consistent with protecting the health of the public in the salon environment. Elimination of the sanitation requirements would present a significant health risk to the public. This proposed change reduces the regulatory burden on current licensees while maintaining protection for the public from infectious pathogens in the salon environment. Most of the businesses operating salons, shops, and spas in Virginia are small businesses, and exempting small businesses from sanitation requirements would pose a substantial risk to public health.

Public Participation

If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Detail of Changes

Please list all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation.

If the regulatory change will be a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory change. Delete inapplicable tables.

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

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

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
18 VAC 41-20-270		Requires the use of an EPA-registered hospital grade and tuberculocidal disinfectant.	<p>In subsection B, replaces all instances of “EPA-registered hospital grade and tuberculocidal disinfectant” with the updated requirement for an “EPA registered disinfectant that is bactericidal, virucidal, and fungicidal.”</p> <p>Disinfectant manufacturers are largely moving away from labeling products as “tuberculocidal,” in part because tuberculosis is an airborne disease and not transmitted through surface contact. Several prominent manufacturers have stopped or have announced plans to stop labeling their products “tuberculocidal;” without this change, licensees may encounter significant barriers in obtain disinfectants that are identified as tuberculocidal.</p> <p>The amended regulation will still protect the health, safety, and welfare of the public. Thirty-two other states currently use the bactericidal, virucidal, and fungicidal requirements in lieu of tuberculocidal, and five more states have some combination of those three terms. Additionally, several more states are in the process of updating their requirement. This change brings Virginia in line with national best practices.</p>
18 VAC 41-70-270		Requires the use of an EPA-registered hospital grade and tuberculocidal disinfectant.	<p>In subsection B, replaces all instances of “EPA-registered hospital grade and tuberculocidal disinfectant” with the updated requirement for an “EPA registered disinfectant that is bactericidal, virucidal, and fungicidal.”</p> <p>Disinfectant manufacturers are largely moving away from labeling products as “tuberculocidal,” in part because tuberculosis is an airborne disease and not transmitted through surface contact. Several prominent manufacturers have</p>

			<p>stopped or have announced plans to stop labeling their products “tuberculocidal;” without this change, licensees may encounter significant barriers in obtain disinfectants that are identified as tuberculocidal.</p> <p>The amended regulation will still protect the health, safety, and welfare of the public. Thirty-two other states currently use the bactericidal, virucidal, and fungicidal requirements in lieu of tuberculocidal, and five more states have some combination of those three terms. Additionally, several more states are in the process of updating their requirement. This change brings Virginia in line with national best practices.</p>
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