



## Proposed Regulation Agency Background Document

<b>Agency name</b>	Board for Barbers and Cosmetology
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC 41-70
<b>Regulation title</b>	Esthetics Regulations
<b>Action title</b>	General Review
<b>Date this document prepared</b>	November 14, 2014

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) 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 are the result of a periodic review of the regulations conducted by the Board. The last non-fee related regulatory change was made in 2007.

The proposed changes in the regulations will make clarifying changes, ensure consistency with other board regulations as well as state and federal law, ensure compliance with current industry standards, and make other necessary changes to better protect the public health, safety and welfare. The proposed changes will also allow for esthetics apprenticeships.

### 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.*

"Board" means the Board for Barbers and Cosmetology.

“Department” means the Department of Professional and Occupational Regulation.

“DOLI” means the Virginia Department of Labor and Industry.

**Legal basis**

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

*Code of Virginia § 54.1-201.5 gives authority to the Board to promulgate regulations. It states, in part, that the Board has the power and duty “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.”*

**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 Board seeks to amend its current regulations to ensure they are as least intrusive and burdensome as possible, in order to assist in providing an environment with unnecessary regulatory obstacles while still protecting the health, safety, and welfare of the public. Additionally, to ensure regulations are clearly written and easily understandable, and are representative of the current advancements and standards of the industries. Furthermore, the Board seeks to strengthen some of its reporting requirements and prohibited acts to address areas of vulnerabilities for the perpetration of fraud by applicants and regulants. The Board is also adding regulations to allow for esthetics apprenticeships.

**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.)*

18 VAC 41-70-10. Definitions. New definitions of business entity, firm, responsible management, sole proprietor, and post-secondary education level have been added and licensee amended to further clarify terms used in subsequent regulations.

18 VAC 41-70-20. General Requirements for an esthetician license or master esthetician license. The proposed amendments update this section to further clarify and standardize entry requirements. The

proposed amendments require applicants disclose all felony convictions during their lifetime and certain misdemeanors within the last three years. The proposed amendments also add that the Board may deny licensure to any applicant having prior disciplinary violations for which the Board deems the applicant unfit to engage in the profession.

18 VAC 41-70-30. License by endorsement. The proposed amendments update this section to further clarify endorsement requirements and extend this avenue to master estheticians.

18 VAC 41-70-35. Apprenticeship training. The proposed new regulation establishes requirements for esthetics apprenticeships and allows exam eligibility upon successful completion of the apprenticeship.

18 VAC 41-70-40. Examination requirements and fees. The proposed amendments update this section to further clarify and standardize entry requirements. The proposed amendments also add requirements that if an applicant does not apply for licensure within five years of passing both exams, he must reapply, and that the Board will only retain examination records for 'non-applicants' for a maximum of five years.

18 VAC 41-70-60. Examination administration. The proposed amendments update this section to further clarify and standardize requirements for examiners and chief examiners. The changes bring the esthetics regulations in line with other Board regulations.

18 VAC 41-70-70. Esthetician temporary license. The proposed amendments clarify that no fees will be charged for a temporary license and that the license will not be issued where grounds exist to deny the license.

18 VAC 41-70-80. Spa license. The proposed amendments update this section to further clarify and standardize the regulations. The proposed amendments add the requirement that the applicant's license be in good standing and requires applicants and all members of responsible management to disclose all felony convictions during their lifetime, certain misdemeanors within the last three years, and any prior discipline by a licensing entity. The proposed also add that the Board may deny licensure to any applicant having prior disciplinary violations for which the Board deems the applicant unfit to engage in the profession. The proposed amendments require disclosure of the applicant's physical address, the firm's responsible management, and certification that the applicant has read applicable laws and regulations. The proposed amendments add the requirement that voided licenses be returned to the Board within 30 days and sets forth what events void a license. The proposed amendments also require any change in responsible management be reported to the Board within 30 days of the change. The proposed amendments allow the Board to inspect a shop or salon during reasonable hours, and define reasonable hours.

18 VAC 41-70-90. School license. The proposed amendments update this section to further clarify and standardize the regulations. The proposed amendments add the requirement that the applicant's license be in good standing and requires applicants and all members of responsible management to disclose all felony convictions during their lifetime, certain misdemeanors within the last three years, and any prior discipline by a licensing entity. The proposed amendments also add that the Board may deny licensure to any applicant having prior disciplinary violations for which the Board deems the applicant unfit to engage in the profession. The proposed amendments also require disclosure of the applicant's physical address, the firm's responsible management, and certify that the applicant has read applicable laws and regulations. The proposed amendments incorporate 18 VAC 41-70-170 and add the requirement that voided licenses be returned to the Board within 30 days and sets forth what events void a license. The proposed amendments also require any change in responsible management be reported to the Board within 30 days of the change. The proposed amendments exempt schools under the Virginia Department of Education. The proposed amendments allow the Board to inspect a school during reasonable hours, and define reasonable hours.

18 VAC 41-70-100. General requirements for an esthetics instructor certificate. The proposed amendments update this section to further clarify and standardize the requirements. The proposed amendments require applicants to hold a current license in esthetics and to disclose all felony convictions

during their lifetime and certain misdemeanors within the last three years. The proposed amendments also require reporting any prior discipline by a licensing entity and allows for application denial where the Board deems the applicant unfit or unsuited to engage in the profession.

18 VAC 41-70-110. General requirements for a master esthetics instructor license. The proposed amendments update this section to further clarify and standardize the requirements. The proposed amendments require applicants to hold a current license in master esthetics and to disclose all felony convictions during their lifetime and certain misdemeanors within the last three years. The proposed amendments also require reporting any prior discipline by a licensing entity and allows for application denial where the Board deems the applicant unfit or unsuited to engage in the profession.

18 VAC 41-70-160. Failure to renew. The proposed amendments update this section to further clarify and standardize the requirements.

18 VAC 41-70-170. Applicants for school licensure. The proposed amendments repeal this regulation, which is incorporated into 18 VAC 41-70-90.

18 VAC 41-70-220. School identification. The proposed amendments repeal this regulation, which is already contained within 18 VAC 41-70-90.

18 VAC 41-70-230. Records. The proposed amendments update this section to further clarify the regulations and add specific requirements for record keeping. The proposed amendments also add a requirement that schools provide certain documentation to the Board within specified time periods.

18 VAC 41-70-240. Hours reported. The proposed amendments update this section to further clarify the requirements and add the requirement that schools provide student rosters to the Board twice a year at specified intervals.

18 VAC 41-70-260. Display of license. The proposed amendments update this section to further clarify and standardize the requirements. The proposed amendments also add display requirements for apprentices.

18 VAC 41-70-270. Sanitation and safety standards for shops, salons, and schools. The proposed amendments update this section to further clarify the requirements. The proposed amendments also clarify the disinfection process between clients. The proposed amendments also add language about disinfecting tubs and bowls used for nail care, upkeep of the immediate area around wax pots, and requiring client bathrooms with hot and cold water. The proposed amendments also add regulations regarding sanitary storage of soiled and clean linens, sanitary containers, labeling, and disinfectant for nail care, and specified what should be included in the blood spill cleanup kit.

18 VAC 41-70-280. Grounds for license revocation or suspension; denial of application, renewal or reinstatement; or imposition of a monetary penalty. The proposed amendments update this section to further clarify and simplify the requirements. The proposed amendments also provide grounds for discipline for failing to teach the approved curriculum, bribery, failing to respond or providing false or misleading information to the Board or its agents and refusing to allow inspection of any shop, salon, or school. They also clarify and refine grounds for discipline for certain criminal convictions and failing to report convictions within a certain time period. The proposed amendments provide grounds for discipline for allowing unlicensed activity, failing to take sufficient measures to prevent transmission of communicable disease and failing to comply with all procedures with regard to conduct at the examination.

*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 indicate.*

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1) The primary advantage of the proposed amendments to the public is the addition of the apprenticeship program as a method of entry. Currently, the only avenue for entry is through training at proprietary schools which may be financially burdensome for some who seek to enter the profession, potentially limiting the number of estheticians who enter the workforce, thus small businesses may have a reduced number of qualified employees to hire. The existence of the DOLI apprenticeship structure will facilitate an efficient and expeditious outcome to this change while providing an avenue to pursue training while being paid at least minimum wage as required by the apprenticeship program. Additionally, the Board will continue to approve applicants and license professionals for which it has safeguards to ensure proper competency and standards of conduct as required by statute. The addition of prohibited acts will reduce fraud and better ensure the regulant population is minimally competent. The clarification of requirements regarding sanitation and health safety will ensure that the health, safety, and welfare of the public are better served. Further, regulants and applicants within these professions will be able to read the Board's requirements with greater clarity and understanding. The added clarity of the language in the proposed regulations will facilitate a quicker and more efficient process for applicants and regulants by enhancing their understanding of their individual requirements. Further, consumers in the public, as well as regulators from related agencies, will have a better understanding of the Board's requirements which will also allow them to conduct their business with greater efficiency.

2) The primary advantage to the Commonwealth will be the positive economic impact of an increase of eligible estheticians entering the workforce who go through the apprenticeship program and potentially contributing to an increase in small businesses, the strengthening of existing small businesses, and a segment of the population with higher earning potential. Additionally, the proposed regulations would provide an avenue to pursue training while being paid at least minimum wage as required by the apprenticeship program. Another advantage is the continued successful regulation of estheticians and master estheticians who meet the minimum entry standards as required by statute. The proposed amendments strengthen the Department's ability to investigate and discipline regulants who disregard the health, safety, and welfare of the public. No disadvantage has been identified.

3) The addition of apprenticeship as a method of entry will likely have a multifaceted positive economic impact. The clarification of the proposed language will facilitate greater understanding of the Board's requirements for all involved.

### **Requirements more restrictive than federal**

*Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale 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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There are no requirements in the proposed regulations that would be more restrictive than those currently required in federal law.

**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.*

Localities with limited or no access to proprietary esthetics schools, or for which individuals wishing to pursue a career in esthetics cannot afford the cost of proprietary schooling or for which individuals wishing to pursue a career in esthetics are unable to obtain financial aid to attend a proprietary school.

**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 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 Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email or fax to **Demetrios Melis, Executive Director, Board for Barbers and Cosmetology, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, Virginia 23233. Telephone: (804) 367-2960, Fax: (866) 245-9693, e-mail: [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 midnight on the last date of the public comment period.

A public hearing will be held after this regulatory stage is published in the *Virginia Register of Regulations* and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>). 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. Please keep in mind that we are looking at the impact of the proposed changes to the status quo.*

<b>Description of the individuals, businesses or</b>	All licensed estheticians, esthetics spas, and esthetics schools are affected by this regulatory
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<p><b>other entities likely to be affected (positively or negatively) by this regulatory proposal. Think broadly, e.g., these entities may or may not be regulated by this board</b></p>	<p>proposal.</p>
<p><b>Agency’s best estimate of the number of (1) entities that will be affected, including (2) small businesses affected. Small business means a business, including affiliates, that is independently owned and operated, employs fewer than 500 full-time employees, or has gross annual sales of less than \$6 million.</b></p>	<ol style="list-style-type: none"> <li>1) As of September 1, 2014 there are 2,851 Estheticians, 550 Esthetics Spas, and 48 Esthetics Schools affected by the regulatory change.</li> <li>2) A large majority of esthetics businesses are small businesses. Small businesses may have an increased number of available qualified employees to hire. The positive economic impact of an increase of eligible estheticians entering the workforce who go through the apprenticeship program and potentially contributing to an increase in small businesses, the strengthening of existing small businesses, and a segment of the population with higher earning potential with an increase in disposable income to spend procuring goods or services from other small businesses. It should be noted, current esthetics schools could see a decrease in students; however, it is likely minimal since those who cannot afford to attend, are likely not to have attended regardless of the availability of an apprenticeship program as an alternative.</li> </ol>
<p><b>Benefits expected as a result of this regulatory proposal.</b></p>	<p>The addition of apprenticeship as a method of entry will likely have a multifaceted positive economic impact, to include, providing an avenue to pursue training while being paid at least minimum wage as required by the apprenticeship program. The benefits of the amendments are to ensure the regulations are the least intrusive and burdensome as possible, while still protecting the health, safety, and welfare of the public; are clearly written and easily understandable; and are representative of the industry’s current state of affairs.</p>
<p><b>Projected cost to <u>localities</u> to implement and enforce this regulatory proposal.</b></p>	<p>There are no projected costs to localities as a result of implementing or enforcing the amended regulations.</p>
<p><b>All projected costs of this regulatory proposal for <u>affected individuals, businesses, or other entities</u>.</b> Please be specific and include all costs, including projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses, and costs related to real estate development.</p>	<p>No costs to individuals or other entities are expected.</p>

<b>Projected cost to the <u>state</u> to implement and enforce this regulatory proposal.</b>	No costs to Virginia, the Department, or the Board are expected from this regulatory change.
<b>See Fiscal Impact by year below:</b>	

	FY 2015	FY 2016	FY2017	FY2018
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

**Summary:**

The Esthetics Regulations for the Board for Barbers and Cosmetology are being amended to clarify language in various sections, to ensure the regulations are the least intrusive and burdensome as possible, while still protecting the health, safety, and welfare of the public; are clearly written and easily understandable; and are representative of the industry’s current state of affairs. The amendments will also allow for an apprenticeship program as a means to obtain an Esthetician license. The Virginia DOLI will oversee the apprenticeship program. No fiscal impact is expected from this regulatory change.

All costs incurred in support of board activities and regulatory operations are paid by the Department and funded through fees paid by applicants and 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.

## Board for Barbers and Cosmetology

### Financial Status and Projections Current Regulations

<b>Beginning Cash</b>	<b>Ending Cash</b>	<b>Callahan</b>	<b>Number of</b>
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<u>Biennium</u>	<u>Balance</u>	<u>Revenues</u>	<u>Expenditures</u>	<u>Balance</u>	<u>Act %</u>	<u>Esthetics Regulants</u>
2010-12	-102,402	7,756,118	6,974,084	679,632	9.7%	3,449
2012-14	679,632	11,518,951	7,272,967	4,925,616	67.7%	as of 9/1/2014
2014-16	4,925,616	8,797,299	8,995,541	4,727,374	52.6%	
2016-18	4,727,374	8,870,120	9,424,100	4,173,394	44.3%	

**Fee History \$**

<u>Major Fee Type</u>	<u>2002</u>	<u>2011</u>	<u>2014</u>
Individual Application	55	140	105
Individual Renewal	55	140	105
Salon/Shop Application	90	225	190
Salon/Shop Renewal	90	225	190
School Application	120	255	220
School Renewal	120	255	220

**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.*

In reviewing the regulations, the Board considered whether there were less burdensome alternatives. The Board weighed those alternatives against the burden to its own regulant population, especially small businesses. Alternatives that failed to meet this consideration were rejected.

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

**Regulatory flexibility analysis**

*Pursuant to §2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational*

*standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

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- 1) The Board must promulgate regulations that provide an adequate level of protection to the public while, simultaneously ensuring that individuals and businesses are not unnecessarily burdened. The amendments are intended to further strengthen that protection, and specifically address areas of the regulations that were being exploited by some applicants and regulants to perpetrate fraud against the Board. Although the majority of the proposed amendments simplify and clarify existing regulations, in some instances, compliance and reporting requirements have been increased. While these amendments may raise some concerns within the regulated community, and thus become a matter of interest, they will not likely be looked at as being overly burdensome to most of the regulant population or the industry. The Board believes these amendments are the least stringent that can be promulgated that will still deliver protection to the public and address fraud being perpetrated against the Board.
- 2) The more stringent deadlines and reporting requirements added by the proposed amendments are being put in place to address the above mentioned fraud by applicants and regulants and better protect the health and safety of the public. The Board believes these amendments are the least stringent that can be promulgated that will still deliver protection to the public and address fraud being perpetrated against the Board.
- 3) The proposed amendments systematically simplify and clarify existing requirements. The Board believes any new requirements are the least stringent that can be promulgated that will still deliver protection to the public and address fraud being perpetrated against the Board.
- 4) Performance standards are utilized in all cases where the Board believes it can provide an adequate level of protection to the health, safety, and welfare of the public.
- 5) The overwhelming majority, if not all, of businesses licensed by the Board are small businesses, and similar proportion of individuals licensed by the Board are employed by small businesses. Thus, every regulatory action undertaken by the Board affects small businesses. As noted above, in order to protect the public, and adequately address issues of fraud, the Board must promulgate regulations. Exempting small businesses from the Board's requirements would prohibit the Board from addressing these concerns and leave the Board and the public exposed to further risk of licensed individuals and business that are not at least minimally competent.

### Small business impact review report of findings

In order to minimize the economic impact of regulations on small businesses, please include, pursuant to Code of Virginia § 2.2-4007.1 E and F, a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency's determination of whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

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- 1) There is a continued need for regulation of the esthetics profession. Due to the personal and physical nature of these professions, at least minimal competency of those engaged in the profession is necessary to protect the health, safety, and welfare of the public. Since the vast majority of regulants either are or

work for small businesses, this necessitates the continued regulation of small businesses. The proposed amendments balance the need for minimally competent professionals with the need for simple and clear regulations. The amendments add clarity to the regulations, and where possible, regulations are repealed or incorporated into other regulations. The amendments also provide for apprenticeships as a means to become eligible for licensure.

2) There were four comments received regarding these regulatory amendments. All of the comments were generally opposed to amending the regulations to allow for apprenticeship as a method of entry. The two themes of the comments were that the current curriculum requirement is the optimal training method and that due to the low standards for grandfathering into the profession, there may be a lack of qualified sponsors to train apprentices.

3) One of the primary purposes and expected benefits of the proposed amendments is to simplify and clarify the regulations as well as provide additional means for entry into the profession without a substantial financial burden while providing an avenue to pursue training while being paid at least minimum wage as required by the apprenticeship program. The Board has approved regulations that are in plain English, and provided terms and instructions that should be easily understood by members of the profession and by the public.

4) The Board has no knowledge of the proposed regulations overlapping, duplicating, or conflicting with any federal or state law or regulation. The apprenticeship program would be administered by the Virginia DOLI.

5) The last non-fee related regulatory change was made in 2007. Since that time there have been changes to technological and economic conditions. The proposed amendments attempt to eliminate or modernize obsolete or outdated regulations.

**Public comment**

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

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Shiva Vahid	<p>Apprenticeship program would be unsafe and unpractical for the public and industry as a whole.</p> <p>Currently there are many unlicensed or unqualified professionals in the field, and the apprenticeship program could put apprentices under the instruction of unqualified individuals.</p> <p>Supports 1200 hours to obtain basic and master esthetics licenses.</p>	<p>In response to input from the regulant community and in an effort to match all other applicable professions the Board regulates which currently have apprenticeship programs, as well as to reduce any cost barriers to entrance into the profession, the Board has sought to allow for additional methods of entry, in this instance, apprenticeships. These apprenticeships must comply with Board regulations and will be overseen by the DOLI. DOLI has administered apprenticeships for cosmetology, barbering, and nail technicians for many years with great success. Enabling apprenticeships for esthetics will bring the esthetics field in line with the other professions regulated by the Board.</p> <p>The Board encourages anyone knowledgeable</p>

		<p>of a possible violation of the regulations or statutes to submit a complaint for review. The Compliance section is responsible for enforcing criminal laws under DPOR’s jurisdiction, including practicing without a license. After investigation, criminal matters are referred to local Commonwealth’s Attorneys for prosecution.</p> <p>The suggestion for a 1200 hour program will be taken under advisement by the Board.</p>
<p>Christine Davis</p>	<p>Agrees with previous commenter.</p> <p>Many grandfathered estheticians have learned unsafe skill and are not aware of sanitary procedures.</p> <p>A formal education is necessary to ensure client safety and professionalism.</p>	<p>In response to input from the regulant community and in an effort to match all other applicable professions the Board regulates which currently have apprenticeship programs, as well as to reduce any cost barriers to entrance into the profession, the Board has sought to allow for additional methods of entry, in this instance, apprenticeships. These apprenticeships must comply with Board regulations and will be overseen by the DOLI. DOLI has administered apprenticeships for cosmetology, barbering, and nail technicians for many years with great success. Enabling apprenticeships for esthetics will bring the esthetics field in line with the other professions regulated by the Board.</p> <p>The Board encourages anyone knowledgeable of a possible violation of the regulations or statutes to submit a complaint for review. The Compliance section is responsible for enforcing criminal laws under DPOR’s jurisdiction, including practicing without a license. After investigation, criminal matters are referred to local Commonwealth’s Attorneys for prosecution.</p>
<p>Christine Gordon</p>	<p>Opposes apprenticeship for estheticians. Believes many grandfathered estheticians do not have proper training and would not be effective sponsors.</p> <p>Apprentices fall under the Department of Labor and Industry, with little oversight by the Board and the ability to grant competency hours and not follow Board approved curriculum.</p> <p>Apprenticeship programs have a low completion rate.</p> <p>Schools are more effectively monitored and must comply with all</p>	<p>In response to input from the regulant community and in an effort to match all other applicable professions the Board regulates which currently have apprenticeship programs, as well as to reduce any cost barriers to entrance into the profession, the Board has sought to allow for additional methods of entry, in this instance, apprenticeships. These apprenticeships must comply with Board regulations and will be overseen by the DOLI. DOLI has administered apprenticeships for cosmetology, barbering, and nail technicians for many years with great success. Enabling apprenticeships for esthetics will bring the esthetics field in line with the other professions regulated by the Board.</p> <p>The Board encourages anyone knowledgeable</p>

	<p>aspects of state rules.</p>	<p>of a possible violation of the regulations or statutes to submit a complaint for review. The Compliance section is responsible for enforcing criminal laws under DPOR’s jurisdiction, including practicing without a license. After investigation, criminal matters are referred to local Commonwealth’s Attorneys for prosecution.</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.*

- 1) The proposed regulations will have no impact on the authority and rights of parents in the education, nurturing, and supervision of their children.
- 2) An increase of eligible estheticians entering the workforce as a result of the addition of apprenticeship as a method of entry may encourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents if the esthetics career provides more monetary compensation than the career the individual may or may not have had prior, while also by providing an avenue to pursue training while being paid at least minimum wage as required by the apprenticeship program. Additionally the proposed regulations may assist in this area through a simplified and clarified regulatory environment. The proposed amendments should make entering and engaging in the regulated professions more easily understood for individuals and businesses.
- 3) The proposed regulations will have no impact on marital commitment.
- 4) The proposed regulations may contribute to an increase in disposable family income by providing an avenue to pursue training while being paid at least minimum wage as required by the apprenticeship program and contributing to the possibility of a segment of the population with higher earning potential

**Detail of changes**

*Please list 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. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.*

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

For changes to existing regulation(s) or regulations that are being repealed and replaced, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
18 VAC 41-70-10		Establishes definitions of terms used throughout the chapter.	<p>“Business Entity” is added to provide a comprehensive list of the forms of legal organization permitted under law. Adding this definition precludes the need to consistently repeat this language.</p> <p>“Firm” is added to provide a short hand explanation of business entities recognized under the laws of the Commonwealth. Adding this definition precludes the need to consistently repeat this language.</p> <p>“Licensee” is amended to reflect all business entities allowed under the laws of the Commonwealth.</p> <p>“Post-Secondary educational level” is added to distinguish educational levels and recognize accredited colleges or universities.</p> <p>“Responsible Management” is added to identify those who are responsible for the business and regulatory activity of a firm. Adding this definition precludes the need to consistently repeat this language.</p> <p>“Sole Proprietorship” is added to distinguish an individual, not a corporation, trading under his own or an assumed name.</p>
18 VAC 41-70-20		Establishes the general requirements for a barber, cosmetology, or nail technician license.	<p>Subsection A.1 is reworded for greater clarity. It also adds that the Board may deny licensure to any applicant it deems unfit to engage in the profession, taking into account the totality of the circumstances. This enables the Board to ensure that it is licensing individuals who are minimally competent to engage in the profession.</p> <p>Old subsection A.4. is removed and reworded in subsections A.1 and new subsection A.4.</p> <p>New subsection A.4 includes a new requirement that certain misdemeanors and all felonies must be disclosed by the</p>

			applicant. In order to conduct the proper analysis required by §54.1-204 of the Virginia Code, the Board needs to be aware of each applicant's criminal history.
18 VAC 41-70-30		Establishes licensure by endorsement for certain individuals.	This section is amended to allow master estheticians to be eligible for endorsement.
18 VAC 41-70-40		Establishes examination requirements and fees.	<p>Subsection A is reworded for greater clarity.</p> <p>New subsection E establishes that any candidate who fails to apply for licensure within five years of passing the examination will have to retake both portions of the exam. It also provides that records of exams will be kept for no more than five years. A candidate who does not apply within five years of their exam is less likely to be knowledgeable of their training or the trade. As no candidate can apply if their exam is more than five years old, there is no purpose in maintaining records beyond this point.</p>
18 VAC 41-70-60		Establishes examination administration requirements.	<p>Subsection A is amended to require the practical examination be supervised by a chief examiner. This ensures the practical examiners have experience, thus providing responsible oversight while conducting the exam.</p> <p>New subsection B requires every esthetics and master esthetics examiner to hold a current license in their respective profession, have three years experience, be currently practicing, and attend training workshops. This brings the examiner qualifications in line with other professions regulated by the Board and ensures competent exam administration.</p> <p>New subsection C prohibits esthetics or master esthetics instructors who are actively teaching, school owners, or apprentice sponsors from being examiners. This brings the examiner qualifications in line with other professions regulated by the Board and ensures unbiased exam administration.</p> <p>New subsection D requires every esthetics and master esthetics chief examiner to hold a current license in their respective profession, have five years experience, be currently practicing, and attend training</p>

			workshops. This brings the examiner qualifications in line with other professions regulated by the Board and ensures competent exam administration.
18 VAC 41-70-70		Establishes the barber, cosmetology and nail technician temporary permits.	<p>Subsection A is amended to specify that there shall be no fee for a temporary license. This addition makes explicit current practice.</p> <p>Subsection C is amended to include additional statutory authority.</p> <p>New subsection E adds the language that temporary permits will not be issued where grounds for denial exist. This ensures that candidates who may disqualify under the Board's regulations are not given temporary licenses and allowed to practice on the public.</p>
18 VAC 41-70-80		Establishes the general requirements for a spa license.	<p>Subsection A.1 is amended to add the requirement that the applicant and members of responsible management be in good standing as a licensed spa, and requires the applicant disclose any disciplinary action taken against the license. It also adds that the Board may deny licensure to any applicant it deems unfit to engage in the profession, taking into account the totality of the circumstances. This enables the Board to ensure that it is licensing spas which are minimally competent to engage in the profession.</p> <p>New subsection A.2 requires the applicant to disclose his physical address. This ensures the Board can maintain appropriate oversight and communication with the licensee, should the license be granted.</p> <p>New subsection A.3 requires the applicant certify that he has read and understands Virginia's laws and regulations regarding its profession. This will help ensure that every licensee understands its professional obligations and is minimally competent.</p> <p>New subsection A.4 includes a new requirement that certain misdemeanors and all felonies must be disclosed for responsible management. In order to conduct the proper analysis required by §54.1-204 of the Virginia Code, the Board needs to be aware of each applicant's</p>



			<p>criminal history.</p> <p>New subsection A.5 requires the applicant to disclose the firm’s responsible management. This will ensure that the Board is informed as to who is actually operating the business.</p> <p>Subsection B is amended to read with greater clarity. The disclaimer from old section 280.A.7 is added, noting that the Board is not responsible for a licensee’s failure to receive communications if the licensee has not notified the Board of a change of address. This requirement ensures that every applicant is aware that it is responsible for updating its address with the Board.</p> <p>Subsection C is reworded to read with greater clarity and specificity.</p> <p>New subsection D requires that any change to officers, managers or directors of certain business entities be reported to the Board within 30 days of the change. This will ensure that the Board is informed as to who is actually operating the business.</p> <p>New subsection E requires the shop/salon allow the Board to inspect the shop/salon during reasonable hours, and defines reasonable hours as 9 a.m. to 5 p.m. This addition ensures that the Board will have access to the regulated shops and salon and that compliance with the Board’s regulations can be verified. This is particularly important if the Board is to fulfill its duty to protect the health, safety and welfare of the public.</p>
<p>18 VAC 41-70-90</p>		<p>Establishes general requirements for a school license.</p>	<p>Subsection A incorporates the requirement from repealed section 170.A that applicants must apply at least 60 days before the date for which approval is sought.</p> <p>Subsection A.1 is amended to add the requirement that the applicant and members of responsible management be in good standing as a licensed school, and requires the applicant disclose any disciplinary action taken against the license. It also adds that the Board may deny licensure to any applicant it deems unfit to engage in the profession, taking</p>

			<p>into account the totality of the circumstances. This enables the Board to ensure that it is licensing schools which are minimally competent to engage in the profession.</p> <p>New subsection A.2 requires the applicant to disclose his physical address. This ensures the Board can maintain communication and appropriate oversight of the licensee, should the license be granted.</p> <p>New subsection A.3 requires the applicant certify that he has read and understands Virginia’s laws and regulations regarding its profession. This will help ensure that every licensee understands its professional obligations and is minimally competent.</p> <p>New subsection A.4 includes a new requirement that certain misdemeanors and all felonies must be disclosed for responsible management. In order to conduct the proper analysis required by §54.1-204 of the Virginia Code, the Board needs to be aware of each applicant’s criminal history.</p> <p>New subsection A.5 requires the applicant to disclose the firm’s responsible management. This will ensure that the Board is informed as to who is actually operating the business.</p> <p>Subsection B is amended to read with greater clarity. A disclaimer is added that the Board is not responsible for a licensee’s failure to receive communications if the licensee has not notified the Board of a change of address. This new requirement ensures that every applicant is aware that he is responsible for updating his address with the Board.</p> <p>Old subsections C and D are removed and replaced with new subsection C, in order to provide greater clarity.</p> <p>Subsection C is added requiring a school to return its license within 30 days of when it becomes void and identifies what will void a license. This regulation will assist the Board in keeping track of which licensees are active and which are inactive. This, in turn, will allow for more accurate</p>
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			<p>information to be distributed to the public regarding licensees.</p> <p>New subsection D requires that any change to officers, managers or directors of certain business entities be reported to the Board within 30 days of the change. This will ensure that the Board is informed as to who is actually operating the school.</p> <p>New subsection E exempts schools under the Virginia Department of Education from licensure requirements. This ensures that the Board's regulations do not conflict, overlap or duplicate other state laws or regulations.</p> <p>New subsection F requires schools to allow the Board to inspect the school during reasonable hours, and defines reasonable hours as 9 a.m. to 5 p.m. This addition ensures that the Board will have access to the regulated schools and that compliance with the Board's regulations can be verified. This is particularly important if the Board is to fulfill its duty to protect the health, safety and welfare of the public.</p>
<p>18 VAC 41-70- 100</p>		<p>Establishes the requirements for esthetics instructor certificates.</p>	<p>Subsection A.1 is amended to add the requirement that the applicant and members of responsible management be in good standing as a licensed school, and requires the applicant disclose any disciplinary action taken against the license. It also adds that the Board may deny licensure to any applicant it deems unfit to engage in the profession, taking into account the totality of the circumstances. This enables the Board to ensure that it is licensing schools which are minimally competent to engage in the profession.</p> <p>Old subsection A.3 is removed.</p> <p>New subsection A.3 includes a new requirement that certain misdemeanors and all felonies must be disclosed for responsible management. In order to conduct the proper analysis required by §54.1-204 of the Virginia Code, the Board needs to be aware of each applicant's criminal history.</p> <p>Subsection B is amended to read with greater clarity.</p>

<p>18 VAC 41-70- 110</p>		<p>Establishes the requirements for master esthetics instructor certificates.</p>	<p>Subsection A.1 is amended to add the requirement that the applicant and members of responsible management be in good standing as a licensed school, and requires the applicant disclose any disciplinary action taken against the license. It also adds that the Board may deny licensure to any applicant it deems unfit to engage in the profession, taking into account the totality of the circumstances. This enables the Board to ensure that it is licensing schools which are minimally competent to engage in the profession.</p> <p>Old subsection A.3 is removed.</p> <p>New subsection A.3 includes a new requirement that certain misdemeanors and all felonies must be disclosed for responsible management. In order to conduct the proper analysis required by §54.1-204 of the Virginia Code, the Board needs to be aware of each applicant's criminal history.</p> <p>Subsection B is amended to read with greater clarity.</p>
<p>18 VAC 41-70- 160</p>		<p>Establishes provision for when licensees fail to renew.</p>	<p>Subsection A is amended to add greater clarity.</p> <p>Subsection B is replaced with simplified language and adds business entities to the its requirements.</p> <p>Old subsection C and a portion of subsection D is removed and incorporated into subsection B.</p>
<p>18 VAC 41-70- 170</p>		<p>Established requirements for applicants for state approval.</p>	<p>This section is repealed and its requirements are incorporated into section 90.</p>
<p>18 VAC 41-70- 220</p>		<p>Establishes requirements for school identification.</p>	<p>This section is repealed to provided greater simplicity to the regulations.</p>
<p>18 VAC 41-70- 230</p>		<p>Establishes recordkeeping requirements for schools.</p>	<p>Old subsection A is reworded and expanded for greater clarity. The added portion specifies for the regulant which records must be kept.</p> <p>Old Subsections B and C are incorporated into subsection A.</p>

			<p>New subsection B adds the requirement that schools must produce to the Board any document concerning a student within 10 days of the request. This will better enable the Board to prevent fraud, investigate regulatory violations, and better assist the regulant community.</p> <p>New subsection C requires that schools, within 21 days of a student's request, produce documentation and performances completed by that student. This provision will assist students in obtaining their records and addresses a frequent complaint that schools are withholding progress documentation from their students.</p> <p>Subsection E is amended to require that schools, for a period of one year after a change in ownership, provide records within 21 days of a request of a current student.</p>
18 VAC 41-70- 240		Establishes reporting requirements for schools.	<p>This section is amended to read with greater clarity. The language from this section is moved to new subsection B.</p> <p>New subsection A adds the requirement that schools submit a roster of all current students twice a year, at specified intervals. This will better enable the Board to prevent fraud, investigate regulatory violations and better assist the regulant community.</p>
18 VAC 41-70- 260		Establishes a requirement for licenses to be displayed.	<p>Subsection A is amended to read with greater clarity.</p> <p>New subsection requires apprenticeship cards issued by DOLI to be displayed in plain view of the public.</p>
18 VAC 41-70- 270		Establishes sanitation and safety standards for shops, salons, and schools.	<p>This section is reworded and reorganized to read with better clarity.</p> <p>The new requirements in this section are added to provide a more sanitary and safe environment for the public and licensed professionals.</p> <p>New subsection B incorporates old subsection C and expands on disinfection of reusable items. These additions bring esthetics and master esthetics in line with</p>

			<p>other professions regulated by the Board.</p> <p>Old Subsection B is amended to add greater clarity.</p> <p>Old subsection B.7 is incorporated into new subsection C.6.</p> <p>New subsection C.7 adds requirements for safely keeping tools.</p> <p>Subsection D.4 is amended to add that certain applications should be kept in closed containers and that cotton or sponges shall be used to apply said applications.</p> <p>Subsection D.7 is amended to require clean towels and linens for each patron and specify how these items must be stored.</p> <p>Subsection E.2 is amended to include specific requirements for blood spill cleanup kits.</p>
<p>18 VAC 41-20- 280</p>		<p>Establishes grounds for disciplinary action.</p>	<p>This section is reworded to read with greater clarity.</p> <p>New prohibited acts are added to better enable the Board to prevent fraud, investigate regulatory violations, and better protect the public.</p> <p>Old subsection A.2 is combined with old subsection A.3.</p> <p>New subsection A.5 adds the grounds for discipline of bribing a public official.</p> <p>New subsection A.6 adds the grounds for discipline of failing to respond to the Board, or providing false, misleading, or incomplete information to an inquiry of the Board.</p> <p>New subsection A.7 adds the grounds for discipline of failing or refusing to allow the Board or its agent to inspect any licensed shop, salon, or school.</p> <p>Old subsection A.7 is re-numbered and a portion of it is removed as duplicative.</p> <p>Old subsection A.8 is re-numbered and adds the ground for discipline of making a</p>

			<p>misrepresentation.</p> <p>Old subsection A.10 is repealed. This section was duplicative with old section 20.A.4.</p> <p>Old subsection A.11 is re-numbered and a portion of it is removed as duplicative.</p> <p>New subsection 12 adds grounds for discipline for having been convicted of certain misdemeanor and any felony.</p> <p>New subsection 13 adds grounds for discipline for failing to report to the Board any conviction within 30 days of being convicted.</p> <p>New subsection 14 adds the grounds for discipline for any spa or school owner or operator who allows an unlicensed person to practice, unless that person is a registered apprentice.</p> <p>New subsection 15 adds the grounds for discipline for an owner or operator of a school who allows the practice of an unlicensed instructor.</p> <p>New subsection 16 adds the grounds for discipline of failing to take sufficient measures to prevent the transmission of communicable diseases or fails to comply with laws and regulations pertaining to sanitation and safety.</p> <p>New subsection 17 adds the grounds for discipline of failing to comply with procedures established by the Board and testing service with regard to conduct during examination.</p> <p>Old subsections B, C, and D are removed.</p>
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If a new regulation is being promulgated, use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
18 VAC 41-70-35	Licensed estheticians and master estheticians who train apprentices, and owners of spas where apprentices are trained shall comply with standards for apprenticeship established by DOLI. Any person	DOLI requirements for apprentices and apprentice sponsors may apply.	This new regulation will result in a new avenue for individuals to enter into the profession. The apprenticeship method of obtaining exam eligibility will also provide a way to obtain the required training without investing significant financial

	completing the apprenticeship program is eligible for examination.		resources.
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