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### Fast-Track Regulation Agency Background Document

<b>Agency name</b>	Board for Barbers and Cosmetology
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	18 VAC 41-20-270 18 VAC 41-70-270
<b>VAC Chapter title(s)</b>	Barbering and Cosmetology Regulations Esthetic Regulations
<b>Action title</b>	Bathroom Requirements for Facilities
<b>Date this document prepared</b>	June 3, 2022 (revised July 12, 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 revise its current requirement that salons, shops, spas, and schools maintain a separate bathroom exclusively for client use. The existing requirement prevents these licensees from sharing a bathroom with other businesses. The proposed amendment to the existing regulation would allow facilities to maintain a bathroom

solely for client use and share a bathroom with other businesses, as long as the shared bathroom meets all the sanitation requirements in the regulations and the bathroom is reasonably close to the entrance. The Board proposes to change the requirement to the bathroom shall either be exclusively for clients' use or shared with other businesses in the same building. If the bathroom is shared, the bathroom shall be available for client use, within 200 feet of the entrance and must adhere to all sanitation requirements of this chapter.

### **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.*

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"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.*

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On July 11 2022, the Board approved the proposed modifications to 18 VAC 41-20-270 and 18 VAC 41-70-270 regarding a fully functional bathroom maintained exclusively for client use.

### **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.*

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This amendment was prompted by a petition for rulemaking from a small business owner. While the Board agreed with the policy direction of the petition, the petition was narrowly tailored for esthetics spas and schools, and the Board rejected the petition to initiate a broader regulatory change encompassing the Barbers and Cosmetology Regulations as well.

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.*

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*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.*

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The purpose of this action is to amend the regulations so businesses do not have to maintain a restroom exclusively for their clients' use. Currently, these businesses must maintain a bathroom on premises that is not shared by other businesses. The current rule was intended to ensure the salon patron does not have to exit the facility during a service or use facilities that are not maintained properly because the salon does not exercise control over it. However, salons and schools have complained that the requirement is onerous, often requiring thousands of dollars of renovations to add bathrooms to prospective facilities. The Board determined facilities that operate a salon, shop, spa, or school can maintain a restroom exclusively for their clients' use or share a bathroom with other businesses providing the business licensee can maintain the sanitation of the restroom and the bathroom is within 200 feet to the establishment entrance. As a result of the proposed amendment, small businesses that serves clients as a salon, shop, spa, or school will be able to use existing shared bathroom facilities. This should substantially reduce the financial burden on businesses, particularly those that lease office space or utilize a salon suite model. The 200 feet requirement should reduce, though not eliminate, the risk to clients of leaving the controlled salon environment. The requirement of the salon to comply with sanitation regulations should enable the salon and protect client safety in that regard.

## 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.*

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18 VAC 41-20-270. Sanitation and Safety Standards for Shops, Salons, and Schools. The proposed amendments update this section changes the restroom requirement from "maintained exclusively for client use" to the "bathroom shall be available exclusively for client use or shared with other businesses in the same building. If the bathroom is shared, the bathroom shall be available for client use, within 200 feet of the entrance and must adhere to all sanitation requirements of this chapter."

18 VAC 41-70-270. Sanitation and Safety Standards for Spas and Schools. The proposed amendments update this section changes the restroom requirement from "maintained exclusively for client use" to the "bathroom shall be available for exclusively client use or shared with other businesses in the same building. If the bathroom is shared, the bathroom shall be available for client use, within 200 feet of the entrance and must adhere to all sanitation requirements of this chapter."

## 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.*

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The benefits of the regulatory change would allow salons, shops, spas, and schools to share a restroom with other businesses, as long as the facility licensee can maintain the sanitation of the bathroom and it is within 200 feet of the entrance. Businesses often lease space prior to understanding the board's requirement, and encounter costly renovation or build out expenses to comply with the regulations. Businesses have reported expenses in the \$5,000 to \$15,000 range. The intended regulation amendment reduces economic burden on facilities while maintaining reasonable safety protections by ensuring the bathrooms comply with sanitation regulations.

The disadvantage are clients may have to share facilities with other businesses' employees and consumers; nevertheless, the regulation is designed to mitigate health risks by requiring the bathroom meet all the sanitation requirements in the regulations. Additionally, clients may travel

further from the salon facility than currently allowed, potentially subjecting them to higher risks if leaving mid-service (with chemicals in their hair, for example).

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.*

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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.*

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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 update the requirement that establishments maintain a restroom exclusively for client’s use to allow salons, shops, spas, and schools to share a restroom with other businesses providing the facility licensee can maintain the sanitation of the restroom and it is close to the entrance of the establishment. The regulatory change will mitigate risk by requiring the establishment’s restroom meet the sanitation requirements. There is no economic or fiscal impact to state agencies or individuals. Businesses operating salons, shops, spas or schools may realize cost savings by not needing to establish and maintain exclusive bathrooms 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 small businesses by decreasing the financial burden of zoning/permit issues. It allows the utilization of adequate restroom facilities. Salons, shops, spas, and schools will have the option to maintain a bathroom solely for clients use or share a restroom with other establishments. Also, they will be</p>

	responsible for the maintenance and sanitation of the shared restroom facilities.
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**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 salons, shops, spas and schools 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 April 1, 2022 there are 884 Barber shops, 73 Barber Schools, 5,086 Cosmetology Salons, 158 Cosmetology Schools, 57 Esthetics Schools, 824 Esthetics Spas, 715 Nail Salons, 43 Nail Technician Schools, 144 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) Current and newly established businesses can make use of the restroom space that is not exclusively for the establishment, as long as it is geographically close to the facility and the facility licensee takes responsibility for the sanitation and safety requirements of the restroom. 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.	The benefits of the regulatory change would allow salons, shops, spas and schools to share a restroom with other businesses, as long as the facility licensee can maintain the

	<p>sanitation of the restroom and it is close to the entrance. The regulation is designed to mitigate health risks by ensuring the facility will maintain and meet the restroom sanitation requirements.</p>
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**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 change is meant to implement a less intrusive and less costly alternative to existing regulation. While there is a theoretical increase in risk to public health, the Board believes this requirement still substantively addresses those risks.

**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 establishing a less onerous requirement. Alternatives would involve eliminating the requirement all together. The Board has amended the existing regulation to allow the facility licensee more flexibility to maintain restrooms shared with other businesses. The proposed change will decrease the financial burden on small businesses by requiring the bathroom meet all the sanitation requirements in the regulations. Eliminating requirements for clean and controlled bathroom spaces could impose a risk of harm to the public, through exposure to unsanitary or unsafe conditions.

**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

*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		This regulation requires facilities newly occupied after January 1, 2017, bathroom shall be maintained exclusively for client use.	<p>In subsection C, this action replaces the requirement to have a bathroom “maintained exclusively for client use” with the requirement to “for facilities newly occupied after January 1, 2017, the bathroom shall either be exclusively for clients’ use or shared with other businesses in the same building. If the bathroom is shared, the bathroom shall be available for client use, within 200 feet of the entrance and must adhere to all sanitation requirements of this chapter.”</p> <p>The regulatory change intends to allow salons, shops, and schools the ability to share restrooms with other establishments if the facility licensee</p>

			<p>is responsible for the shared restroom maintenance and sanitation. This will reduce the economic burden on facility owners by allowing them to use existing restrooms in shared offices/suites rather than building a new bathroom to meet the requirement.</p>
<p>18 VAC 41-70- 270.C</p>		<p>This regulation requires facilities newly occupied after January 1, 2017, bathroom shall be maintained exclusively for client use.</p>	<p>In subsection C, this action replaces the requirement to have a bathroom “maintained exclusively for client use” with the requirement to “for facilities newly occupied after January 1, 2017, the bathroom shall either be exclusively for clients’ use or shared with other businesses in the same building. If the bathroom is shared, the bathroom shall be available for client use, within 200 feet of the entrance and must adhere to all sanitation requirements of this chapter.”</p> <p>The regulatory change intends to allow spas and schools the ability to share restrooms with other establishments if the facility licensee is responsible for the shared restroom maintenance and sanitation. This will reduce the economic burden on facility owners by allowing them to use existing restrooms in shared offices/suites rather than building a new bathroom to meet the requirement.</p>