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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	Board for Barbers and Cosmetology
<b>Virginia Administrative Code (VAC) citation(s)</b>	18 VAC 41-20-200
<b>Regulation title(s)</b>	Barbering and Cosmetology Regulations
<b>Action title</b>	Esthetics Instructors Teaching Wax Programs
<b>Date this document prepared</b>	April 5, 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 amendment to 18 VAC 41-20-200 will allow licensed and certified esthetics instructors and master esthetics instructors to teach the wax technician curriculum at waxing schools. Licensed and certified esthetics instructors and master esthetics instructors are already trained to teach students on waxing *in esthetics schools* under the Board's esthetics regulations (Chapter 70); however, currently the regulations in Chapter 20 governing waxing schools only allow licensed and certified wax technician instructors or cosmetology instructors to teach at waxing schools.

### 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 November 14, 2016, the Board approved the proposed amendment to 18 VAC 41-20-200 and voted to use the fact-track process for its promulgation.

### 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 wax technicians, estheticians, and the schools and instructors responsible for their training. Section 54.1-704.2 specifically references the Board's jurisdiction over schools, and § 54.1-706 provides discretionary authority for the Board to establish different requirements for the different license types.

### 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.*

This amendment is needed for consistency in the interpretation and application of the Board's laws and regulations. Section 54.1-700 of the Code of Virginia defines esthetics to include the removal of unwanted hair from the body (by non-laser methods). As a result, those Board licensees permitted to remove unwanted hair are licensed wax technicians, licensed cosmetologists, and licensed estheticians and master estheticians.

The Board's regulations governing cosmetology and wax technicians (Chapter 20) currently restrict anyone from teaching the wax curriculum in waxing schools except licensed and certified wax technician instructors or cosmetology instructors. Licensed and certified esthetics instructors and master esthetics instructors are already trained to teach students on waxing *in esthetics schools* under the Board's esthetics regulations (Chapter 70), however, and the Board determined esthetician and master

esthetician training in the removal of hair is equivalent to or greater than that required by cosmetology training.

The proposed amendment to 18 VAC 41-20-200 will allow esthetics instructors and master esthetics instructors to teach the waxing program—they already cover waxing and hair removal techniques as part of the esthetics curriculum—in waxing schools, and poses no additional risk to health, safety, or welfare.

### 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 interpretation and application of §54.1-700, which defines those license types approved for waxing. The change is not expected to be controversial because members of the regulated community requested the change, it lowers the burden of the current regulatory restriction, and it will increase the overall availability of qualified instructors in waxing programs.

### 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 amendment to existing 18 VAC 41-20-200 updates the “General requirements” section applicable to schools, to standardize who may teach waxing at waxing schools by allowing licensed and certified esthetics instructors and master esthetics instructors.

### 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 allowing esthetics instructors and master esthetics instructors to teach waxing at waxing schools is that it promotes economic growth opportunities. By increasing the number of available instructors for waxing schools, program costs may be reduced for students. This in turn may lead to an increase in the number of students graduating, obtaining licensure, and participating in the waxing profession.

Moreover, this regulatory change will offer esthetics instructors and master esthetics instructors more employment opportunities under their current scope of practice, without any additional training requirements. There are no disadvantages to the public or individual private citizens or businesses.

The primary advantage to the Commonwealth is that the regulatory program will be more consistent by allowing all licensed instructors who are trained in waxing to teach at waxing schools. Currently, while

both cosmetologists and estheticians are trained in waxing, only cosmetology and wax technician instructors can teach it. 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.*

As the proposed change is less restrictive than the existing regulation, there are no alternatives. The regulatory change allows greater economic participation by qualified esthetics licensees who have equivalent or greater training than those currently approved to teach waxing at waxing schools.

### 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's regulations are being amended to allow esthetics instructors to teach waxing at waxing schools, as licensed cosmetology and wax technician instructors are already permitted to do. No 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><b>Projected cost to the state to implement and enforce the proposed regulation, including:</b></p> <p><b>a) fund source / fund detail; and</b>  <b>b) a delineation of one-time versus on-going expenditures</b></p> <p><b>See Fiscal Impact by year below:</b></p>	<p>\$0</p>
<p><b>Projected cost of the new regulations or changes to existing regulations on localities.</b></p>	<p>\$0</p>
<p><b>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</b></p>	<p>Licensed esthetics instructors and wax technician schools.</p>
<p><b>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.</b> Small business means a business entity, including its affiliates, that:</p> <p>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 53 esthetics instructors will be affected.</p> <p>10 wax technician schools (presumably small businesses)</p>
<p><b>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:</b></p> <p><b>a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and</b>  <b>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.</b></p>	<p>\$0</p>
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>The amendment will ensure esthetics instructors are allowed to teach waxing at waxing schools along with cosmetology and wax technician instructors.</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.*

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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.*

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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.*

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None identified.

### 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
200		<p>Schools must . . . Employ a staff of and ensure all training is conducted by licensed and certified barber, cosmetology, nail technician, or wax technician instructors, respectively.</p> <p>Licensed and certified cosmetology instructors may also instruct in nail and waxing programs.</p>	<p>Adds language to allow licensed and certified esthetics instructors and master esthetics instructors to teach waxing programs.</p> <p>The intent of this amendment is to promote consistency in the interpretation and application of the Board’s laws and regulations. Section 54.1-700 defines esthetics to include the removal of unwanted body hair; hair removal is also covered by the license types for cosmetologists and wax technicians.</p> <p>Other than wax technician instructors, the Board currently allows only licensed and certified cosmetology instructors to teach the wax curriculum at waxing schools. Esthetics instructors and master esthetics instructors are already trained to teach students on waxing <i>in esthetics schools</i>, however, and the Board determined esthetics training in the removal of hair is equivalent to or greater than that required by cosmetology training.</p> <p>This regulatory change will allow esthetics instructors and master esthetics instructors to teach in waxing programs, providing greater employment opportunities for those licensees; a larger pool of instructors for wax schools; and potentially lower program costs for students—without posing an additional risk to health, safety, or welfare.</p>