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## Proposed Regulation Agency Background Document

<b>Agency name</b>	DPOR – Board for Barbers and Cosmetology
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC 41 -70
<b>Regulation title</b>	Board for Barbers and Cosmetology Esthetics Regulations
<b>Action title</b>	Develop necessary regulations to implement a regulatory program for esthetics
<b>Date this document prepared</b>	May 19, 2006

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.*

Chapter 829 of the 2005 Acts of the Assembly mandated separate licensing categories under the Board for Barbers and Cosmetology for esthetics practitioners, schools, and spas where esthetic services are provided. The regulations contain the requirements for obtaining a license, renewal and reinstatement, safety and sanitation procedures, and standards of professional conduct.

To comply with Chapter 829 of the 2005 Acts of the Assembly and fulfill the Board for Barbers and Cosmetology responsibility to promulgate regulations, new regulations are promulgated to ensure competence and integrity of all licensees, ensure that the health and sanitary standards and safety procedures are adequate in parlors and other facilities where esthetics services are provided, and to administer the regulatory program.

## Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

The regulatory action to promulgate regulations governing the licensure and practice of esthetics under the Board for Barbers and Cosmetology is mandated by Chapter 829 of the 2005 Acts of the Assembly.

<http://leg1.state.va.us/cgi-bin/legp504.exe?051+ful+CHAP0829>

Regulations are promulgated under the general authority of Chapter 2 of Title 54.1 of the Code of Virginia. Section 54.1-201(5) provides the Board the authority to promulgate regulations to administer the regulatory system.

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-201>

While the Board is mandated to establish regulations, the content of the regulations is at the discretion of the Board.

### CHAPTER 829

*An Act to amend and reenact §§ [54.1-700](#) through [54.1-703](#) and [54.1-704.1](#) through [54.1-706](#) of the Code of Virginia and to amend the Code of Virginia by adding a section numbered [54.1-703.3](#), relating to the Department of Professional and Occupational Regulation; Board for Barbers and Cosmetology; regulation of estheticians.*

[H 2510]

Approved March 26, 2005

Be it enacted by the General Assembly of Virginia:

1. That §§ [54.1-700](#) through [54.1-703](#) and [54.1-704.1](#) through [54.1-706](#) of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered [54.1-703.3](#) as follows:

§ [54.1-700](#). Definitions.

As used in this chapter, unless the context requires a different meaning:

"Barber" means any person who shaves, shapes or trims the beard; cuts, sings, shampoos or dyes the hair or applies lotions thereto; applies, treats or massages the face, neck or scalp with oils, creams, lotions, cosmetics, antiseptics, powders, clays or other preparations in connection with shaving, cutting or trimming the hair or beard, and practices barbering for compensation and when such services are not performed for the treatment of disease.

"Barbering" means any one or any combination of the following acts, when done on the human body for compensation and not for the treatment of disease, shaving, shaping and trimming the beard; cutting, singeing, shampooing or dyeing the hair or applying lotions thereto; applications,

treatment or massages of the face, neck or scalp with oils, creams, lotions, cosmetics, antiseptics, powders, clays, or other preparations in connection with shaving, cutting or trimming the hair or a beard. The term "barbering" shall not apply to the acts described hereinabove when performed by any person in his home if such service is not offered to the public.

"Barber instructor" means any person who has been certified by the Board as having completed an approved curriculum and who meets the competency standards of the Board as an instructor of barbering.

"Barbershop" means any establishment or place of business within which the practice of barbering is engaged in or carried on by one or more barbers.

"Board" means the Board for Barbers and Cosmetology.

"Body-piercer" means any person who for remuneration penetrates the skin of a person to make a hole, mark, or scar, generally permanent in nature.

"Body-piercing" means the act of penetrating the skin of a person to make a hole, mark, or scar, generally permanent in nature.

"Body-piercing salon" means any place in which a fee is charged for the act of penetrating the skin of a person to make a hole, mark, or scar, generally permanent in nature.

"Body-piercing school" means a place or establishment licensed by the Board to accept and train students in body-piercing.

"Braiding salon" means any commercial establishment, residence, vehicle, or other establishment, place, or event wherein hair braiding is offered or practiced on a regular basis for compensation.

"Braiding school" means a place or establishment licensed by the Board to accept and train students and which offers a hair braiding curriculum approved by the Board.

"Cosmetologist" means any person who administers cosmetic treatments; manicures or pedicures the nails of any person; arranges, braids, dresses, curls, waves, cleanses, cuts, shapes, singes, waxes, tweezes, shaves, bleaches, colors, relaxes, straightens, or performs similar work, upon human hair, or a wig or hairpiece, by any means, including hands or mechanical or electrical apparatus or appliances unless such acts as adjusting, combing, or brushing prestyled wigs or hairpieces do not alter the prestyled nature of the wig or hairpiece, and practices cosmetology for compensation.

"Cosmetology" includes, but is not limited to, the following practices: administering cosmetic treatments; manicuring or pedicuring the nails of any person; arranging, braiding, dressing, curling, waving, cleansing, cutting, shaping, singeing, waxing, tweezing, shaving, bleaching, coloring, relaxing, straightening, or similar work, upon human hair, or a wig or hairpiece, by any means, including hands or mechanical or electrical apparatus or appliances, but shall not include such acts as adjusting, combing, or brushing prestyled wigs or hairpieces when such acts do not alter the prestyled nature of the wig or hairpiece.

"Cosmetology instructor" means a person who has been certified by the Board as having completed an approved curriculum and who meets the competency standards of the Board as an instructor of cosmetology.

"Cosmetology salon" means any commercial establishment, residence, vehicle or other establishment, place or event wherein cosmetology is offered or practiced on a regular basis for compensation and may include the training of apprentices under regulations of the Board.

*"Esthetician" means a person who engages in the practice of esthetics for compensation.*

*"Esthetics" includes, but is not limited to, the following practices of administering cosmetic treatments to enhance or improve the appearance of the skin: cleansing, toning, performing effleurage or other related movements, stimulating, exfoliating, or performing any other similar procedure on the skin of the human body or scalp by means of cosmetic preparations, treatments, any nonlaser device, electrical, mechanical, or manual, for care of the skin; applying make-up or eyelashes to any person, tinting or perming eyelashes and eyebrows, and lightening hair on the body except the scalp; and removing unwanted hair from the body of any person by the use of tweezing, chemical, or mechanical means. However, "esthetics" is not a healing art and shall not include any practice, activity, or treatment that constitutes the practice of medicine, osteopathic medicine, or chiropractic. The terms "healing arts," "practice of medicine," "practice of osteopathic medicine," and "practice of chiropractic" shall mean the same as those terms are defined in § [54.1-2900](#).*

*"Esthetics instructor" means a licensed esthetician who has been certified by the Board as having completed an approved curriculum and who meets the competency standards of the Board as an instructor of esthetics.*

*"Esthetics spa" means any commercial establishment, residence, vehicle, or other establishment, place, or event wherein esthetics is offered or practiced on a regular basis for compensation under regulations of the Board.*

"Hair braider" means a person who engages in the practice of hair braiding on a regular basis for compensation.

"Hair braiding" means the braiding, twisting, wrapping, weaving, extending, or locking of natural human hair by hand or mechanical device, provided that the service does not include hair cutting or the application of dyes, reactive chemicals, or other preparations to alter the color of the hair or to straighten, curl, or alter the structure of the hair.

*"Master esthetician" means a licensed esthetician who, in addition to the practice of esthetics, offers to the public for compensation, without the use of laser technology, lymphatic drainage, chemical exfoliation, or microdermabrasion, and who has met such additional requirements as determined by the Board to practice lymphatic drainage, chemical exfoliation with products other than Schedules II through VI controlled substances as defined in the Drug Control Act (§ [54.1-3400](#) et seq.), and microdermabrasion of the epidermis.*

"Nail care" means manicuring or pedicuring natural nails or performing artificial nail services.

"Nail salon" means any commercial establishment, residence, vehicle or other establishment, place or event wherein nail care is offered or practiced on a regular basis for compensation and may include the training of apprentices under regulations of the Board.

"Nail school" means a place or establishment licensed by the board to accept and train students in nail care.

"Nail technician" means any person who for compensation manicures or pedicures natural nails, or who performs artificial nail services for compensation, or any combination thereof.

"Nail technician instructor" means a licensed nail technician who has been certified by the Board as having completed an approved curriculum and who meets the competency standards of the Board as an instructor of nail care.

"Physical (wax) depilatory" means the wax depilatory product or substance used to remove superfluous hair.

"School of cosmetology" means a place or establishment licensed by the Board to accept and train students and which offers a cosmetology curriculum approved by the Board.

*"School of esthetics" means a place or establishment licensed by the Board to accept and train students and which offers an esthetics curriculum approved by the Board.*

"Tattoo parlor" means any place in which tattooing is offered or practiced.

"Tattoo school" means a place or establishment licensed by the Board to accept and train students in tattooing.

"Tattooer" means any person who for remuneration practices tattooing.

"Tattooing" means the placing of designs, letters, scrolls, figures, symbols or any other marks upon or under the skin of any person with ink or any other substance, resulting in the permanent coloration of the skin, including permanent make-up or permanent jewelry, by the aid of needles or any other instrument designed to touch or puncture the skin.

"Wax technician" means any person licensed by the Board who removes hair from the hair follicle using a physical (wax) depilatory or by tweezing.

"Wax technician instructor" means a licensed wax technician who has been certified by the Board as having completed an approved curriculum and who meets the competency standards of the Board as an instructor of waxing.

"Waxing" means the temporary removal of superfluous hair from the hair follicle on any area of the human body through the use of a physical (wax) depilatory or by tweezing.

"Waxing salon" means any commercial establishment, residence, vehicle or other establishment, place or event wherein waxing is offered or practiced on a regular basis for compensation and may include the training of apprentices under regulations of the Board.

"Waxing school" means a place or establishment licensed by the Board to accept and train students in waxing.

§ 54.1-701. Exemptions.

The provisions of this chapter shall not apply to:

1. Persons authorized by the laws of the Commonwealth to practice medicine and surgery or osteopathy or chiropractic;
2. Registered nurses licensed to practice in the Commonwealth;
3. Persons employed in state or local penal or correctional institutions, rehabilitation centers, sanatoria, or institutions for care and treatment of the mentally ill or mentally deficient or for care and treatment of geriatric patients, as barbers, cosmetologists, wax technicians, nail technicians, hair braiders, *estheticians*, barber instructors, cosmetology instructors, wax technician instructors, ~~or~~ nail technician instructors, *or esthetics instructors* who practice only on inmates of or patients in such sanatoria or institutions;
4. Persons licensed as funeral directors or embalmers in the Commonwealth;
5. Gratuitous services as a barber, nail technician, cosmetologist, wax technician, hair braider, tattooer, ~~or~~ body-piercer, *or esthetician*;
6. Students enrolled in an approved school taking a course in barbering, nail care, cosmetology, waxing, hair braiding, tattooing, ~~or~~ body-piercing, *or esthetics*;
7. Persons working in a cosmetology salon whose duties are expressly confined to hair braiding or the shampooing and cleansing of human hair under the direct supervision of a cosmetologist or barber;
8. Apprentices serving in a barbershop, nail salon, waxing salon, cosmetology salon, ~~or~~ hair braiding salon, *or esthetics spa* licensed by the Board in accordance with the Board's regulations; ~~and~~
9. Schools of barbering, nail care, waxing, cosmetology, or hair braiding in public schools; *and*
10. *Persons whose activities are confined solely to applying make-up, including such activities that are ancillary to applying make-up.*

§ 54.1-702. Board for Barbers and Cosmetology; membership; officers; quorum.

A. The Board for Barbers and Cosmetology shall be composed of ~~eight~~ 10 members, ~~of whom as follows:~~ two members shall be licensed barbers, one of whom may be an owner or operator of a barber school; two members shall be licensed cosmetologists, at least one of whom shall be a salon owner and one of whom may be an owner or operator of a cosmetology school; ~~and~~ one member shall be a licensed nail technician or a licensed cosmetologist engaged primarily in the practice of nail care, each of whom shall have been licensed in their respective professions for at least three years immediately prior to appointment; one member ~~who~~ shall be either a licensed tattooer or a licensed body-piercer; *two members shall be licensed estheticians, at least one of whom shall be an esthetics salon owner and one of whom may be an owner, operator, or designated representative of a licensed esthetics school;* and two citizen members. The terms of Board members shall be four years. No member shall serve for more than two full successive

terms. The Board shall elect a chairman and a ~~vice chairman~~ *vice chairman*. A majority of the Board shall constitute a quorum.

*B. The Governor shall appoint to the Board two estheticians who have practiced as an esthetician for at least five consecutive years immediately prior to appointment, effective July 1, 2005. The esthetician members shall not vote on any matters before the Board, except matters related to esthetics, until July 1, 2007.*

*Of the esthetician members initially appointed to the Board, one shall be appointed for a term of two years. Thereafter, all such appointments shall be for terms of four years, except that appointment to fill vacancies shall be for the unexpired terms.*

§ [54.1-703](#). License required.

No person shall offer to engage in or engage in barbering, cosmetology, nail care, waxing, hair braiding, tattooing, ~~or~~ body-piercing, *or esthetics* without a valid license issued by the Board, except as provided in § [54.1-701](#).

§ [54.1-703.3](#). *Waiver of examination; estheticians.*

*The Board shall waive the examination requirements for licensure as an esthetician or master esthetician for any individual who (i) makes application for licensure between July 1, 2007, and July 1, 2008; (ii) otherwise complies with Board regulations relating to moral turpitude; and (iii) meets any of the following conditions:*

- 1. Has at least three years of documented work experience as an esthetician or a master esthetician that is deemed satisfactory by the Board;*
- 2. Has completed a training program that is deemed satisfactory by the Board; or*
- 3. Holds an unexpired certificate of registration, certification, or license as an esthetician or a master esthetician issued to him on the basis of comparable requirements by a proper authority of a state, territory, or possession of the United States, or the District of Columbia.*

§ [54.1-704.1](#). License required for barbershop, cosmetology salon, nail care salon, waxing salon, hair braiding salon, tattoo parlor, body-piercing salon, and esthetics spa.

No individual or entity shall operate a barbershop, cosmetology salon, nail care salon, waxing salon, hair braiding salon, tattoo parlor, ~~or~~ body-piercing salon, *or esthetics spa* without a valid license issued by the Board.

The provisions of this section shall not apply to a licensed barber, cosmetologist, nail technician, waxing technician, tattooer, ~~or~~ body-piercer, *or esthetician* who does not have an ownership interest in a licensed barbershop, cosmetology salon, nail care salon, waxing salon, hair braiding salon, tattoo parlor, ~~or~~ body-piercing salon, *or esthetics spa* in which he is employed.

§ [54.1-704.2](#). License required for schools of barbering, cosmetology, nail care, waxing, hair braiding, tattooing, body-piercing, or esthetics.

Except as provided in § [54.1-701](#), no person, firm or corporation shall operate or attempt to operate a school of barbering, cosmetology, nail care, waxing, hair braiding, tattooing, ~~or~~ body-piercing, *or esthetics* unless licensed by the Board pursuant to its regulations.

§ [54.1-705](#). Inspections.

A. Inspectors and sanitarians of the State Department of Health, or an affiliated local health department, may inspect each barbershop, cosmetology salon, waxing salon, nail care salon, hair braiding salon, tattoo parlor, ~~and~~ body-piercing salon, *and esthetics spa* in the Commonwealth regularly. Any infractions shall be immediately reported to the Health Department and the Director of the Department of Professional and Occupational Regulation for disciplinary action.

B. The Board may inspect barbershops, barber schools, cosmetology salons and schools, waxing salons and schools, nail care salons and schools, hair braiding salons and schools, tattoo parlors and schools, ~~and~~ body-piercing salons and schools, *and esthetics spas and schools* for compliance with regulations promulgated by the Board.

C. The Board shall specify procedures for enforcement of compliance with the disease control and disclosure requirements of § [18.2-371.3](#), including unannounced inspections by appropriate personnel.

D. The Board or the Virginia Department of Health, or an affiliated local health department, may regulate the sanitary condition of the personnel, equipment and premises of tattoo parlors and body-piercing salons.

§ [54.1-706](#). Different requirements for licensure.

The Board shall have the discretion to impose different requirements for licensure for the practice of barbering, cosmetology, nail care, waxing, hair braiding, tattooing, ~~and~~ body-piercing, *and esthetics*.

2. That the provisions of this act shall become effective on July 1, 2007, except that § [54.1-702](#) of this act shall become effective on July 1, 2005.

3. That the Board for Barbers and Cosmetology shall adopt final regulations to implement the provisions of this act to be effective on or before July 1, 2007.

<http://leg1.state.va.us/cgi-bin/legp504.exe?051+ful+CHAP0829>

**§ 54.1-201. Powers and duties of regulatory boards.**

The powers and duties of regulatory boards shall be as follows:

5. 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.

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-201>



## Purpose

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.*

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The Board proposes to promulgate regulations, 18 VAC 41-70-10 et seq., governing the licensure and practice of esthetics, schools, and spas as directed by Chapter 829 of the 2005 Acts of the Assembly.

The regulatory action is necessary to ensure minimal competence of esthetics practitioners. The regulatory action will establish qualifications for licensure, standards of practice, and requirements for maintaining licensure as an esthetician, master esthetician, school, or esthetic spa in the Commonwealth of Virginia. The regulatory action will also establish fees necessary to administer the licensure program in accordance with §54.1-113 of the Code of Virginia.

As directed by the 2005 General Assembly, the regulatory action is required to protect the health, safety and welfare of citizens of the Commonwealth. The regulations ensure that licensees have met qualifications that demonstrate minimum competency to protect the health, safety and welfare of citizens of the Commonwealth and ensure that health, sanitary and safety standards are adequate in schools and spas where esthetic services are being provided.

## Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)*

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The Board will develop regulations to implement a regulatory program for esthetics, consisting of licensing requirements and standards for estheticians and master estheticians as mandated by HB 2510 of the 2005 General Assembly session, in accordance with the provisions of § 54.1-201(5) of the Code of Virginia. In addition to establishing the requirements for licensure, these regulations will ensure minimum competency and integrity of all licensees, and ensure that health, sanitation and safety standards are adequate in facilities where esthetic services are provided or taught.

These regulatory requirements include: 1) definitions of words and terms relative to the practice of providing esthetics services that will ensure that licensees understand the scope and limitations of their profession; 2) general requirements for obtaining a license to provide services as an esthetician or master esthetician or a certification to be an esthetics instructor or master esthetics instructor; 3) general requirements for obtaining a license to operate an esthetics spa; 4) general requirements for obtaining a license to operate school of esthetics; 5) detailed curriculum and performance requirements to include minimum clock or credit hours acceptable to sit for the board approved examination; 6) fees for initial, renewal, and reinstatement applications for estheticians, instructors, esthetics spas, and school of esthetics; 7) sanitation and safety standards for esthetics spas and schools of esthetics that address disinfection and storage of implements, sanitation of equipment, and safety standards pertaining to the use of chemical products, the proper handling of blood spills, and client health guidelines.

## 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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.*

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The primary advantage of the proposed regulatory action is that it will establish the licensing requirements for the specialized practice of esthetics. The proposed regulatory action will be an advantage to the public in that it will provide clear and effective regulations to ensure competency and integrity and prevent deceptive or misleading practices by individuals providing esthetician and master esthetician services.

There are no disadvantages to the public or the Commonwealth with regards to regulations governing the licensure and practice of estheticians and master estheticians.

## Requirements more restrictive than federal

*Please identify and describe any requirement of the proposal which are 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.*

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Not applicable.

## 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.*

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Not applicable.

## Public participation

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.*

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In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable

effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to William H. Ferguson, II, Executive Director, DPOR, 3600 West Broad St., Richmond, VA 23230, Phone (804) 367-8590, FAX (804) 367-6295, barbercosmo@dpor.virginia.gov. In order to be considered comments must be received by the last date of the public comment period.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website ([www.townhall.virginia.gov](http://www.townhall.virginia.gov)) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

**Board for Barbers and Cosmetology - Esthetics  
Fiscal Impact of Proposed Regulation**

**Summary:**

This proposed regulatory change will include Estheticians as a new regulatory program within the Board for Barbers and Cosmetology. House Bill 2510 from the 2005 General Assembly session requires the adoption of regulations governing the practice of esthetics, schools of esthetics and esthetics instructors.

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation 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.

**Fiscal Impact:**

	FY 2007	FY 2008	FY2009	FY2010
Fund	NGF (0900)	NGF (0900)	NGF (0900)	NGF (0900)
Program/Subprogram	560 46	560 46	560 46	560 46

Impact of Regulatory Changes:				
One-Time Costs	0	0	0	0
Ongoing Costs	0	0	0	0
Total Fiscal Impact	0	0	0	0

FTE	0.00	0.00	0.00	0.00
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**Description of Costs:**

**One-Time:** The General Assembly has previously authorized and funding was provided by HB2510 for the one time costs of \$5,000 for furniture and equipment related to one additional FTE needed for the program. No additional one-time costs are expected as a result of this regulatory change.

**Ongoing:** The administrative and regulatory responsibilities of the Department of Professional and Occupational Regulation will increase and will require the addition of one classified position. The General Assembly has previously authorized this additional classified position and funding was provided by HB 2510 for the related ongoing costs. The ongoing costs include wages, benefits, employee development, telephone, postage, supplies, printing regulations, and board member travel and per diem. These authorized costs total \$56,736 for FY07 and \$55,003 for FY08 and future years. No additional ongoing costs are expected as a result of this regulatory change.

**Cost to Localities:** No change anticipated.

**Description of Individuals, Businesses, or Other Entities Impacted:** Individual estheticians including master estheticians, esthetics schools, esthetics instructors, and esthetics salons.

**Estimated Number of Regulators:** Approximately 2,000 individuals, schools, and salons.

**Projected Cost to Regulators:** No change in licensing fees is anticipated as a result of these regulatory changes. Based on current fees, it will cost the individual applicant \$55 to become licensed. In addition, applicants must pass an examination in order to be eligible for licensure. The examination will be contracted out and applicants will pay the examination fee directly to the vendor. The cost of the examination to the applicant is expected to be between \$125 and \$175. It will cost the individual regulator \$27.50 annually to remain licensed. In general, costs associated with being licensed are not considered to be prohibitive for practicing the profession.

**Board for Barbers and Cosmetology – Esthetics**

**Financial Status and Projections**

**Proposed Regulations**

<u>Biennium</u>	<u>Beginning Cash Balance</u>	<u>Revenues</u>	<u>Expenditures</u>	<u>Ending Cash Balance</u>	<u>Callahan Act %</u>	<u>Number of Regulators</u>
2000-02	801,299	2,077,695	2,966,012	-87,019	-2.9%	57,784
2002-04	-87,019	3,779,371	3,263,504	428,849	13.1%	61,389
2004-06	428,849	4,300,838	3,866,824	862,863	22.3%	64,654

2006-08	862,863	4,559,770	4,754,752	667,880	14.0%
2008-10	667,880	4,693,263	5,325,043	36,101	0.7%

**Fee History**

<u>Major Fee Type</u>	<u>1995</u>	<u>1997</u>	<u>1999</u>	<u>Current</u>
Barber new application	75	65	60	55
Barber renewal	75	30	25	55
Cosmetologist new application	0	0	0	55
Cosmetologist renewal	45	25	25	55

**NOTES:**

In 2002, fees were standardized among categories with individuals paying the same application fee. Prior to 2002, cosmetologist applicants only paid an exam fee and did not pay an application fee.

**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.*

The Board will consider any and all comments received during the comment period as to any proposed alternatives.

**Regulatory flexibility analysis**

*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 regulations were developed with consideration that the esthetics industry consists of small businesses. The Board considers that the regulatory methods implemented were promulgated to accomplish the applicable law while minimizing the adverse impact on small businesses and are consistent with the regulation of small businesses of other professions regulated by the Board.

**Public comment**

*Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.*

<b>Commentor</b>	<b>Comment</b>	<b>Agency Response</b>
<p>Kim Westenfeld, RDH, EMT-Cardiac, (soon to be Facial Specialist in the State of Florida-waiting on license) KWRDHEMT@aol.com</p>	<p>I am in favor of regulation for the practice of Esthetics</p> <p>I would hope that there would be specific regulations regarding the type of "peels" and "microdermabrasion.</p> <p>I would also encourage strong regulations regarding sterilization of equipment.</p>	<p>Thank for your comments for the need to regulate esthetics and your participation in the regulatory process.</p>
<p>Chanel Mathis Ohm Spa Ohm Spa@aol.com</p>	<p>I hope that you will accept licenses from other states, that someone without a license, but with significant experience can be grandfathered, other state laws will be reviewed, and the esthetician and waxing license could be into one.</p>	<p>Licensure by "grandfathering" and licensure in another state are included in the Code of Virginia and in the proposed regulations.</p> <p>Practitioners must have applicable licensure for their practice.</p> <p>Waxing is included in the scope of practice for estheticians.</p>
<p>Diane Bussee (aka Diane Collins) frankenallee@yahoo.com alternate work email: diane.bussee@troutmansanders.com</p>	<p>I am very pleased that the State is moving forward with licensure for estheticians.</p> <p>I would like to see the Board recognize reciprocity with esthetician licenses held from other states and hope that you will include a grandfather clause to allow for licensure for esthetics in Virginia because of the previous licenses attained.</p>	<p>Licensure by "grandfathering" and licensure in another state are included in the Code of Virginia and in the proposed regulations.</p>
<p>Richard Sells Director ASI americanspiritinstitute@yahoo.com</p>	<p>American Spirit Institute in Williamsburg, Virginia proposes that Virginia require 300 hours for a basic Professional Esthetics class, and then an additional 300 hours for an advanced program.</p> <p>For the basic course, the Milady's standard textbook would be a good</p>	<p>The Milady's text book and your suggested hours of instruction were considered in the promulgation of the regulations.</p>

	<p>outline and text for the course.</p> <p>Many students have limited amounts of time and money to come to school. Proposing to have excessive required hours may result in less persons attending school because of lack of time and funds. Having no licensure to an excessive 600 or 1200 hours for esthetics requirements is extreme.</p>	
<b>Commentor</b>	<b>Comment</b>	<b>Agency Response</b>
<p>Anonymous Currently practicing esthetician and business owner in the central Virginia area.</p>	<p>(1) Concerned that the board would develop regulations that are detrimental to the industry and that board members should be people who are familiar with the issues, not directly related to the field.</p> <p>(2) We should not have a two tier license like Utah (which is the only state to have it currently):</p> <p>(3) Grandfather testing should be available, just as waxing was:</p>	<p>The Code of Virginia states that the Board for Barbers and Cosmetology is responsible for promulgating regulations.</p> <p>The Code of Virginia states two members shall be licensed estheticians, at least one of whom shall be an esthetics salon owner and one of whom may be an owner, operator, or designated representative of a licensed esthetics school.</p> <p>The Code of Virginia mandates licensure as an esthetician and master esthetician and any change must be made by the Virginia General assembly.</p> <p>Licensure by "grandfathering" and licensure in another state are included in the Code of Virginia and in the proposed regulations.</p> <p>Passing both a written and practical exam is required.</p> <p>The test is developed by our contracted testing vendor, Professional Credential Services (PCS); these contracts are competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act (§2.2-4300 et seq. of the Code of Virginia.</p>
<b>Commentor</b>	<b>Comment</b>	<b>Agency Response</b>
<p>Pam McAllister, Esthetician FAX: 804-639-7907</p>	<p>I would like to see state to state reciprocity in accepting other states licenses an the grandfathering clause</p>	<p>The regulations do allow for endorsement of licensure from other states.</p>

	<p>accept Estheticians.</p> <p>I don't think that the second tier level should be a full 600 hours. It should be limited to 300 hours.</p> <p>I would like to see the State Board Exam for Estheticians equivalent to several other state board exams.</p> <p>I have concern that from regulation, we may never have enough estheticians working in Virginia.</p> <p>I would hope that the Board of Cosmetology would not create a monopoly of this industry.</p>	<p>The waiver of exam is licensure by work experience and is included in the Code of Virginia.</p> <p>The hours of instruction in other states were considered in the development of the esthetics regulations.</p> <p>In regards to testing, the test is developed by our contracted testing vendor, Professional Credential Services (PCS); these contracts are competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act (§2.2-4300 et seq. of the Code of Virginia.</p> <p>The Code of Virginia states that the Board for Barbers and Cosmetology is responsible for promulgating regulations.</p> <p>The Code of Virginia states two members shall be licensed estheticians, at least one of whom shall be an esthetics salon owner and one of whom may be an owner, operator, or designated representative of a licensed esthetics school.</p> <p>You are included on our e-mail notification list. All persons interested may review the regulations when developed.</p> <p>Regulations are developed to protect the health, safety and welfare of the citizens of Virginia.</p>
<p><b>Commentor</b></p>	<p><b>Comment</b></p>	<p><b>Agency Response</b></p>
<p>Barbara Hughes 2341 Whitney Court Charlottesville, VA 22911</p>	<p>I am asking for the 30 year veterans of the industry to be recognized by grandfathering them as esthetic licensing.</p>	<p>Licensure by "grandfathering" is included in the Code of Virginia and in the proposed regulations.</p>
<p><b>Commentor</b></p>	<p><b>Comment</b></p>	<p><b>Agency Response</b></p>
<p>Chris Werne and The Staff of Chrysm Day Spa Chrysm Day Spa www.chrysmdayspa.com</p>	<p>With regard to the Esthetics regulations, I am in favor of the following:</p> <ol style="list-style-type: none"> <li>1. 300 hour educational requirement for</li> </ol>	<p>Your comments were considered in the promulgation of the esthetics regulations. 600 hour educational requirement</p>



<p>chrism@msn.com 757-366-0336</p>	<p>Professional Esthetics</p> <ol style="list-style-type: none"> <li>2. 600 hour educational requirement for Master Esthetics</li> <li>3. Both a practical and theory exam for licensure</li> <li>4. Allow the use of lancets</li> <li>5. Allow the use of Esthetics grade chemical peels.</li> </ol>	<p>for Master Esthetics was included in proposed regulations.</p> <p>Both a practical and theory exam for licensure was included in proposed regulations.</p> <p>Scope of practice is defined in § 54.1-700. Definitions in the Code of Virginia.</p>
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**Family impact**

*Please assess the impact of the proposed 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.*

The proposed regulatory action is not expected to have any significant impact on Virginia's families. An analysis of the proposed regulatory action assesses that there should be no potential impact on the institution of the family and family stability in that it should not strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; should not 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; should not strengthen or erode the marital commitment; and may not increase or decrease disposable family income.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

The Board proposes to promulgate regulations, 18 VAC 41-70-10 et seq., governing the licensure and practice of esthetics as directed by Chapter 829 of the 2005 Acts of the Assembly.

The proposed regulatory action is necessary to ensure minimal competence of esthetics practitioners. This regulatory action will establish qualifications for licensure, standards of practice and requirements for maintaining licensure as an esthetician, master esthetician, esthetics instructor, esthetics spa and school

of esthetics in the Commonwealth of Virginia. This regulatory action will establish fees necessary to administer the licensure program.

As directed by the 2005 General Assembly, this regulatory action is required to protect the health, safety and welfare of citizens of the Commonwealth in that it will provide for and ensure that licensees have met qualifications that demonstrate competency that protects the health, safety and welfare of citizens of the Commonwealth and that health and sanitary standards and safety are adequate in spas and schools where esthetic services are being provided.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
N/A	<b><u>18 VAC 41-70-10.</u></b> <b><u>Definitions.</u></b>	N/A	Defines the meaning of words and terms used within the chapter and establishes that all terms defined in § 54.1-700 et seq., of the Code of Virginia are incorporated into the chapter to provide understand to their meaning of words and terms used within the chapter.
N/A	<b><u>18 VAC 41-70-20.</u></b> <b><u>General requirements for an esthetician license or master esthetician license.</u></b>	N/A	Establishes the general requirements for licensure as an esthetician or master esthetician to provide licensure qualifications to persons interested in applying this sections establishes the general requirements for licensure as an esthetician, master esthetician, or esthetics instructor which include applicant qualifications and eligibility to sit for a board-approved examination and establishes qualifications for waiver of the examination for persons making application within one year after the effective date of this chapter.
N/A	<b><u>18 VAC 41-70- 30.</u></b> <b><u>License by endorsement.</u></b>	N/A	Sets forth the requirements for obtaining an esthetician license by endorsement to provide an option for licensure for person licensed in another jurisdiction, the section sets forth the requirements for obtaining a license by endorsement for applicants currently licensed to practice in another state or jurisdiction of the United States.
N/A	<b><u>18 VAC 41-70-40.</u></b> <b><u>Examination requirements and fees.</u></b>	N/A	Sets forth the examination requirement that applicants for an initial esthetician license pass an examination and that any candidate failing to appear for an examination shall forfeit the examination fee to inform applicants concerning examination requirement and fees.
N/A	<b><u>18 VAC 41-70-50.</u></b> <b><u>Reexamination</u></b>	N/A	Requires any applicant who does not pass a reexamination within one year of the initial examination to submit new application and

	<u>requirements.</u>		examination fee to inform applicants of examination timeframe.
N/A	<u>18 VAC 41-70-60.</u> <u>Examination administration.</u>	N/A	Establishes the requirements for the administration of the esthetics examination to include the procedure for setting fees for examination and reexamination and sets forth a standard of applicant conduct during the administration of an examination to provide applicants information concerning the administration of the examination.
N/A	<u>18 VAC 41-70-70.</u> <u>Esthetician temporary licenses.</u>	N/A	Sets forth the general temporary permit eligibility requirements to provide applicants requirements.
N/A	<u>18 VAC 41-70-80.</u> <u>Spa license.</u>	N/A	Establishes the requirements for obtaining an esthetics spa license in compliance with § 54.1-704.1 of the Code of Virginia.
N/A	<u>18 VAC 41-70-90.</u> <u>School license.</u>	N/A	Sets forth the requirements for obtaining a school of esthetics license in compliance with § 54.1-704.2 of the Code of Virginia.
N/A	<u>18 VAC 41-70-100.</u> <u>General requirements for an esthetics instructor certificate.</u>	N/A	Sets forth general requirements for obtaining an esthetics instructor certification as schools are required to use certified instructors.
N/A	<u>18 VAC 41-70-110.</u> <u>General requirements for a master esthetics instructor certificate.</u>	N/A	Sets forth general requirements for obtaining a master esthetics instructor certification as schools are required to use certified instructors.
N/A	<u>18 VAC 41-70-120.</u> <u>Fees.</u>	N/A	Establishes initial, renewal and reinstatement application fees for individuals, spas, and schools that are licensed or certified under this chapter for all boards within the Department of Professional and Occupational Regulation

			must operate within the Code provisions of the Callahan Act (54.1-113), and the general provisions of 54.1-201.
N/A	<b><u>18 VAC 41-70-130.</u></b> <b><u>Refunds.</u></b>	N/A	Establishes that all fees are nonrefundable and shall not be prorated to inform persons of refund procedure.
N/A	<b><u>18 VAC 41-70-140.</u></b> <b><u>License renewal required.</u></b>	N/A	Prescribes the dates for renewal of esthetician, master esthetician, spa, and school licenses to inform that licenses are valid for two years.
N/A	<b><u>18 VAC 41-70-150.</u></b> <b><u>Notice of renewal.</u></b>	N/A	Sets forth the procedures for renewal, however, failure to receive this notice shall not relieve the licensee or certificate holder of the obligation to renew to inform persons of renewal procedures.
N/A	<b><u>18 VAC 41-70-160.</u></b> <b><u>Failure to renew.</u></b>	N/A	Sets forth the criteria and procedures for reinstatement in the event that a licensee or certificate holder fails to renew their license or certification to inform persons of reinstatement procedures.
N/A	<b><u>18 VAC 41-70-170.</u></b> <b><u>Applicants for school license.</u></b>	N/A	Establishes application requirement to inform person interested in apply for school license of the standard time frame for submitting an application.
N/A	<b><u>18 VAC 41-70-180.</u></b> <b><u>General requirements.</u></b>	N/A	Establishes general requirements for schools of esthetics to obtain a license under this chapter to inform applicants.
N/A	<b><u>18 VAC 41-70-190.</u></b> <b><u>Curriculum and hours of instruction requirements.</u></b>	N/A	Sets forth requirements for curriculum and hours of instruction for schools of esthetics.
N/A	<b><u>18 VAC 41-70-200.</u></b> <b><u>Practical performance requirements.</u></b>	N/A	Sets forth requirements for minimum practical performances to be included in the curriculum to provide performances determined necessary for the esthetics training programs

N/A	<b><u>18 VAC 41-70-210.</u></b> <b><u>School equipment.</u></b>	N/A	Sets forth requirements for equipment to ensure that equipment is available to properly administer esthetics training programs.
N/A	<b><u>18 VAC 41-70-220.</u></b> <b><u>School identification.</u></b>	N/A	Establishes that each licensed school of esthetics shall identify itself to the public as a teaching institution to communicate type of operation to public.
N/A	<b><u>18 VAC 41-70-230.</u></b> <b><u>Records.</u></b>	N/A	Sets forth requirements for maintenance and retention of records so student records are maintained and accessible.
N/A	<b><u>18 VAC 41-70-240.</u></b> <b><u>Hours reported.</u></b>	N/A	Establishes written report of completed hours and performances of each of its students who have not completed the program to provide notification of closing and status of current training.
N/A	<b><u>18 VAC 41-70-250.</u></b> <b><u>Scope of practice.</u></b>	N/A	Establishes responsibilities to ensure performance of services that are within the scope of practice.
N/A	<b><u>18 VAC 41-70-260.</u></b> <b><u>Display of license.</u></b>	N/A	Establishes that each spa owner or school owner shall ensure the proper display of all licenses and certificates issued by the board to inform clients of license status.
N/A	<b><u>18 VAC 41-70-270.</u></b> <b><u>Sanitation and safety standards for spas, and schools.</u></b>	N/A	Sets forth the sanitation and safety standards for spas and schools and establishes safety standards, the proper handling of blood spills, and client health guidelines to protect the health and safety of the public.
N/A	<b><u>18 VAC 41-70-280.</u></b> <b><u>Grounds for license revocation, probation, or suspension; denial of application, renewal or</u></b>	N/A	Establishes the grounds for license revocation or suspension, denial of application, renewal or reinstatement, or imposition of monetary penalties for licensees or certificate holders.  To give direction on grounds for action by the Board.

	<u>reinstatement; or imposition of a monetary penalty.</u>		
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