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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Board for Barbers and Cosmetology
Virginia Administrative Code (VAC) Chapter citation(s)	18 VAC41-20
VAC Chapter title(s)	Barbering and Cosmetology Regulations
Date this document prepared	October 4, 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

"DPOR" means the Department of Professional and Occupational Regulation.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The promulgating agency is the Board for Barbers and Cosmetology ("the Board").

Code of Virginia § 54.1-201(A)(1) gives the Board the power and duty to “establish the qualifications of applicants for certification or licensure by any such board, provided that all qualifications shall be necessary to ensure either competence or integrity to engage in such profession or occupation.”

Code of Virginia § 54.1-201(A)(5) gives authority to the Board to promulgate regulations. It states, in part, that the Board has the power and duty “[t]o 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.”

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

No alternatives were considered as part of this periodic review. The regulation enables the Board to fulfill the statutory requirements established in Chapters 2 and 7 of Title 54.1 of the Code of Virginia. Further, the regulation is necessary to ensure that the Board’s statutory requirements are executed in the least burdensome and most efficient and cost-effective manner possible while protecting the health, safety, and welfare of the citizens of Virginia.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency’s response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response
CommentID: 217104 Christine Werne / The Chrysm Institute of Esthetics	Current requirements of a minimum of 600 hours in Esthetics and an additional minimum of 600 hours in Master Esthetics should remain the requirement in Virginia and not be reduced because (i) the scope of Esthetics has continued to broaden, and additional subject matter is required, not less; and (ii) the current requirements allow schools to appropriately train competent and safe practitioners. Performance of Master treatments requires a greater number of hours in education and experience to be able to practice safely. In addition to learning proper application, students must additionally experience	Thank you for your comments regarding the future discussion of Esthetic and Master Esthetic hours. The Board intends to study the Esthetic and Master Esthetic training hours, along with the possibility of combining the licenses, apart from this periodic review. The Board intends to assemble a panel of advisors representing businesses, public schools, private career and technical schools to conduct a comprehensive review of the education and training Virginia mandates to obtain an esthetics or master esthetics license. The Board encourages regulants and the public to participate in this process by providing public comment during any meetings of the advisory panel or the Board.

	<p>customization of each treatment and technique to many different skin types and conditions which each have different indications, contraindications, and application requirements. Students need to have experience on a multitude of different skin types and conditions to be able meet DPOR's mission, to ensure practitioners practice safely and consumers are protected from potential harm.</p> <p>Esthetics and Master Esthetics should not be combined because this would delay entry into the workforce or prohibit entry into the workforce at all.</p> <p>Not all applicants will excel or prefer to learn the more advanced education provided in Master Esthetics. Requiring completion of these additional education and training hours may preclude these individuals from completing the program or entering the workforce.</p> <p>A separate Esthetics and Master Esthetics program equips practitioners with more thorough knowledge and provides increased career opportunity.</p>	<p>The purpose of the Board is to protect the health, safety, and welfare of the public who receive esthetics services by ensuring those who are licensed to practice are minimally competent and that minimum standards of practice are sufficient to ensure safety.</p>
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Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The regulation meets the criteria set forth in the Office of Regulatory Management procedures. The regulation contains the requirements for obtaining a license, renewal and reinstatement of licenses, safety and sanitation procedures, standards of professional conduct, to ensure competence and integrity of all licensees and that the health and sanitary standards and safety are adequate in shops, salons, schools, and other facilities where barber, cosmetology, wax and nail technician services are provided, and administer the regulatory program in accordance with Chapters 2 and 7 of Title 54.1 of the Code of Virginia. The regulation is necessary for the protection of public health, safety, and welfare and is clearly written and understandable.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

On August 14, 2023, the Board voted to retain the regulation “as is” without any change, as explained further in the “Small Business Impact” section. In accordance with the Governor’s Executive Directive Number One (2022), the Board is currently undertaking a separate action to perform a comprehensive line-by-line review of this regulation.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

Code of Virginia §§ 54.1-201(A)(1) and 54.1-201(A)(5) mandate the Board promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The Board 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 barber, cosmetology, nail or wax technician, instructor, salon, or school license, or temporary permit. The Board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulations.

The comments received during the public comment period did not pertain to the Barbering and Cosmetology Regulations. The two identical public comments received pertained to the Esthetics Regulations (18VAC41-70), and reflected concerns regarding the Board’s future discussion of reducing or combining the Esthetics and Master Esthetics curriculum and licenses. The Board has formed a Regulatory Advisory Panel to review this subject.

The Barbering and Cosmetology Regulations are clearly written, easily understandable, and do not overlap, duplicate or conflict with federal or state law or regulation.

The most recent periodic review of the regulation occurred in 2019. Currently, the Board is conducting a comprehensive review of the regulation.
