



Fast-Track Regulation Agency Background Document

Agency name	Board for Barbers and Cosmetology
Virginia Administrative Code (VAC) citation(s)	18 VAC 41-20
Regulation title(s)	Barbering and Cosmetology Regulations
Action title	Align Barber Curriculum with Scope of Practice
Date this document prepared	November 17, 2017

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The proposed changes to the existing regulations will align the barber curriculum to the statutory scope of practice for barbering. Barber school curriculum requirements have included the following services that are not covered by the definition of barbering in Virginia Code § 54.1-700: styling of the hair with a hand dryer, thermal waving, permanent waving with chemicals, wig care, and lightening or toning the hair.

Modifying the regulations to conform to the statute will decrease the barber curriculum and performance requirements. These amendments propose a barber curriculum consisting of a minimum of 1,100 clock hours (instead of the current 1,500) and 420 total performances (instead of the current 490).

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.

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 August 21, 2017, the Board approved the proposed amendments to the Barbering and Cosmetology Regulations to update the barber curriculum.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.

Code of Virginia § 54.1-201.5 grants authority to the Board 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 Board is the promulgating entity for regulations governing barbers and the schools responsible for their training. Virginia Code § 54.1-704.2 specifically references the Board’s jurisdiction over schools.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

These amendments are necessary to bring the Board’s regulations into alignment with its enabling statutory authority. The legal definition of barbering, pursuant to § 54.1-700, does not extend to styling of the hair with a hand dryer, thermal waving, permanent waving with chemicals, wig care, and lightening or toning the hair. However, barber school curriculum and training requirements outlined in the Board’s regulations have included such services even though they are reserved to the practice of cosmetology.

As a result, barber students are being required to take training on unnecessary topics that they should not be performing, and licensed barbers are performing services on which they have been trained even though they fall outside their statutory scope of practice. The Board, in consultation with the Office of Attorney General, reviewed this issue during the summer of 2017 and concluded a fast-track regulatory

action is necessary to clarify the barbering scope of practice for licensees, students, schools, and instructors.

These proposed amendments to the curriculum and performance requirements will correct the scope of practice for students and practitioners. In addition to conforming regulations to the statute, these changes will decrease the length of the barbering program. By creating a faster (and perhaps less expensive) path to licensure for barbers, this may in turn increase the number of participants in the barbering profession. This regulatory action poses no additional risk to the health, safety, or welfare of the public because amending the barbering curriculum to align with the legal definition will eliminate out-of-scope practices such as chemical services that present a greater degree of potential harm.

Rationale for using fast-track process

Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

The fast-track rulemaking process is being used to amend the Board's regulatory language for consistency in the application of § 54.1-700, which defines those services that are considered within the scope of practice for barbering and those that require a cosmetology license. The Board, in consultation with the Office of Attorney General, concluded that the current barber curriculum requirements are outside the statutory scope of practice, making these regulatory amendments necessary.

The changes are not expected to be controversial because they lower the burden of the current regulations. Barber schools and instructors will be able to eliminate out-of-scope training and practices and concentrate their curricula on barber-specific services. By decreasing the overall instructional hours and performance requirements accordingly, these amendments should allow students to complete barber programs more quickly and perhaps at less expense (the Board does not govern tuition charged by schools, only the minimum curriculum requirements).

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.

The Board's proposed amendments to existing 18 VAC 41-20-20—the section outlining the general requirements for an individual barber license—decrease the number of hours required from out-of-state applicants in order to reflect the removal of the out-of-scope practices from curriculum and training requirements.

The Board's proposed amendment to existing 18 VAC 41-20-200—the section outlining the general requirements for barber schools—decreases the minimum clock hours from 1,500 to 1,100.

The Board's proposed amendments to existing 18 VAC 41-20-210—the section governing barber school curriculum requirements—eliminate services determined to be outside the scope of practice of barbering.

The Board's proposed amendments to 18 VAC 41-20-220—the section describing barber school hours of instruction and performances—strike the minimum performances determined to be outside the scope of practice of barbering.

Issues

Please identify the issues associated with the proposed regulatory action, 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, please indicate.

The primary advantage of aligning the barber curriculum to the statutory scope of practice is to ensure consistency between the Board's regulations and the law. Individuals (students, instructors, and clients) as well as businesses (schools and shops/salons) will benefit from these revisions, which restore clarity and reduce confusion as to what the legislature determined is barbering and what is cosmetology.

In addition, eliminating curriculum requirements that are outside the barbering scope of practice will decrease the length of time (and perhaps associated tuition) required to complete barbering programs, which may increase enrollment at barber schools and promote economic growth opportunities. This in turn may lead to more students graduating, obtaining licensure, and participating in the barbering profession. Decreasing the overall hours of instruction and practices reduces an entry barrier into the profession without presenting an increased risk to the public's health, safety, or welfare. Moreover, any reduction in length and complexity of training has the potential to encourage individuals working illegally to obtain proper training and licensure, further safeguarding the public.

There are no disadvantages to the public or individual private citizens or businesses. The Board has already notified licensed barbers, shops, and schools that they are not allowed to perform out-of-scope services on the public for compensation; these proposed regulatory changes simply align the curriculum requirements in the regulations to the law.

The primary advantage to the Commonwealth is that the regulatory program will be applied consistently in accordance with the statutory definition. There are no identified disadvantages to the agency or the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include 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 statement to that effect.

There are no requirements in the proposed regulations that are more restrictive than any applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

None identified.

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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.

The proposed changes are necessary to align the Board’s regulations with applicable law. Moreover, given that the amendments are less restrictive than the existing regulations, there are no alternatives that would be less burdensome.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Summary: The Board is revising its regulations to align the barber curriculum with the statutory scope of practice for barbering. No state general fund fiscal impact is expected from this regulatory 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.

Economic Impact:

<p>Projected cost to the state to implement and enforce the proposed regulation, including:</p> <p>a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p>	<p>\$0</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>\$0</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>Licensed schools offering a barber training program and students enrolled in such training programs.</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>Approximately 80 barber schools (presumably small businesses)</p> <p>An estimated 100-300 students enroll in barber training programs each year</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>Some schools may see a reduction in revenue if they choose to lower tuition to reflect the reduction in required barber curriculum training hours.</p> <p>Barber schools will also incur minimal administrative expenses related to revising the curriculum and submitting for Board review.</p> <p>No other costs are expected as a result of the regulatory changes.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The amendments will eliminate training and practices outside the scope of practice of barbering.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.

No viable alternatives identified.

Public participation notice

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.

Periodic review and small business impact review report of findings

If this fast-track is the result of a periodic review/small business impact review, use this form to report the agency's findings. Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review and (2) indicate whether the regulation meets

the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

This section is not applicable.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This action will not have an effect on the authority and rights of parents in the education, nurturing, and supervision of their children.

This action may encourage economic self-sufficiency in several ways. The reduced curriculum length and complexity will allow qualified individuals to obtain a barber license and enter the workforce more quickly and with greater ease. The proposed amendments may also lead to reduced school tuition prices, which in turn lower expenses and increase family incomes.

This action will not have an impact on the marital commitment.

As noted above, these changes may lead to an increase in disposable family income due to reduced barriers of entry into the profession of barbering.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is 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 action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

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

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
20		Barbering and cosmetology exam candidates with out-of-	*Amend subsection B.2.a to strike barbering from the 1,500-hour

		<p>state training must provide documentation of 1,500 hours of substantially equivalent training (or proof of substantially equivalent training and six months work experience)</p>	<p>requirement applicable to cosmetology</p> <p>*Add new subsection B.2.b to repeat the same language for barbers except update with the 1,100 hours requirement</p> <p>*Renumber subsections accordingly</p> <p>The intent of this amendment is to align the regulations with the scope of practice for barbering as defined in § 54.1-700 (which does not include styling with a hand dryer, thermal waving, permanent waving with chemicals, wig care, and lightening or toning the hair).</p> <p>This action decreases the number of hours required from out-of-state barber applicants, in order to reflect the removal of the out-of-scope training requirements from the barbering curriculum.</p>
<p>200</p>		<p>Barber school instructional curriculum shall be based on a minimum of 1,500 clock hours</p>	<p>*Amend subsection 5.a to decrease the minimum clock hour requirement to 1,100</p> <p>The intent of this amendment is to align the regulations with the scope of practice for barbering as defined in § 54.1-700 (which does not include styling with a hand dryer, thermal waving, permanent waving with chemicals, wig care, and lightening or toning the hair).</p> <p>This action decreases the number of total “clock hours” required for the barber curriculum, in order to reflect the removal of the out-of-scope training requirements.</p>
<p>210</p>		<p>Barber school curriculum syllabus/outline requirements; 21 topics including the following out-of-scope items:</p> <p>10. Styling the hair with a hand hair dryer; 11. Thermal waving; 12. Permanent waving with chemicals; 16. Lightening or toning the hair;</p>	<p>*Amend subsection A to strike the four items determined to be out of scope of the practice of barbering (and reserved to cosmetology)</p> <p>The intent of this amendment is to align the regulations with the scope of practice for barbering as defined in § 54.1-700 (which does not include styling with a hand dryer, thermal waving, permanent waving with chemicals, wig care, and lightening or toning the hair).</p> <p>This action eliminates from the barber school curriculum those services determined by the Board, in consultation with the Office of Attorney General, to be outside the scope of barbering.</p>

			<p>In addition to promoting clarity and consistency, this regulatory change may increase barber school enrollment and, ultimately, qualified licensed professionals, due to the simplified and shorter curriculum.</p>
<p>220</p>		<p>Barber school curriculum performance requirements; 11 topic areas totaling 490 hours, including the following out-of-scope items:</p> <p>Hair styling-320 Bleaching and frosting-10 Cold permanent waving or chemical relaxing-25 Wig care, styling, placing on model-5 Finger waving and thermal waving-30 Waxing-5</p>	<p>*Amend subsection A to reflect the new 1,100 hour curriculum for barbering</p> <p>*Amend subsection B to strike the out-of-scope performances, reducing the total number of performances from 490 to 420; remove waxing from the requirement for five basic facials; change reference to "Hair Styling" to "Hair Services"</p> <p>The intent of this amendment is to align the regulations with the scope of practice for barbering as defined in § 54.1-700 (which does not include styling with a hand dryer, thermal waving, permanent waving with chemicals, wig care, and lightening or toning the hair).</p> <p>This action eliminates from the barber school curriculum those minimum performances determined by the Board, in consultation with the Office of Attorney General, to be outside the scope of barbering.</p> <p>In addition to promoting clarity and consistency, this regulatory change may increase barber school enrollment and, ultimately, qualified licensed professionals, due to the simplified and shorter curriculum.</p>