



## Proposed Regulation Agency Background Document

<b>Agency name</b>	Board for Barbers and Cosmetology
<b>Virginia Administrative Code (VAC) citation</b>	18VAC41-70
<b>Regulation title</b>	Esthetics Regulations
<b>Action title</b>	Amending Esthetics Fees 2009
<b>Date this document prepared</b>	September 24, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.*

The proposed regulations will increase fees for the Board for Barbers and Cosmetology to ensure that revenues are sufficient but not excessive to cover its ongoing operating expenses. The Board's most recent fee increases became effective in July 2002. Since 2002, licensure programs have become effective for the following professions: wax technician (2004), tattooing (2006), hair braiding (2006), body piercing (2007), and esthetics (2007). The Board has incurred an increase in costs for enforcement activities, Information Systems development costs, and application processing and customer support services. Current fees are not adequate to reduce the deficit and pay continuing operating costs. Without the proposed fee increases, the Board's deficit will continue to increase and the Department will not collect adequate revenue to pay for operations.

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.

## 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.*

---

DPOR means Department of Professional and Occupational Regulation

## 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 proposed regulatory action is mandated by the following sections of the Code of Virginia. To comply with these statutes, the Board for Barbers and Cosmetology evaluates its current and projected financial position, and determines the type of fees and amounts to be established for each fee that will provide revenue sufficient to cover its expenses.

§ 54.1-113. (Callahan Act) Regulatory boards to adjust fees – Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under § 54.1-308 or § 54.1-2505, shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

§ 54.1-201.4 describes each regulatory board's power and duty to "levy and collect fees for the certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the Department..."

§ 54.1-304.3 describes the power and duty of the Director to "collect and account for all fees prescribed to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the Board, regulatory boards, and the Department shall be paid..."

§ 54.1-308 provides for compensation of the Director, employees, and board members to be paid out of the total funds collected. This section also requires the Director to maintain a separate account for each board showing moneys collected on its behalf and expenses allocated to the board.

These Code sections require the Department to:

- pay expenses of each board and the Department from revenues collected;
- establish fees adequate to provide sufficient revenue to pay expenses;
- account for the revenues collected and expenses charged to each board; and
- revise fees as necessary to ensure that revenue is sufficient but not excessive to cover all expenses.

To comply with these requirements, the Department:

- Accounts for the revenue collected for each board distinctly.

- Accounts for direct board expenses for each board, and allocates a proportionate share of agency operating expenses to each board.
- Reviews the actual and projected financial position of each board biennially to determine whether revenues are adequate, but not excessive, to cover reasonable and authorized expenses for upcoming operating cycles.
- Recommends adjustments to fees to respond to changes and projections in revenue trends and operating expenses. If projected revenue collections are expected to be more than sufficient to cover expenses for upcoming operating cycles, decreases in fees are recommended. If projected revenue collections are expected to be inadequate to cover operating expenses for upcoming operating cycles, increases in fees are recommended.

**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.*

The intent of the proposed changes in regulations is to increase licensing fees for regulants of the Board for Barbers and Cosmetology. The Board must establish fees adequate to support the costs of Board operations and a proportionate share of the Department’s operations. By the close of the current biennium, fees will not provide adequate revenue for those costs.

The Board for Barbers and Cosmetology provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals that meet specific criteria set forth in the statutes and regulations are eligible to receive a esthetician, master esthetician, esthetics spa, or esthetics school license, or esthetics instructor or master esthetics instructor certification, or temporary permit. The Board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulations. Without adequate funding, complaints against regulants, brought to the attention of the Board by citizens, could not be investigated and processed in a timely manner. This could provide an opportunity for a dishonest esthetician, master esthetician, esthetics instructor, master esthetics instructor, esthetics spa, or esthetics school waiting for action to be taken by the Board, to continue to work, harming additional citizens.

The Department of Professional and Occupational Regulation receives no general fund money, but instead, is funded almost entirely from revenue collected through applications for licensure, renewals, examination fees, and other licensing fees. The Department is self-supporting, and must collect adequate revenue to support its mandated and approved activities and operations. Fees must be established at amounts that will provide that revenue. Fee revenues collected on behalf of the boards fund the Department’s authorized special revenue appropriation.

The Board for Barbers and Cosmetology has no other source of revenue from which to funds its operations.

**Substance**

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

The existing regulations are being amended to increase the fees applicable to several licensing items.

**18VAC41-20-140. Fees.**

The fee for Esthetician license is increased from \$55 to \$75.  
 The fee for Master Esthetician license is increased from \$55 to \$75.  
 The fee for Esthetician license by endorsement is increased from \$55 to \$75.  
 The fee for Master Esthetician license by endorsement is increased from \$55 to \$75.  
 The fee for Esthetician license renewal is increased from \$55 to \$75.  
 The fee for Master Esthetician license renewal is increased from \$55 to \$75.  
 The fee for Esthetician license reinstatement is increased from \$55 to \$75.  
 The fee for Master Esthetician license reinstatement is increased from \$55 to \$75.  
 The fee for Esthetics Instructor certification is increased from \$60 to \$85.  
 The fee for Master Esthetician Instructor certification is increased from \$60 to \$85.  
 The fee for Esthetics Instructor certification by endorsement is increased from \$60 to \$85.  
 The fee for Master Esthetics Instructor certification by endorsement is increased from \$60 to \$85.  
 The fee for Esthetics Instructor certification renewal is increased from \$60 to \$85.  
 The fee for Master Esthetics Instructor certification renewal is increased from \$60 to \$85.  
 The fee for Esthetics Instructor certification reinstatement is increased from \$60 to \$85.  
 The fee for Master Esthetics Instructor certification reinstatement is increased from \$60 to \$85.  
 The fee for Esthetics Spa license is increased from \$90 to \$115.  
 The fee for Esthetics Spa license renewal is increased from \$90 to \$115.  
 The fee for Esthetics Spa license reinstatement is increased from \$90 to \$115.  
 The fee for Esthetics School license is increased from \$120 to \$145.  
 The fee for Esthetics School to add a program is increased from \$60 to \$85.  
 The fee for Esthetics School license renewal is increased from \$120 to \$145.  
 The fee for Esthetics School license reinstatement is increased from \$120 to \$145.

## 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.*

---

The primary issue for the proposed fee increase is the Department's statutory requirement to comply with the Callahan Act.

Further issues to be addressed as regulations are developed include:

The Callahan Act required DPOR to review each board's expenditures at the close of each biennium, and to adjust fees if necessary. For the 2008-10 biennium the Board for Barbers and Cosmetology is expected to have a \$86,784 cash balance and a Callahan Act percentage of 1.5% and for the 2010-2012 biennium, the Board for Barbers and Cosmetology is expected to incur a deficit of \$821,453 and a Callahan Act percentage of -13.2 %.

The regulatory review process generally takes a minimum of 18 months, and so it is essential to consider fee increases now, before the deficit increases to the amount greater than previously anticipated. To avoid increasing the deficit the new fees will need to become effective early in the 2010-12 biennium. Otherwise, the Board's deficit will increase to the point that the new fees would be inadequate to provide

sufficient revenue for upcoming operating cycles, which could result in the Board having to consider additional fee increases in the near future.

The advantage of these changes is that the regulatory program will be able to continue to function in order to protect the public. The disadvantage is that these changes will increase the cost of the license to the regulated population; however, the impact of these changes on the income of the regulated population should not be of a great significance compared to their level of income.

### 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.*

---

There are no federal requirements in place regarding the licensing of esthetician, master esthetician, esthetics instructor, master esthetics instructor, esthetics spa, or esthetics school in the Commonwealth of Virginia.

### 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.*

---

Estheticians, master estheticians, esthetics instructors, master esthetics instructors, esthetics spas, or esthetics schools licensed by the Board for Barbers and Cosmetology are located throughout the Commonwealth, subsequently; no particular area will be affected more than another.

### 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.*

---

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 via the Regulatory Townhall website, [www.townhall.virginia.gov](http://www.townhall.virginia.gov), or by mail, email or fax to William Ferguson, c/o DPOR, 9960 Mayland Drive, Suite 400, Richmond, Virginia 23233-1485, (p) 804-367-8590, (f) 804-527-4295, [barbercosmo@dpor.virginia.gov](mailto:barbercosmo@dpor.virginia.gov). Written comments must include the name and address of the commenter. 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) and the Commonwealth Calendar. Both oral and written comments may be submitted at that time.

**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.*

**Board for Barbers and Cosmetology**

**Financial Status and Projections  
Current 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 Regulants</u>	
2006-08	1,067,922	4,700,888	4,934,958	833,852	16.9%	71,142	
2008-10	833,852	4,970,416	5,717,484	86,784	1.5%	72,876	As of 6/30/09
2010-12	86,784	5,322,948	6,231,185	-821,453	-13.2%		
2012-14	-821,453	5,421,422	6,993,149	-2,393,180	-34.2%		

**Fee History**

<u>Major Fee Type</u>	<u>1999</u>	<u>2002 - Current</u>	
Individual Application:		55	Since 2002, licensure programs have become effective for the following professions: wax technician (2004), tattooing (2006), hair braiding (2006), body piercing (2007), and esthetics (2007).
Individual Renewal	25	55	

**Board for Barbers and Cosmetology**

**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 Regulants</u>	
2006-08	1,067,922	4,700,888	4,934,958	833,852	16.9%	71,142	
2008-10	833,852	4,970,416	5,717,484	86,784	1.5%	72,876	As of 6/30/09
2010-12	86,784	6,966,497	6,231,185	822,096	13.2%		
2012-14	822,096	7,095,377	6,993,149	924,324	13.2%		

**Fee History**

<u>Major Fee Type</u>	<u>1999</u>	<u>2002</u>	<u>Projected 2010</u>
Individual Application:		55	75
Individual Renewal	25	55	75

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

**Summary:**

The proposed regulations will increase fees for the Board for Barbers and Cosmetology to ensure that revenues are sufficient but not excessive to cover its ongoing operating expenses. Financial projections and analysis indicate the Board’s expenditures will exceed available cash and revenue early in the 2010-12 biennium. The proposed fee increases will provide revenue to cover the cost of the Board’s ongoing operations for the next biennium. The Board’s most recent fee increases became effective in July 2002. Proposed fees are expected to become effective in FY10.

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 in 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 2008	FY 2009	FY2010	FY2011
Fund	NGF (0900)	NGF (0900)	NGF (0900)	NGF (0900)
Program/Service Area	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

**Description of Costs:**

One-Time: No one-time costs are expected as a result of this regulatory change.

Ongoing: No 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:** This change will affect all regulants of the Board for Barbers and Cosmetology.

**Estimated Number of Regulants:** As of June 30, 2009, the Board regulates 72,876 barbers, cosmetologists, nail technicians, wax technicians, hair braiders, tattooists, body piercers, and estheticians, including salons, schools, and instructors as follows:

Barber Schools	52
Barber Shops	969
Barber Teachers	154
Barbers	3,316
Cosmetologists	42,603
Cosmetology Instructors	1,896
Cosmetology Salons	5,683
Cosmetology Schools	173
Nail Technician Instructors	201
Nail Technician Salons	804
Nail Technician Schools	39
Nail Technicians	8,790
Wax Technician Instructors	34
Wax Technicians	2,186
Waxing Salons	65
Waxing Schools	11
Hair Braiders	434
Hair Braiding Salons	35
Hair Braiding Schools	4
Permanent Cosmetic Tattoo Instructors	14
Permanent Cosmetic Tattoo Salons	36
Permanent Cosmetic Tattooers	293
Permanent Cosmetic Tattooing Schools	7
Tattoo Parlor	223
Tattooer	584
Tattooing Instructors	17
Tattooing Schools	6
Body Piercers	149
Body Piercers Ear Only	343
Body Piercing Parlor	86
Body Piercing Parlor - Ear Only	74
Estheticians	2,295
Esthetics Instructors	49
Esthetics Schools	43
Esthetics Spas	255
Master Estheticians	843
Master Esthetics Instructors	110



With few exceptions, businesses licensed by the Board are small businesses. Licensed businesses include barber shops, barber schools, cosmetology salons, cosmetology schools, nail salons, nail technician schools, waxing salons, waxing schools, hair braiding salons, hair braiding schools, tattoo parlors, tattooing schools, permanent cosmetic tattooing salons, permanent cosmetic tattooing schools, permanent cosmetic tattooing schools, body piercing parlors, body piercing ear only parlors, esthetics spas, and esthetics schools.

**Projected Cost to Regulators:** All fees cover a two year period. The cost for an individual applicant to become licensed will be \$75. The cost for an individual to renew a license for two years will be \$75. Increases in fees are not expected to have a significant effect on individuals deciding to become or remain licensed by the Board.

## 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 Department has considered the following alternatives to increasing fees for the Board for Barbers and Cosmetology.

- Reduce services: Because the regulatory activities conducted by the Board are mandated by statute, this is not considered a viable alternative. In addition, reductions in services would result in delays in issuing licenses, creating barriers to citizens' ability to work, and would decrease the Department's effectiveness in ensuring that licensees conduct their activities in a manner adequate to protect the public health, safety and welfare.
- Obtain a Treasury loan to fund operations: The Department could request a loan from the general fund to cover the Board's deficit and supplement its ongoing operations. However, this would be a short-term solution only, and would only delay the need for fee increases. When eventually implemented, fee increases would need to be even greater to provide for repayment of the loan.
- Supplement Board activities with general funds: The Department currently receives no general fund revenue, and this would require a change in the Code of Virginia and the Appropriations Act. The Department's boards are intended to be self-funding per Sections 54.1-113, 54.1-201.4, 54.1-304.3, and 54.1-308 of the Code of Virginia. Use of general funds to support board operations does not appear to be an appropriate use of taxpayer dollars.

## 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 adjustment of fees is mandated by statute and subsequently there is no flexibility.

**Public comment**

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

There were no comments received during the NOIRA comment period.

**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.*

These fee increases are not anticipated to have any significant impact on Virginia's families.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if implemented in each section. Please detail the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.*

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

For changes to existing regulations, use this chart:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change, rationale, and consequences</b>
18VAC41-70-120	NA	The fee for individual esthetician or master esthetician license is \$55. The fee for individual esthetician or master esthetician license by endorsement is \$55. The fee for individual esthetician or master esthetician license renewal is	The fee or individual esthetician or master esthetician license is increased from \$55 to \$75 to facilitate compliance with the Callahan Act. The fee for individual esthetician or master esthetician license by endorsement is increased from \$55 to \$75 to facilitate compliance with the Callahan Act. The fee for individual esthetician or master esthetician license renewal is increased

		<p>\$55.                  The fee for individual esthetician or master esthetician license reinstatement is \$55.                  The fee for individual esthetician or master esthetician instructor certification is \$60.                  The fee for individual esthetician or master esthetician instructor certification by endorsement is \$60.                  The fee for individual esthetician or master esthetician instructor certification renewal is \$60.                  The fee for individual esthetician or master esthetician instructor certification reinstatement is \$60.                  The fee for esthetics spa license is \$90.                  The fee for esthetics spa license renewal is \$90.                  The fee for esthetics spa license reinstatement is \$90.                  The fee for esthetics school license is \$120.                  The fee for esthetics school license renewal is \$120.                  The fee for esthetics school license reinstatement is \$120.                  The fee for esthetics school to add a program is \$60.</p>	<p>from \$55 to \$75 to facilitate compliance with the Callahan Act.                  The fee for individual esthetician or master esthetician license reinstatement is increased from \$55 to \$75 to facilitate compliance with the Callahan Act.                  The fee for individual esthetician or master esthetician instructor certification is increased from \$60 to \$85 to facilitate compliance with the Callahan Act.                  The fee for individual esthetician or master esthetician cosmetologist, or nail technician instructor certification by endorsement is increased from \$60 to \$85 to facilitate compliance with the Callahan Act.                  The fee for individual esthetician or master esthetician instructor certification renewal is increased from \$60 to \$85 to facilitate compliance with the Callahan Act.                  The fee for individual esthetician or master esthetician instructor certification reinstatement is increased from \$60 to \$85 to facilitate compliance with the Callahan Act.                  The fee for esthetics spa license is increase from \$90 to \$115 to facilitate compliance with the Callahan Act.                  The fee for esthetics spa license renewal is increased from \$90 to \$115 to facilitate compliance with the Callahan Act.                  The fee for esthetics spa license reinstatement is increased from \$90 to \$115 to facilitate compliance with the Callahan Act.                  The fee for esthetics school license is increasing from \$120 to \$145 to facilitate compliance with the Callahan Act.                  The fee for esthetics school license renewal is increasing from \$120 to \$145 to facilitate compliance with the Callahan Act.                  The fee for esthetics school license reinstatement is increasing from \$120 to \$145 to facilitate compliance with the Callahan Act.                  The fee for esthetics school to add a program is increasing from \$60 to \$85 to facilitate compliance with the Callahan Act.</p>
--	--	--	---