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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 18 VAC 41-70
VAC Chapter title(s)	Barbering and Cosmetology Regulations Esthetics Regulations
Action title	Regulatory amendment to the instructor training program
Date this document prepared	April 28, 2021

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 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 proposed amendments establish a uniform instructor program among licensed cosmetology, barber, nail, and wax schools. Currently, schools with multiple licensing programs have to submit different instructor applications for each license type. Additionally, instructors are required to complete a training program for each profession. The Board for Barbers and Cosmetology proposes a standard instructor curriculum that unifies the barbers, cosmetologists, nail technician, wax technician and esthetics instructor programs. Establishing a standard instructor program for all license types will eliminate additional costs for instructors and schools.

The Board seeks to create a 400-hour instructor curriculum that is not profession-specific. The proposed amendment aligns the criteria for barber, cosmetology, nail, and wax instructor curricula with the esthetic instructor requirements. The Board indicated that the esthetic instructor program's curriculum and hour

requirements are sufficient for all professions and creates educational consistency between the programs.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

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

“Board” means the Board for Barbers and Cosmetology

“Body Art” means any professions or licenses issued under the Tattooing or Body Piercing Regulations.

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.”

On January 13, 2020, the Board for Barbers and Cosmetology approved a regulatory amendment to align the regulations of the barber, cosmetology, nail technician, and wax technician instructor's training program with the esthetic regulations. The change is needed to eliminate additional costs for schools and instructors, and to ensure consistent requisites for instructor training programs. The amended regulation requires schools to submit one curriculum for the instructor program and allow instructors the ability to teach the instructor program for any non-body art profession in which they are licensed. Without changing this regulation, prospective instructors are required to complete instructor training for each profession, and schools are required to submit an instructor curriculum for each profession.

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

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 amendment reduces the onerous process for schools and instructors. The revised regulations eliminate duplicate applications, as well as the additional fees for instructor licenses. The Board determined that the 400-hour instructor curriculum meets minimum competency for the barber, cosmetology, nail technicians, and wax technicians. The regulatory amendment introduces similar educational standards for instructors of the barber, cosmetology, nail technicians, and wax technicians. The existing regulations are inconsistent and do not meet the competency needed for the instructor program. The amended regulation removes discrepancies in the instructor training programs, decreases the burdensome application process, and makes it more affordable for schools and instructors. It will also create a single instructor program for barber, cosmetology, waxing, nail care, and esthetics instructors.

The amended regulations requiring schools to provide a 400-hour curriculum for instructor training programs has a disadvantage. The proposed curricula may require a change in program length for existing licensed schools. Most instructor programs currently operate around 400 hours, but the range varies from 200 to 600 hours. Those operating at different hours will need to revise their programs to meet the new requirement. It should be noted that candidates for the instructor certification have multiple methods of obtaining that certification, and none are required to complete the instructor program that is the subject of this change.

There is no additional risk to the health, safety, or welfare of the citizens by eliminating inconsistencies in the instructor programs.

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 will amend its instructor certification requirements so that an instructor certificate will allow teaching in any non-body art profession for which a license is held. The regulations will further create a formal instructor curriculum for schools to administer, including subject areas and program length. The curriculum will match the esthetics instructor program requirements.

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.

One alternative to the regulatory change is to maintain the current provision. If the regulations remain unchanged, the instructor application process remains burdensome and inconsistent. Schools could have a range in the number of hours required for instructor training. The existing regulation is not as cost-effective as schools and instructors have different criteria for each profession.

The new regulatory amendment is beneficial in the following areas: a less burdensome and intrusive option, a standard curriculum, less expensive for schools and instructor applicants, and the single system program allows instructors to teach multiple professions without repeating the same training.

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 agency is seeking an opportunity for comments on this regulatory proposal, including but not limited to ideas to be considered in the development of this proposal, the costs and benefits of the regulatory proposal, and the potential impacts of the regulation. Public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

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 Steve Kirschner, Executive Director, Board for Barbers and Cosmetology, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, Virginia 23233. Telephone: (804) 367-8590, 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 following the publication of the proposed stage of this regulatory action.