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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Board for Barbers and Cosmetology
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	18 VAC 41-70
<b>VAC Chapter title(s)</b>	Esthetics Regulations
<b>Action title</b>	General Review of the Esthetics Regulations
<b>Date this document prepared</b>	October 11, 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*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).*

The Board for Barbers and Cosmetology (“the Board”) intends to undertake a general regulatory review of the Esthetics Regulations. The regulation provides for the (i) licensure of estheticians and master estheticians; (ii) licensure of spas; (iii) licensure of esthetics schools; and (iv) certification of instructors.

The goals of the action include:

1. Review of discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program, in accordance with the regulatory reduction goal of Executive Directive Number One (2022);
2. Review to ensure the regulation complements current Virginia law and meets applicable federal requirements, if any;
3. Review to ensure the regulation is organized, clear, and understandable; and

- 4. Review to ensure the regulation provides minimal burdens on regulants while still protecting the public.

In addition, the review will ensure the regulation reflects current DPOR procedures and policies, along with any other changes determined to be necessary and appropriate.

## Acronyms and Definitions

*Define all acronyms or technical definitions used in this form.*

"DOLI" means Department of Labor and Industry.

"DPOR" means Department of Professional and Occupational Regulation.

## Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation, (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."*

The impetus for this regulatory action is Executive Directive Number One (2022), which directs Executive Branch entities under the authority of the Governor "...to initiate regulatory processes to reduce by at least 25 percent the number of regulations not mandated by federal or state statute, in consultation with the Office of the Attorney General, and in a manner consistent with the laws of the Commonwealth."

This action is not the result of a mandate.

## 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 and 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 agency is Board for Barbers and Cosmetology.

Section 54.1-201 of the Code of Virginia provides, in part:

- A. The powers and duties of regulatory boards shall be as follows:
  - 1. 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.
  - 5. To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system

administered by the regulatory board. The regulations shall not be in conflict with the purposes and intent of this chapter or of Chapters 1 (§ 54.1-100 et seq.) and 3 (§ 54.1-300 et seq.) of this title.

**Purpose**

*Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.*

The General Assembly has charged the Board with the responsibility for regulating those engage in the practice of esthetics or master esthetics by requiring that such individuals obtain a license in order to engage in these occupations for compensation.

As mandated by the General Assembly, the Board protects the public welfare, in part, by establishing through regulation (i) the minimum qualifications of applicants for certification or licensure, provided that all qualifications are necessary to ensure either competence or integrity to engage in the profession or occupation; (ii) minimum standards to assure continued competency and to prevent deceptive or misleading practices by practitioners; and (iii) requirements to effectively administer the regulatory system administered by the Board.

As the regulation is developed, the Board, in accordance with Executive Directive Number One (2022), will review discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program. To the extent any such current requirement may not be necessary to protect the public health, safety, and welfare, or not necessary to effectively administer the licensure program, the Board will consider eliminating the requirement.

These issues are not inclusive of all potential issues that may be addressed during development of the regulation.

**Substance**

*Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.*

The Board formed a regulatory review committee composed of members of the Board to conduct a review of this regulation. The committee’s membership includes individuals who are licensed to practice each of the regulated disciplines falling under the Board’s jurisdiction (barbering, cosmetology, nail care, waxing, tattooing, body-piercing, and esthetics). Most of these committee members either own or operate schools, or previously owned or operated schools.

The regulatory review committee has performed a review of the regulation. The Board is expected consider the substantive changes detailed below. However, the Board may consider other changes prior to adoption of the proposed regulation.

Part I – General (18 VAC 41-70-10 et seq.):

Definitions (18 VAC 41-70-10): Revising the section to specifically incorporate statutory terms from § 54.1-700 of the Code of Virginia that are used in the regulation. Currently, the section incorporates all terms that are defined in this section of the Virginia Code, including many terms that are not used in the

regulation. Adding a definition for the following terms or phrases: “clock hours;” “each and every location for school licensure;” “reasonable hours;” “substantially equivalent exam;” “substantially equivalent training;” and “wet disinfection unit.” Removing the definition of “endorsement.”

Part II – Entry (18 VAC 41-70-20 et seq.):

Adding a new section – Gratuitous Services (18 VAC 41-70-15). The new section would provide clarification regarding the exemption from licensure in § 54.1-701(5) of the Code of Virginia for those who provide “gratuitous services.” The statute does not provide a meaning for the term “gratuitous services.” The new section would provide clarification as to what are considered gratuitous services.

General Requirements for an Esthetician License or Master Esthetician License (18 VAC 41-70-20):

- Revising the provisions of subdivision A.1 to clarify that an applicant only disclose prior disciplinary actions that pertain to services within the scope of practice for the license for which the individual is applying (i.e. esthetician or master esthetician).
- Revising the provisions of subdivision A.1 to remove a requirement that an applicant disclose whether the applicant previously held a license in Virginia as an esthetician or master esthetician. This requirement is not necessary.
- Revising the provisions of subdivision A.2 to allow applicants to provide a post office box address as a secondary address to a physical address. Currently, applicants are not permitted to provide a post office box address.
- Revising the provisions of subdivision A.4 to only require disclosure of felony convictions occurring within 10 years of the date of application. Currently, applicants must disclose felony convictions occurring within 20 years of the date of application.
- Adding a new subdivision that will require any change of name or address to be reported to the Board in writing within 30 days of the change.
- Revising the provisions of subdivision B.1 to add a provision that those completing a registered apprenticeship are eligible to sit for the license examination. Currently, this provision is located in 18 VAC 41-70-35, and will be relocated.
- Revising the provisions of subdivision B.2 to allow for applicants who did not complete a training program substantially equivalent to Virginia training to qualify for the license examination by providing documentation of three (3) years of work experience as a licensed esthetician or master esthetician in another jurisdiction. Currently, applicants who received training outside of Virginia must have completed a training program substantially equivalent to Virginia training.
- Revising the provisions of subdivision B.2 to provide that applicants who have received training outside of the United States must have their degree translated, authenticated, and evaluated by an education evaluation service if credit is being sought for such education.

License by Endorsement (18 VAC 41-70-30): Revising the section to (i) add provisions enabling individuals endorsing from other states who have completed one examination (written or practical) that is substantially equivalent to the Virginia examination to take the other examination (written or practical, as applicable) in Virginia; and (ii) add provisions allowing individuals endorsing from other states who completed a training program that is not substantially equivalent to Virginia’s training requirements to substitute three (3) years of work experience for training.

Apprenticeship Training (18 VAC 41-70-35): Revising the section to (i) remove a provision that those completing a registered apprenticeship are eligible to sit for the license examination. This provision will be relocated to 18 VAC 41-70-20; and (ii) provide that responsible management, rather than owners, of spas who train apprentices comply with standards for apprenticeship training established by DOLI.

Examination Requirements and Fees (18 VAC 41-70-40): Revising the section to (i) clarify that the license examination consists of both a practical and a written portion, as opposed to separate examinations; (ii) remove a provision that failing to appear for a scheduled examination results in forfeiting of the examination fee, as this provision is unnecessary; (iii) removing a provision that the examination is administered by the

Board or a designated testing services, as this provision is unnecessary; and (iv) removing a provision that examination records will be maintained for a maximum of five years, as this provision is unnecessary.

Esthetician Temporary License (18 VAC 41-70-70): Revising the section to (i) provide for the issuance of temporary permits, instead of licenses; (ii) establish the term of temporary permits to be 90 days, up from the 45 days allowed for a temporary license; and (iii) providing that no subsequent temporary permit will be issued. The Board has previously authorized this change as a fast-track action.

General Requirements for a Spa License (18 VAC 41-70-80):

- Revising the provisions of subdivision A.1 to clarify that an applicant only disclose prior disciplinary actions that pertain to services within the scope of practice for the license for which the firm is applying.
- Revising the provisions of subdivision A.1 to remove a requirement that an applicant disclose whether the applicant or a member of the firm's responsible management previously held a license in Virginia as an esthetics spa. This requirement is not necessary.
- Revising the provisions of subdivision A.2 to allow applicants to provide a post office box address as a secondary address to a physical address. Currently, applicants are not permitted to provide a post office box address.
- Revising the provisions of subdivision A.4 to only require disclosure of felony convictions occurring within 10 years of the date of application. Currently, applicants must disclose felony convictions occurring within 20 years of the date of application.
- Revising the provisions of subsection C to require that a licensed firm notify the Board within 30 days of a change of business entity (e.g. formation of a new firm, dissolution of an existing firm) and destroy the license. Currently, a firm is required to return the license to the Board within 30 days of a change of business entity.
- Adding a new subsection that requires mobile spas to have a spa license and provide the Board with a physical address.
- Revising subsection E to remove provisions defining the term "reasonable hours." The term "reasonable hours" will be added to the definitions section in 18 VAC 41-70-10.

General Requirements for a School License (18 VAC 41-70-90):

- Revising the provisions of subdivision A.1 to clarify that an applicant only disclose prior disciplinary actions that pertain to services within the scope of practice for the license for which the firm is applying.
- Revising the provisions of subdivision A.1 to remove a requirement that an applicant disclose whether the applicant or a member of the firm's responsible management previously held a license in Virginia as an esthetics school. This requirement is not necessary.
- Revising the provisions of subdivision A.2 to allow applicants to provide a post office box address as a secondary address to a physical address. Currently, applicants are not permitted to provide a post office box address.
- Revising subdivision A.4 to only require disclosure of felony convictions occurring within 10 years of the date of application. Currently, applicants must disclose felony convictions occurring within 20 years of the date of application.
- Revising the provisions of subsection C to require that a licensed firm notify the Board within 30 days of a change of business entity (e.g. formation of a new firm, dissolution of an existing firm) and destroy the license. Currently, a firm is required to return the license to the Board within 30 days of a change of business entity.
- Revising subsection F to remove provisions defining the term "reasonable hours." The term "reasonable hours" will be added to the definitions section in 18 VAC 41-70-10.

General Requirements for an Esthetics Instructor Certificate (18 VAC 41-70-100):

- Revising the section to include instructor certificates for master esthetics. Currently, the requirements for a master esthetics instructor certificate are located in 18 VAC 41-70-110, which will be repealed.
- Revising subdivision A.1 to remove a requirement that an applicant disclose whether the applicant has been previously certified in Virginia as an esthetician or master esthetician. This provision is not necessary.
- Revising subdivision A.3 to require that an applicant either (i) pass a teaching course in teaching techniques at the post-secondary education level; or (ii) pass an instructor examination to qualify for an instructor certificate. A provision allowing for an applicant to qualify based on completing a Board-approved instructor training course is removed.
- Revising subdivision A.4 to only require disclosure of felony convictions occurring within 10 years of the date of application. Currently, applicants must disclose felony convictions occurring within 20 years of the date of application.
- Adding a new subdivision that will require any change of name or address to be reported to the Board in writing within 30 days of the change.
- Revising subsection B to remove the requirement that a certificate holder maintain their underlying professional license as an esthetician or master esthetician, in order to qualify for an instructor certificate. Instructors would not be required to renew the professional license if the instructor certificate is currently active.
- Adding a new subsection that provides certified instructors may teach in any profession for which they hold the underlying license.

Adding a new section – Student Instructor Temporary Permit (18 VAC 41-70-105): The new section would allow a licensed esthetician or master esthetician to be granted a 12-month temporary student instructor permit while under the direct supervision of a certified instructor.

General Requirements for a Master Esthetic Instructor Certificate (18 VAC 41-70-110): Repealing this section as it is no longer necessary.

Part III – Fees (18VAC41-70-120 et seq.):

Fees (18VAC41-70-120): Incorporate provisions from 18VAC41-70-130, which specifies that fees are nonrefundable and shall not be prorated.

Refunds (18 VAC 41-70-130): Repealing this section as it is no longer necessary.

Part IV – Renewal/Reinstatement (18VAC41-70-140 et seq.):

Failure To Renew (18 VAC 41-70-160): Revising the provisions of subsection B to require that an individual that fails to reinstate a license or certificate within two (2) years of the expiration date must either (i) apply for licensure or certification as a new applicant, and meet current entry requirements; or (ii) if the individual has been licensed for a minimum of three (3) years, submit a new application and pass the required examination.

Part V – Esthetic Schools (18VAC41-70-180 et seq.):

General Requirements (18 VAC 41-70-180):

- Revising the provisions of subdivision 3 to provide that licensed and certified esthetics and master esthetics instructors may also instruct a waxing program.
- Revising the provisions of subdivision 3 to require that any change in instructors be reported to the Board within 30 days of the change.
- Adding a subdivision to require that instructor programs be taught by a certified instructor. This change is also part of a separate pending action that is currently in Proposed stage.

Curriculum and Hours of Instruction Requirements (18 VAC 41-70-190):

- Revising the provisions in subsection D pertaining to the student assessment a school may conduct to give a student credit toward required training hours to allow for schools to make the assessment based on (i) review of the student’s transcript; (ii) documentation of hours and performances provided by the student; or (iii) completion of a competency examination. Currently, schools are required to review the student’s transcript and conduct a board-approved competency examination.
- Revising the provisions of subsection E to (i) remove the requirement that an instructor curriculum consist of a minimum of 400 hours of instruction; and (ii) revising the curriculum topics. This change is also part of a separate pending action that is currently in Proposed stage.

Records (18 VAC 41-70-230): Revising the provisions of the section to (i) remove records of competency examinations used to award credit as a record that a school must maintain for each student for five (5) years after the student’s completion of the curriculum, termination, or withdrawal; and (ii) remove provisions requiring a school to provide a student with documentation of the student’s hours and performances upon request for a period of one year after the school changes ownership.

Part VI – Standards of Practice (18 VAC 41-70-250 et seq.):

Sanitation and Safety Standards for Spas and Schools (18 VAC 41-70-270):

- Sanitation requirements in this section will be adjusted based on current industry standards.
- Revising the provisions of subdivision B.1 to remove the definition of “wet disinfection unit.” This definition will be added to the definitions section of the regulation in 18 VAC 41-70-10.
- Revising the provisions of subsection D to provide that any multiuse article, tool, or product that cannot be disinfected by full immersion or cleaned according to manufacturer’s instructions, such as natural hair brushes or neck dusters, are prohibited from use.

Grounds for License Revocation, Probation, or Suspension; Denial of Application, Renewal or Reinstatement; or Imposition of a Monetary Penalty (18 VAC 41-70-280):

- Revising the prohibited act in subdivision 1 to prohibit the inability to practice with skill or safety as a result of any mental or physical condition. Currently, this subdivision prohibits mental or physical incapability to practice.
- Revising the prohibited act in subdivision 11 to provide that failure to notify the Board within 30 days of any final disciplinary action taken against a license, registration, certificate, or permit by any local, state, or national regulatory body is prohibited.

As the regulation is developed, the Board, in accordance with Executive Directive Number One (2022), will review discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program. To the extent any such current requirement may not be necessary to protect the public health, safety, and welfare, or not necessary to effectively administer the licensure program, the Board will consider eliminating the requirement.

**Alternatives to Regulation**

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.*

A goal of this regulatory action is to review of discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program, in accordance with the regulatory reduction goal of Executive Directive Number One (2022). As the regulation is developed, the Board will consider potential alternatives to existing requirements that may be less burdensome or intrusive while still meeting the essential purpose of the regulation.

### Periodic Review and Small Business Impact Review Announcement

*If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”*

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This NOIRA is not being used to announce a periodic review or a small business impact review.

### Public Participation

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.*

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The Board formed a regulatory review committee composed of members of the Board to conduct a review of this regulation. The committee held multiple meetings between September 2022 and September 2023. These meetings included opportunities for public comment. The committee has received public comment from interested parties at several of these meetings.

The Board for Barbers and Cosmetology is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>.

Comments may also be submitted by mail, email or fax to:

Kelley Smith, Executive Director  
Board for Barbers and Cosmetology  
9960 Mayland Drive  
Perimeter Center, Suite 400  
Richmond, VA 23233  
bchoplicensing@dpor.virginia.gov  
866-245-9693 (fax)

In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.



A public hearing will be held following the publication of the proposed stage, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.