

This document is made available electronically by the Minnesota Legislative Reference Library as part of an ongoing digital archiving project. <http://www.leg.state.mn.us/lrl/sonar/sonar.asp>

August 20, 2019

Legislative Reference Library
645 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, Minnesota 55155
VIA sonars@lrl.leg.mn

Re: In The Matter of the Proposed Rules of the Board of Cosmetologist Examiners
about Licensing and Practice; Revisor's ID Number 4552

Dear Librarian:

The Minnesota Board of Cosmetologist Examiners intends to adopt rules governing the licensing and practice of Cosmetologists, Estheticians, Advanced Practice Estheticians, Nail Technicians, Eyelash Technicians, Instructors, Salons, and Schools. We plan to publish a Dual Notice of Intent to Adopt Rules in the August 26, 2019 edition of the *State Register*.

The Board has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Board is sending the Library an electronic copy of the Statement of Need and Reasonableness at the same time we are mailing our Notice of Intent to Adopt Rules.

If you have questions, please contact me at 651-201-2751.

Yours very truly,

Rebecca Gaspard
Policy Analyst

Attachment: Statement of Need and Reasonableness

Minnesota Board of Cosmetologist Examiners
STATEMENT OF NEED AND REASONABLENESS
In the Matter of Proposed Revisions of Minnesota Rule Chapters 2015 and 2110
Governing Licensing and Practice
Revisor's # 4552
OAH 71-9013-36146

ALTERNATIVE FORMAT

Upon request, this Statement of Need and Reasonableness (SONAR) can be made available in an alternative format, such as large print, Braille, or audio. To make a request, contact

Rebecca Gaspard at: rebecca.gaspard@state.mn.us or

1000 University Avenue W, Suite 100,

St. Paul, Minnesota, 55104

651-201-2751 (voice), or fax 612-617-2801.

Persons with hearing loss or speech disabilities may call the Board through their preferred Telecommunications Relay Service.

TABLE OF CONTENTS

Acronyms or abbreviations	4
1. Introduction.....	5
2. Statutory Authority	5
3. General Statement of Need.....	6
4. Public Participation and Stakeholder Involvement	6
5. Regulatory Analysis	7
6. Performance Based Rules.....	9
7. Additional Notice Plan for Notice of Intent to Adopt with or without a Hearing.....	9
8. Consultation with MMB on Local Government Impact.....	10
9. Determination about Rules Requiring Local Implementation.....	10
10. Cost of Complying for Small Business or City	10
11. List of Witnesses.....	10
12. Rule-by-Rule Analysis	10
13. Conclusion	21

Acronyms and Abbreviations

Administrative Law Judge	ALJ
Board of Cosmetologist Examiners	Board
Beauty Certified Education Association	BCEA
Minnesota Rules chapter 2105	Chapter 2105
Minnesota Rules chapter 2110	Chapter 2110
Designated Licensed Salon Manager	DLSM
Office of Administrative Hearings	OAH
Minnesota Management and Budget	MMB
Request for Comment	RFC
Salon and Spa Professional Association	SSPA
Statement of Need and Reasonableness	SONAR

1. INTRODUCTION

The Board of Cosmetologist Examiners proposes to adopt and amend new rules to remove unnecessary barriers to licensing and the practice of cosmetology. In addition, the Board seeks to clarify rules which have been subjected to multiple interpretations by licensees referring to the rules for guidance.

Background

The Board is the regulatory agency charged with the licensing and regulating of cosmetologists, manicurists, estheticians, advanced practice estheticians, eyelash technicians, salon managers, salons, instructors, school managers, and cosmetology schools in the Minnesota. The Board's mission is to protect the health and safety of the public in the practice of cosmetology (Minnesota Statutes, section 155A.21.)

Historically, regulatory responsibility for cosmetology began in Minnesota in 1927 with the establishment of the Board of Hairdressing and Beauty Culture Examiners. In 1971, the Board name changed to Board of Cosmetology. In 1981, regulatory authority transferred to the Commissioner of Commerce when the Board was eliminated by the legislature. In 2003, the licensing and regulatory responsibility transferred to the Barbers Examiners Board, renamed the Board of Barber and Cosmetologist Examiners. In 2009, the legislature created the current Board of Cosmetologist Examiners, which now consists of seven members appointed by the Governor and a small staff.

In late 2016, the Board completed a comprehensive overhaul of rules governing licensing and practice requirements for practitioners and salons in Minnesota Rules Chapter 2105. More than 500 rule changes were adopted by the Board (OAH 60-9013-31884) in the process.

In 2019, licensees and legislators raised issues with certain rule requirements that have caused the Board to again review the need and reasonableness of rules related to salon licensing. In addition, application of the amended rules over a two year period illustrated the need for additional clarification of certain rules. As a result, the Board proposes new and amended rules to allow for better administration of the Board's regulatory authority, and to allow alternatives to specific rules found too burdensome by licensees and legislators.

2. STATUTORY AUTHORITY

The Board's statutory authority to adopt these rules is stated in Minnesota Statutes, section 155A as follows:

A. §155A.26, which states:

The Board may develop and adopt rules according to chapter 14 that the board considers necessary to carry out sections 155A.21 to 155A.36

B. §155A.27 Subd. 2., which states, regarding licensing:

Qualifications for licensing in each classification shall be determined by the board and established by rule and shall include educational and experiential prerequisites. The rules shall require a demonstrated knowledge of procedures necessary to protect the health and safety of the practitioner and the consumer of cosmetology services, including but not limited to infection control, use of implements, apparatuses and other appliances,

and the use of chemicals.

C. §155A.29 Subd. 2., which states, regarding salons:

The conditions and process by which a salon is licensed shall be established by the board by rule.

D. §155A.29 Subd. 3., which states:

Minimum infection control standards for the operation of a salon shall be established by rule.

The Board has the necessary statutory authority to adopt the proposed rules.

3. GENERAL STATEMENT OF NEED

The Administrative Procedure Act, Minn. Stat. Ch. 14, requires the Board to establish the need for the proposed rules by an affirmative presentation of the facts.

After reviewing concerns raised by licensees, applicants, legislators, and the public, the Board identified potential alternatives to existing requirements that are less burdensome and identified unforeseen ambiguities in existing rule. For these reasons, the Board proposes rule amendments to continue to protect the health and safety of the public without imposing undue burdens on applicants and licensees, and to clarify application of certain rules.

4. PUBLIC PARTICIPATION AND STAKEHOLDER INVOLVEMENT

The Board published a Request for Comments (RFC) identifying topics of possible rule changes and inviting comments on any rule changes sought by interested parties in the *State Register* on March 4, 2019 (43 SR 1041).

The Board posted the RFC on the Board's website, posted information and links to the RFC about it on the Board's Facebook page, and emailed the RFC to all licensees with an email address. The Board also sent the RFC to the Salon and Spa Professional Association and Beauty Certified Education Association.

A total of 59 comments were received. In addition, the Board received more than 25 signatures attached to a request for a hearing. Individuals signing the hearing requests who left a legible address were informed that the Board had not yet proposed any specific rules that could be the subject of a hearing, that there were no applicable provisions for a hearing under the Administrative Procedures Act at this stage in the rulemaking process, and that there would be an opportunity to request a hearing after the Notice of Intent to Adopt Rules was published with proposed rules.

The possible rules were discussed at properly noticed meetings of the Board's Rule Committee in 2018 and 2019 and discussed at properly noticed meetings of the Board in 2018 and 2019.

At the July 22, 2019, Board of Cosmetology board meeting, the Board passed a resolution approving the rules as drafted, and authorizing the actions necessary to adopt the rules, including publishing a Dual Notice of Intent to Adopt Rules With or Without a Hearing.

5. REGULATORY ANALYSIS

Minnesota Statutes, section 14.131, sets out eight factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (8) below quote these factors and then give the

Board's response.

“(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule”

Classes of affected persons: The proposed rules will affect board licensees, including cosmetologists, estheticians, advanced practice estheticians, nail technicians, and eyelash technicians, designated licensed salon managers, salons, schools, instructors, and clients who receive cosmetic services. Because the proposed rules include clarification of salon licensing requirements in nursing homes and assisted living facilities, nursing homes and assisted living facilities are also affected.

Who will bear the costs of the proposed rules? Licensees and applicants for licensure will bear any potential costs associated with implementation or compliance with the proposed rules. In general, compliance with the proposed rule changes is not expected to cause new or additional costs. Where a particular proposed rule has a probable cost, that cost is discussed in the rule-by-rule analysis.

Who will benefit from the proposed rules?

Applicants for practitioner licenses will benefit because a current requirement that the applicant hold a high school diploma or equivalent would be removed, which eliminates a potential barrier to licensure. Individuals and businesses wanting to open new salons will benefit because reducing the potential number of sinks required for a salon may result in lower costs, and because a license required for salon licensure (designated licensed salon manager) will be easier to obtain because work experience requirements are eliminated. Applicants, licensees and the Board will benefit from the proposed rules amendments because improved clarity makes it easier to comply with requirements.

“(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues”

The probable costs to the Board are anticipated to be minimal and limited to minor changes in the licensing software and staff time for implementation.

There is no anticipated significant effect on state revenue, as the Board does not anticipate that the proposed rules will impact the numbers of applicants for initial application or renewal of licenses. Proposed rule provisions would allow new graduates of cosmetology training programs to apply for a salon manager license without first paying for an operator license. New graduates who choose to do so are likely interested in obtaining the salon manager license in order to immediately open a salon. The loss of the operator application fees would be more than offset by the additional salon licenses anticipated to be sought by the new graduate. In any case, the number of new graduates interested in applying for the salon manager license is likely to be too low to have any significant impact on revenue.

“(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule”

The Board has carefully considered any cost and burden of the proposed rules, and because proposed rule amendments reduce or eliminate requirements, has determined that costs to applicants would likely be reduced as a result of the proposed changes. There were no methods found that were less costly or less intrusive which would achieve the purposes of the proposed rules.

“(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule”

When an alternative method for achieving the purpose of the proposed rule was seriously considered by the Board, the reasons the alternative methods were rejected in favor of the proposed rule are discussed in the rule-by-rule analysis.

“(5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals”

The costs of complying with the proposed rules will fall on applicants and licensees. No costs would be borne by governmental units because governmental units are not subject to the proposed rules. Where a probable cost to compliance exists, the cost is discussed in the rule-by-rule analysis.

“(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals”

The consequences of not adopting the proposed rules includes the continuation of unnecessary requirements for licensure, which may result in increased costs in opening new salons, delays for new graduates seeking to open their own salon business, and continued expense and delays for applicants without a high school diploma who must obtain a GED before being licensed, and delays for foreign applicants who must pay for transcript translations and review. In addition, lack of clarity in a few specific rule citations will continue to leave licensees and applicants confused about requirements.

“(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference”

There are no existing federal regulations concerning the practice of cosmetology. The proposed rules do not address any issues or requirements in federal regulations and therefore there is no difference to discuss.

“(8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.”

The proposed rules address the regulation of cosmetology in Minnesota, which is not regulated by federal law. The Board is the only regulatory authority addressing cosmetology in Minnesota. Therefore, this consideration is not applicable for this rules amendment.

6. PERFORMANCE BASED RULES

Minnesota law (Minnesota Statutes, sections 14.002 and 14.131) requires that the SONAR describe how the Board, in developing the rules, considered and implemented performance-based standards that emphasize superior achievement in meeting the Board's regulatory objectives and maximum flexibility for licensees and applicants for licensure, and the Board in meeting those goals.

The Board was guided by performance based regulatory principles as it developed these proposed amendments. The proposed rules amendments help applicants and licensees to comply with requirements designed to protect the health and safety of the public. The Board believes the proposed rules amendments are performance-based to the extent possible because proposed amendments extend duties and burdens no further than is necessary to meet the Board's regulatory objectives and at the same time preserve optimal flexibility for the licensees and applicants.

7. ADDITIONAL NOTICE PLAN

The Board's Additional Notice Plan was reviewed by the Office of Administrative Hearings and approved by Administrative Law Judge Palmer-Denig on August 12, 2019. As part of additional notice, the Board will:

- Email every board licensee who has an email address listed with the Board with links to the Dual Notice of Intent to Adopt With or Without a Hearing, the draft rules, and the SONAR. Approximately 98% of our 39,000 licensees list an email address.
- Post information about the proposed rules on the Board's website and Facebook page with links to the Dual Notice of Intent to Adopt Rules, SONAR, and the draft rules.
- Offer a copy of the Dual Notice of Intent to Adopt Rules, along with copies of the draft rules and SONAR to visitors at the Board's office.
- Mail the Dual Notice of Intent to Adopt Rules, the SONAR, and the draft rules; or email the Dual Notice of Intent to Adopt Rules, along with links to the draft rules and SONAR to:
 - the Salon and Spa Professional Association and the Beauty Certified Education Association (professional associations for Minnesota licensed practitioners);
 - the Minnesota Office of Higher Education;
 - Care Providers of Minnesota
 - Aging Services of Minnesota
 - Minnesota Board of Nursing Home Administrators
 - Subscribers to interest group lists with the gov.delivery system
- The Additional Notice Plan also includes giving notice required by statute. We will email the Dual Notice of Intent to Adopt Rules with links to the SONAR and the draft rules to everyone who has registered to be on the Board's rulemaking mailing list under Minnesota Statutes, section 14.14, subdivision 1a. We will also give notice to the Legislature per Minnesota Statutes, section 14.116.
- The Additional Notice Plan does not include notifying the Commissioner of Agriculture because the rules do not affect farming operations per Minnesota Statutes, section 14.111.

- The Additional Notice Plan does not include notifying the Council on Affairs of Chicano/Latino People because the rules do not have a primary effect on Chicano/Latino people per Minnesota Statutes, section 3.922.

8. CONSULTATION WITH MMB ON LOCAL GOVERNMENT IMPACT

As required by Minnesota Statutes, section 14.131, the Board will consult with Minnesota Management and Budget (MMB). We sent MMB copies of the documents that we sent to the Governor's Office for review and approval on July 25, 2019. The documents sent included the Governor's Office Proposed Rule and SONAR Form; the proposed rules; and the draft SONAR. The Board will submit a copy of the cover correspondence and any response received from Minnesota Management and Budget to OAH with the documents it submits for ALJ review.

9. DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION

As required by Minnesota Statutes, section 14.128, subdivision 1, the Board has considered whether these proposed rules will require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules. The Board has determined that they do not because the proposed rules pertain to applicants and licensees, and do not pertain to local governments. Compliance with the rules falls on these applicants and licensees. Enforcement of the rules falls solely on the Board.

10. COST OF COMPLYING FOR SMALL BUSINESS OR CITY

Agency Determination of Cost

As required by Minnesota Statutes, section 14.127, the Board has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city. The Board has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business or small city. Where there is a cost to complying with a proposed rule amendment, the cost is discussed in the rule-by-rule analysis.

Because the rules do not apply to small cities, the Board determined that there is no cost to implementing the proposed rules for a small city.

11. LIST OF WITNESSES

In the event that a hearing is necessary, the Board anticipates the following witnesses, in addition to agency staff, may testify in support of the need for and reasonableness of the rules:

- Rhonda Besel, chair of the Board
- Stephen Adams, member of the Board

12. RULE-BY-RULE ANALYSIS

This section discusses each proposed change. Some rule parts are self-explanatory and thus necessary and reasonable on their face and, therefore, only explained briefly, while others are discussed in more detail to provide guidance in future rule application.

Repealed rule parts are denoted by ~~stricken~~ text.

2105.0010 Definitions

Renumbering: The repeal of certain definitions resulted in the re-numbering of current definitions as needed to retain an alphabetic order.

2105.0010 DEFINITIONS. ~~Subp. 7. Dispensary.~~ This definition is repealed because the term is no longer used under proposed rule changes.

2105.0010 DEFINITIONS. ~~Subp. 10a. Hair braider.~~

2105.0010 DEFINITIONS. ~~Subp. 10b. Hair braiding.~~

2105.0010 DEFINITIONS. ~~Subp. 10c. Hair braiding services.~~

These three definitions related to hair braiding are repealed because, in 2019, the legislature repealed provisions in Minnesota Statutes, section 155A.28 requiring the registration of hair braiders (Minnesota Session Law 2019, Chapter 10, Article 2, Section 27). The terms no longer need definition in rule. The definition of hair braiding is retained in Minnesota Statutes 155A.

2105.0010 DEFINITIONS. Subp. 11. Licensed services. This proposed rule amendment simplifies the definition by removing unnecessary language and removing a reference to hair braiding which is no longer relevant.

2105.0010 DEFINITIONS. Subp. 13. Unregulated service. This amendment references the hair braiding definition in statute and removes references to other hair braiding terms which are no longer relevant.

2105.0105 SCOPE OF PRACTICE. Subp. 2. Esthetics. This proposed rule amendment refers the reader to an existing definition of a term to provide better understanding of the rule. The amendment does not change the impact of the rule or add any additional requirements.

2105.0105 SCOPE OF PRACTICE. Subp. 5. Advanced practice esthetic services.

This proposed rule amendment refers the reader to an existing definition of a term to provide better understanding of the rule. The amendment does not change the impact of the rule or add any additional requirements.

2105.0110 ADVERTISING. Item E. This proposed rule amendment extends the title protection in current rule for esthetic and advanced practice esthetic licenses to all licenses issued by the Board. The use of qualifying terms with license titles implies additional training or certification requirements that do not exist and which may be misleading to the public. The amendment continues to include the alternate spelling of esthetician (“aesthetician”) in the title protection. Nationally, both esthetician and aesthetician are used to refer to persons providing cosmetic skin care. Aesthetician is defined as “a person licensed to provide cosmetic skin care treatments and services (such as facials, hair removal, and makeup application” in *Merriam-Webster’s online dictionary* (11th ed.), retrieved from <https://www.merriam-webster.com/dictionary/aesthetician>.

2105.0115 INSPECTIONS. Subp. 3 Posting inspection results. This proposed rule amendment addresses the existing requirement that inspection results must be posted in a salon and clarifies that the posted inspection report can’t be altered, resized, or only partially posted. The intent of the posting requirement is to make the inspection result visible to the public. Posting that are incomplete, too small to be read, or printed illegibly do not meet the intent of the original rule.

Additionally, the posting location is expanded to customer entrances in recognition that some salons have eliminated the reception area, and in recognition that some salons have more than one entryway. Using the term “customer entrances” clarifies that the inspection report should be posted at every entryway used by customers, which excludes employee only entrances.

Finally, rule changes adopted in 2016 anticipated a two-part inspection system with both an inspection result and an inspection report. The two-part inspection system was never implemented and the proposed amendment eliminates the references in rule to both parts to reduce confusion.

2105.0115 INSPECTIONS. Subp. 4. Inspection penalties and discipline.

This proposed rule amendment removes outdated references to penalties for offering regulated services in a salon not licensed for that licensed field. Salon licenses are no longer issued for specific licensing fields, and instead a single salon license covers all license fields. Penalties for offering a service for a different license field than the salon license are no longer applicable.

2105.0145 APPLICANTS FOR INDIVIDUAL LICENSES. Subpart 1. Cosmetologists, nail technicians, estheticians, and eyelash technicians.

The proposed rule amendments remove a requirement that applicants for licensure hold a high school diploma or equivalent and introduce a requirement that applicants must be at least 17 years old.

The high school diploma requirement proved to be an unnecessary barrier to applicants. Older persons who graduated from high school decades ago may no longer have documentation of their diploma and their school district, if still in existence, may not possess retained records from years past. Applicants from other countries often have difficulty establishing documentation of a high school diploma, especially when civil unrest, natural disasters, and political upheavals make retrieval of such documentation impossible or nearly impossible. Individuals disadvantaged by poverty, race, or difficult family situations may not have had the opportunity to complete a high school diploma. Although applicants may pursue a GED or other equivalent, it is generally considered more difficult to obtain a GED than a diploma, and a GED program may require time away from a job in order to complete the program and additional expenses. Finally, an applicant who successfully completes the theoretical training and practical requirements, as well as the testing requirements for licensure would meet requirements in place that establish the minimum competency necessary to protect the health and safety of the public.

If the Board were to propose a new rule requiring a high school diploma for licensure today, the Board would have difficulty establishing the need and reasonableness of such a requirement. More than 26 states do not require a high school diploma for licensure.

In the absence of a requirement for a high school diploma, the Board considered whether it was appropriate to establish a minimum age requirement for licensure. Age requirements in other states range from 16 years to 18 years. Students graduating from high school are typically 17 or 18 years old. After considering age requirements for cosmetology licenses in other states, the average age of students graduating from high school, and the hazardous substances and equipment that may be used in cosmetology services, the Board determined that a minimum age of 17 is appropriate.

2105.0145 APPLICANTS FOR INDIVIDUAL LICENSES. Subpart 1. Cosmetologists, nail technicians, estheticians, and eyelash technicians. Item D. This proposed rule amendment corrects an error in this rule. Consistent with Minnesota Rule 2110.0680, credits transferred from other schools are valid for 5 years, not 3 years as currently stated in this rule.

2105.0145 APPLICANTS FOR INDIVIDUAL LICENSES. Subp 1a Advanced Practice Estheticians. This proposed rule amendment removes an unnecessary provision because the provision exists in other rule parts. The change does not impose new burdens or requirements for applicants.

2105.0145 APPLICANTS FOR INDIVIDUAL LICENSES. Subp. 1a. Advanced practice estheticians. Item B. The proposed elimination of the requirement for a high school diploma and the new requirement for a minimum age are discussed in the rule-by-rule analysis of 2105.0145 Subp. 1.

2105.0145 APPLICANTS FOR INDIVIDUAL LICENSES. Subp. 2. Salon managers. Item A. This proposed amendment removes a work experience requirement for the salon manager license. Currently, an applicant must have an operator practitioner license, 2700 hours of work experience in a licensed salon, and passing results from a salon manager test on laws and rules related to salon compliance.

A salon manager license is required under two circumstances. First, before a salon license can be issued, the salon must have a designated licensed salon manager (DLSM) who assumes, with the salon, the responsibility of ensuring the compliance of the salon and all practitioners in the salon with rules and statute (MN Statutes section 155A.29 Subd. 2 and MN Rules 2105.0310). Secondly, a salon manager license is required before a practitioner can obtain a special event permit which allows limited provision of services outside of a licensed salon (MN Statutes 155A.275).

New licensees who wish to open their own salon and serve as their own DLSM, without first working in other salons to gain work experience, view the 2700 hours as an unreasonable barrier. The Board examined the reasoning behind the decades old 2700 work experience requirement and concluded that the work experience requirement was based on the historical responsibility of a salon manager, who in the past was expected to support new licensees by offering technical advise and oversight while licensees provided regulated services. With the evolution of salon business operations and the 2016 substantive rule amendments related to DLSMs, DLSMs play an entirely different role focused solely on compliance (MN Rule 2105.0305). An applicant who passes the salon manager test meets the minimum standard for knowledge and understanding of the compliance requirements. An applicant's work experience, or lack of work experience, has little impact on the applicant's ability to apply rule and statutory requirements.

2105.0145 APPLICANTS FOR INDIVIDUAL LICENSES. Subp. 2. Salon managers. Item B. This new proposed rule allows an applicant who is not yet licensed as an operator to apply directly for a salon manager license. The applicant must still meet the requirements for the operator and the salon manager licenses, but since no operator license would be issued is not required to pay for the operator license. The applicant must pay the salon manager license application fees. This provision is reasonable because the proposed changes in Item A eliminating the work experience requirements for salon manager licenses eliminates the need to first obtain an operator license while waiting to gain the work experience.

2105.0145 APPLICANTS FOR INDIVIDUAL LICENSES. Subp. 2. Salon managers. Item C. Now re-lettered as Item D, this proposed rule change simply reflects the removal of the work experience requirement in Item A.

2105.0145 APPLICANTS FOR INDIVIDUAL LICENSES. Subp. 4. Instructors. This proposed rule change addresses licensed instructors who are seeking an instructor license in a second field of licensure. With the addition of two new license fields in the past year (eyelash technology and advanced practice esthetics), instructors are now seeking instructor licenses in a second or third licensure field. An instructor has already met the training and testing requirements for an instructor license, and it is unreasonable to require the instructor to repeat the training course and the testing to gain an instructor license in a new licensure field. This rule provides that a licensed instructor only needs 2700 hours of practical experience in the new field to qualify for an additional instructor license.

2105.0145 APPLICANTS FOR INDIVIDUAL LICENSES. Subp. 5. Additional licenses. This proposed rule addresses currently licensed practitioners who are seeking a license in an additional licensure field. Because the licensee has already passed the test on laws and rules, it is unnecessary to require the licensee to retake the same test to qualify for a second license in a new licensure field.

~~**2105.0155 GRANDFATHERED ADVANCED PRACTICE ESTHETIC LICENSES.**~~

~~**Subpart 1. Grandfathering provisions for advanced practice esthetician operators.**~~

~~**Subp. 2. Grandfathering provisions for advanced practice esthetician salon managers**~~

~~**Subp. 3. Grandfathering provisions for advanced practice esthetician instructors.**~~

These rule parts contain provisions for a grandfathered advanced practice esthetic license and are repealed because the grandfathering provisions expired July 31, 2019 and are no longer applicable.

~~**2105.0155 GRANDFATHERED ADVANCED PRACTICE ESTHETIC LICENSES. Subp. 4. Student**~~

~~**grandfathering provisions for advanced practice esthetician licenses.**~~ This rule part contains advanced practice esthetic licensure grandfathering provisions for students and is repealed because the grandfathering provisions expire December 31, 2019. The board anticipates adopting these proposed rules in 2020, when this provision will no longer be applicable.

~~**2105.0182 GRANDFATHERED EYELASH TECHNOLOGY INSTRUCTORS.**~~

This rule part contains provisions for a grandfathered eyelash technology instructor license and is repealed because the grandfathering provisions expired and are no longer applicable.

2105.0183 TRANSFER OF LICENSES FROM OTHER STATES OR COUNTRIES. Subpart 1. This proposed amendment reflects the removal of the requirement for a high school diploma and the addition of a minimum age requirement as discussed under the rule-by-rule analysis of part 2105.0145.

2105.0183 TRANSFER OF LICENSES FROM OTHER STATES OR COUNTRIES. Subp. 2. Applicants with less than the required training who are licensed in another state. This proposed amendment reflects the removal of the requirement for a high school diploma and the addition of a minimum age requirement as discussed under the rule-by-rule analysis of part 2105.0145.

2105.0183 TRANSFER OF LICENSES FROM OTHER STATES OR COUNTRIES. Subp. 3. Applicants with training and experience in another country who have not been licensed in another state.

This proposed amendment reflects the removal of the requirement for a high school diploma and the addition of a minimum age requirement as discussed under the rule-by-rule analysis of part 2105.0145.

2105.0183 TRANSFER OF LICENSES FROM OTHER STATES OR COUNTRIES. Subp. 4a. Applicants with an advanced practice or master esthetician training or license from another state or country.

This proposed amendment reflects the removal of the requirement for a high school diploma and the addition of a minimum age requirement as discussed under the rule-by-rule analysis of part 2105.0145.

2105.0187 SKILLS COURSES. The proposed amendments to this part are related to providers that may offer a skills course. Students who completed licensure training 5 or more years before applying for a license are required to complete a skills course before applying for licensure, as are various applicants wishing to transfer their license or training from other states and countries. A skills course begins with an assessment of the practical skills of an applicant and includes any necessary remedial training to bring an applicant up to standards required for completion of training.

The proposed amendments to this part remove the provision for providers who are not licensed cosmetology schools, and limit course providers to licensed cosmetology schools that are approved to offer the full licensure course in the same license field as the skills course.

The skills courses were adopted in rule in 2016, and at that time there was a concern that schools might not choose to offer the skills course. If schools did not offer the courses, then applicants transferring from other states and countries would not be able to meet the requirements for license application. Students who completed training but failed to become licensed within 5 years would also not be able to meet the licensure requirements. The 2016 rule amendments anticipated a potential shortage of providers for skills courses, and provisions in rule were made for alternative providers.

However, schools are offering the skills course, there is no shortage of providers for the skills course, and no other provider has ever applied to offer the skills courses. It is reasonable to now restrict the skills course to those schools that have met the criteria to offer the full licensure course, because these schools are best positioned to offer the course. The schools have the equipment and facilities to offer the course, the school's instructors are experienced in assessing student performance in the skills test as required for the skills course, and the instructors are experienced in any necessary remedial curriculum for the relevant licensure field. In addition, the schools are subjected to audits and inspections to ensure compliance with rules and statutes.

2105.0190 MAINTAINING A LICENSE. Subp. 4. Display of license. This proposed amendment clarifies that the current requirement to post a license means posting the original license without alteration. Because the current rule did not qualify the requirement for licensure posting, licensees have posted altered licenses and licenses reduced in size. The clarification is reasonable and necessary to protect the integrity of the license and to ensure the objectives of the requirements for posting a license are met. The clarification does not impose any new burden on a license and will make it easier for a practitioner to both understand and comply with the rule.

2105.0190 MAINTAINING A LICENSE. Subp. 4. Display of license. Item B. This proposed rule amendment offers an alternative to posting the license at the reception area. Because some salons are moving towards a salon layout where there is no reception area, the proposed amendment offers posting at customer entrances as an acceptable alternative location for license posting.

2105.0190 MAINTAINING A LICENSE. Subp. 4. Display of license. Item D. This proposed amendment clarifies that when a licensee's name is posted, the licensee's name must be visible to the public. Current rule requires that when a license is posted in the reception area, either a duplicate license or the licensee's name must also be posted at the work station. It is reasonable to also apply the requirement that the public must have an unobstructed view of the license to a posted name.

~~**2105.0205 Retired License, Item C.**~~ This change repeals an outdated rule that cites a deadline that expired in July 2018.

2105.0215 PROCEDURE FOR RENEWING AN EXPIRED LICENSE. Subpart 1. Practitioner licenses expired less than three years. This proposed rule amendment addresses concerns raised by practitioners who are renewing expired licenses. License cycles are for three years and expire on the last day of the licensee's birth month. Under current rule, when an expired license is renewed, a license is issued a license for the remainder of the following license cycle. A license expiring January 2019, when renewed, will be issued a license that expires January 2022. If that same license is not renewed until December 2021, the licensee is still charged the full renewal fee and is issued a license that expires the next month in January 2022. The proposed rule change renews a license for a new three year cycle that starts the month the license is renewed, and ends the third year during the licensee's birth month. Under the proposed rule, that licensee renewing on December 2021 would receive a license valid until January 2024. The proposed rule change is reasonable because it does not unfairly penalize a licensee who does not renew the license until they are ready to return to work.

2105.0225 OUTSTANDING FEES OR PENALTIES. This proposed new rule addresses applicants and licensees who have unpaid civil penalties assessed under Minnesota Statutes 155A.33 Subd. 6 or have unpaid inspection penalties assessed under Minnesota Statutes 155A.25 Subd. 1a. It is reasonable and necessary to take appropriate action to enforce the provisions of Minnesota Statutes and Minnesota Rules, and it is consistent with the board's authority under Minnesota Statutes 155A. 33 Subd. 4 to refuse to issue or renew licenses in such circumstances. Placing the statutory provision in rule helps licensees understand the possible consequence of ignoring assessed penalties.

2105.0305 DESIGNATED LICENSED SALON MANAGER. Item C. This proposed amendment makes a minor change in wording to provide better clarity and does not impose new requirements or add any burden to the licensee.

2105.0305 DESIGNATED LICENSED SALON MANAGER. Item D. This proposed amendment removes confusion regarding the effective date of a notification to the board that a designated licensed salon manager (DLSM) has resigned. It also clarifies that a DLSM practicing on an expired license remains responsible for salon compliance during the lapse in their own practitioner license.

2105.0332 MAINTAINING A SALON LICENSE. Subp. 4. Maintain insurance. The proposed amendments create a list format of the existing rule for better clarity, and add a requirement that proof of the required professional liability insurance is maintained on the salon premises. This allows for better enforcement of this provision and is not overly burdensome. Professional liability insurance coverage is essential to protect the public if an adverse event occurs, enabling possible recovery of medical expenses and other damages to the client.

2105.0332 MAINTAINING A SALON LICENSE. Subp. 5A Remodel of Physical Premises. This new proposed rule addresses frequent questions from licensees regarding whether licensed salons must notify the board of any remodeling or expansions. The board determined that it is not necessary to require the salon to apply for approval from the Board for such changes. It is reasonable instead to require the salon to ensure that any changes in the salon layout or structure are in compliance with rules that are current at the time of the remodeling or change.

2105.0332 MAINTAINING A SALON LICENSE. Subp. 8. Change of Owner. This proposed amendment clarifies the requirements for licensing a salon with a new owner. When a salon business is purchased, it may have a current or an expired license. The current rule provides that a new owner who has purchased a salon has 60 days to obtain a license. The amendment clarifies that if the salon is not currently licensed at the time of purchase, the new owner may not operate the unlicensed salon until a new license has been obtained. This is consistent with requirements in Minnesota Statutes, section 155A.29, and applies the same requirements in rule to the owner who has purchased an unlicensed salon as are applied to any owner of a new salon business.

2105.0360 SALON PHYSICAL REQUIREMENTS ~~Subp. 5a. Dispensary.~~ This rule part is repealed. The requirements for disinfecting and sinks in Item A are moved to Subpart 6. The requirements in Item B related to preventing public access to hazardous substances by storing them in a closed cupboard are repealed. The hazardous products (hair dyes, acetone, perm solutions, disinfectants, etc.) in a salon are similar or identical to hazardous products found on the open shelves of grocery stores, drug stores, big box retailers, beauty supply stores, and other retailers. It is not reasonable to place more restrictions on access to the hazardous products when the products are located in a salon than when those products are located in a retail store. The potential threat to an unattended child, vulnerable adult, or adult is the same whether the product is in a salon or on the shelf at a retailer.

2105.0360 SALON PHYSICAL REQUIREMENTS Subp. 6. Designated Sinks and Disinfecting Areas in work areas. This rule part is amended to include sink and disinfecting requirements previously located in Subp. 5.

The rule part is also amended to provide an alternative to the current requirement that each work area have a handwashing sink. Licensees and various legislators have found the requirement for a sink in the work area to be too burdensome because sink installations can be expensive.

The proposed alternative allows the continuous provision of hand sanitizer as an alternative to the sink in each work area as long as the practitioner using the work area has continuous access to a sink for handwashing and disinfecting. Because licensees are required to wash hands before providing services and may only use alcohol based hand sanitizer as a substitute when their hands are clean and have no product residue (MN Rule 2105.0375, Subp. 2), and must wash hands

before donning gloves (MN Rule 2105.0375, Subp. 7, Item O), and must wash hands during any blood exposure incident (MN Rule 2105.0375, Subp. 5), access to a sink is critical. The Board considered maintain the requirement for a sink in the work area only when the designated sink was too far away to be practical, as measured in the number of feet between the work area and the sink. The Board also considered maintaining the sink requirement when a licensee would need to use doors or doorknobs to move between the sink and the work area, because touching doors could cause contamination and transmission of contaminants to clients. These options were considered to be too difficult to enforce, and potentially difficult for licensees to determine whether those conditions were met.

Allowing the provision of hand sanitizer as an alternative to a sink in a work area allows a salon to make a business decision about the practicality of sink locations, given that the current requirement to wash hands before providing a service without using sanitizer when the hands are dirty or have product residue is continued.

2105.0370 SALON OPERATIONAL REQUIREMENTS. Item B. This proposed amendment provides a performance measure for the current requirement regarding salon responsibilities to notify licensees of health and safety measures and procedures regarding the use of hazardous products in the salon. The current rule is silent regarding how often or when the salon should notify licensees, and the amendment proposes that the salon should do so at least once every 12 months. This is not unduly burdensome and is reasonable given that both products and licensees will likely change over time in a salon. The amendment also is reformatted to place the requirements in a list for better clarity.

2105.0370 SALON OPERATIONAL REQUIREMENTS. Item C. This proposed amendment adds an alternative to posting the salon license in the reception area, allowing the posting of the salon license at customer entrances.

2105.0375 INFECTION CONTROL. Subpart 1. Duties. This proposed amendment clarifies that the infection control requirements apply to all the tools and equipment located in the salon that could be used in a service regulated by the board. Salons and licensees sometimes defend citations for infection control violations with a claim that a particular unclean item or work area was meant for personal use or used for a service not regulated by the board. It may not be possible to establish whether a work station was used for unregulated services such as threading or for regulated services such as hair styling, or a whether a comb was used for unregulated braiding or regulated hair services, or whether an esthetic bed was used for unregulated massage services or waxing services regulated by the board. The amendment holds all areas and equipment in the licensed salon to the current infection control standards to better protect the health and safety of the public.

2105.0375 INFECTION CONTROL. Subp. 6. Storage of items. Items A and B. The proposed amendments in this part reorganize Item A into two parts (Item A and Item B) for reasons of better clarity. Requirements in former Item D are moved to Item B. No new requirements are added.

2105.0375 INFECTION CONTROL. Subp. 6. Storage of items. Item E. This new rule addresses a frequently asked question regarding proper storage of disinfected items. In preparation for a service, it is not uncommon for licensees to pull the necessary tools out of storage and place them

in readiness for the next service, which may be hours or days in advance. In order to ensure these disinfected tools and implements are not unnecessarily exposed to contaminants present in the salon, the rule proposes that tools laid out for upcoming services are covered with a cloth or paper towel until the service begins. The rule also requires that after the service, the towel is discarded and not reused.

2105.0375 INFECTION CONTROL. Subp. 7. Safety and infection-control practices. Item F. This proposed amendment addresses licensee questions regarding patch tests. Under current rule, when a manufacturer's directions *require* a patch test, licensees must inform the customer of the potential risks of the product use and offer the patch test. Licensees question whether the rule requirements apply when the directions *recommend or advise* a patch test. The proposed amendment clarifies that whenever a manufacturer's directions recommend, advise, or require a patch test, the rule requirements apply. It is reasonable and necessary to apply the requirements regardless of whether the patch test is recommended, advised, or required by the manufacturer. The intent of the original rule is to ensure that consumers are informed of potential risks and have access to a patch test. A potential risk is likely present whenever a manufacture mentions a patch test in the use directions. The proposed rule amendment is reasonable and necessary partly because it would be difficult to determine whether a mention of a patch test is a recommendation, a suggestion, or a requirement; because the rule requirement meets the board's responsibility to protect the health and safety of the public; and because explaining potential risks to a customer and offering a patch test is not unduly burdensome.

2105.0375 INFECTION CONTROL. Subp. 7. Safety and infection-control practices. Item O. This proposed rule amendment regarding requirements for wearing gloves consists of minor editing for clarity and repeats an existing rule requirement that requires licensees to follow manufacturer directions. It does not add any new requirements.

2105.0375 INFECTION CONTROL. Subp. 8. Laundered items. This proposed rule amendment consists of a format change for better understanding and does not add or change requirements.

2105.0375 INFECTION CONTROL. Subpart 12. Pedicure stations.

Item A. The proposed amendment specifies that the faucet and controls must also be disinfected between uses to prevent transmission of bacteria, viruses, fungus, etc. during services.

Item B. This section addresses the use of tub liners and delineates the process of cleaning and disinfecting a pedicure tub when a liner is used. This is reasonable and necessary because some practitioners believed the use of a tub liner meant that no cleaning and disinfection was necessary. Infections related to nail services remain a concern as evidenced by complaints filed with the board. Amendments to this part include three new requirements.

First, the proposed rule requires salons that use tub liners to use tub liners on all the pedicure tubs in the salon. This is reasonable and necessary so that all practitioners in the salon will follow the same procedures, avoiding potential confusion on the part of practitioners and inspectors over the disinfection status of any specific tub in the salon. Alternatively, if some tubs were used with a liner, and some tubs were used without a liner, it is likely that a mix of the two procedures (the requirements under Item A and the requirements under Item B) would occur, which could lead to incomplete infection control procedures. To avoid that, it would be then be reasonable to require each tub to be disinfected prior to use as if no liner was used. This would effectively

eliminate the perceived advantages of using a tub liner.

A second new requirement limits the liners that may be used to only those liners manufactured for use in a pedicure tub. This is a reasonable and necessary requirement because inspectors have found salons substituting garbage bags or other types of plastic bags which may be less expensive, but may not fit correctly or may tear, causing potential contamination.

The third new requirement that salons using liners to maintain a sufficient supply of liners on hand is similar to current rule requirements to maintain sufficient disinfectant and sufficient numbers of tools and implements to ensure the provision of safe services is possible.

The infection control requirements are also clarified to specifically require the cleaning and disinfection of faucet and controls or handles between uses to prevent transmission of bacteria, viruses, fungus, etc. during services.

Item C. A sentence is removed because the provisions are previously stated in other parts.

2105.0375 INFECTION CONTROL. Subp. 15. Salon Fixtures. Item E. This proposed rule amendment clarifies that in addition to cleaning and disinfecting fixtures weekly, the fixtures must also be cleaned and disinfected before use if visibly soiled. The amendment is reasonable and necessary as licensees have ignored visible soil as a reason for cleaning and disinfecting a fixture, relying instead on the weekly cleaning.

2105.0393 SALONS LOCATED IN PRIVATE RESIDENCES. This proposed rule amendment applies to salons in homes where the residential bathroom is shared with salon customers. Salons in homes are subject to the same requirements as salons in commercial spaces unless otherwise noted in this rule part. Salon requirements include access to a bathroom. Although the current requirement for storing hazardous products is proposed for repeal under parts, the Board proposes retaining that requirement in residential bathrooms shared with salon customers. Bathrooms in homes often include medicine cabinets, where prescription drugs including controlled substances may be stored. It is reasonable to require salons in these circumstances to keep medications and hazardous substances in locked cupboards. Because this amendment retains a current rule requirement, the amendment does not represent a new requirement and does not impose any new burden on home salons.

2105.0397 SUITE-STYLE SALONS. Subpart 1. Suite-style salons. This proposed rule amendment is a result of the change in sink requirements for salons discussed above in part 2105.0360. Suite-style salons (defined in MN Rule 2105.0010 Subp. 12a) are distinguishable from other salons because the physical structure more closely resembles an office building with many small offices. Each "office" is a suite leased by a licensee independently offering cosmetology services and acts as a self-contained salon. For reasons of proper infection control, licensees must have immediate access to sinks for disinfecting and handwashing. Because a common area sink in a suite-style salon may be literally hundreds of feet away from a suite, and because that common area may be shared by numbers of tenants, access to the sink depends on both the distance and time it might take to reach the sink for handwashing and disinfecting, and on whether the sink(s) is already in use by another tenant. For that reason, the proposed amendments to sinks in other rule parts are not applied to suite-style salons. The proposed amendment to this part retains the current requirement for a sink in the work area by repeating it in this rule part.

2105.0410 LICENSED SERVICES NOT OFFERED IN A LICENSED SALON. Subpart 1. Nursing homes licensed under Minnesota Statutes, chapter 144A. The proposed amendments to this part address both nursing homes and assisted living facilities. The amendment extends the exemption to salon licensing to assisted living facilities operating under Minnesota Statutes 144G. The proposed amendment also clarifies that a resident in an assisted living facility who receives assisted living services is homebound as defined in part 2105.0010 Subp. 10e. It is reasonable to clarify this because some assisted living facilities offer apartments where persons needing services may reside with a spouse or partner who does not require services and is not homebound.

In addition, the rule part is edited to reduce confusion but does not impose any other new requirements.

CHAPTER 2110

~~**2110.0010 Definitions, Subp. 17a. Hair braiding.**~~

~~**2110.0010 Definitions, Subp. 17b. Hair braiding services.**~~

~~**2110.0010 Definitions, Subp. 17c. Hair braider.**~~

These three definitions related to hair braiding are repealed because the legislature repealed provisions in Minnesota Statutes, section 155A.28 requiring the registration of hair braiders (Minnesota Session Law 2019, Chapter 10, Article 2, Section 27). The terms no longer need definition in rule. Minnesota Statutes, section 155A.28 retains a definition of hair braiding.

2110.0010 DEFINITIONS. Subp. 18. Licensed services. The proposed amendment to the definition eliminates a list of licenses and replaces the list with a single term for brevity, and does not change the meaning or application of the definition.

2110.0010 DEFINITIONS. Subp. 14. Dispensary. The proposed amendment to the definition removes the reference to salons, because proposed rule amendments mean that dispensary is no longer a term used in salon requirements in part 2105.0360. Dispensary requirements remain in effect in Chapter 2110 rules related to school licensing and operational requirements.

2110.0010 DEFINITIONS. Subp. 18. Licensed services. This proposed rule amendment simplifies the definition by removing unnecessary language and removing a reference to hair braiding which is no longer relevant.

2110.0100 UNREGULATED SERVICES. Subpart 1. Disclosure. This proposed rule amendment clarifies that unregulated services are those not regulated by the Board. The language removed indicates that unregulated services are not regulated by the state of Minnesota, which may or may not be accurate.

2110.0545 SKILLS COURSES. This proposed rule amendment replaces existing text with the text proposed for part 2105.0187 on Skills Courses. A skills course begins with an assessment of the practical skills of an applicant and includes any necessary remedial training to bring an applicant up to standards required for completion of training. Students who completed licensure training 5 or more years before applying for a license are required to complete a skills course, as are various applicants applying to transfer their license or training from other states and countries.

The proposed amendments to this part include limiting the course providers to licensed cosmetology schools that are approved to offer the full licensure course. The skills courses were adopted in rule in 2016, and initial provisions in rule were made to allow any licensed cosmetology schools to offer the courses. It is reasonable to restrict the skills course to those schools that have met the criteria to offer the full licensure course, and who have existing approved curriculum related to the skills course.

14. CONCLUSION

In this SONAR, the Board has established the need and reasonableness of the proposed amendments, repeal of rules, and new rules in Chapter 2105 and Chapter 2110. The Board has provided the necessary notifications and in this SONAR documented the Board's compliance with all applicable administrative rulemaking requirements of Minnesota Statute and Rules.

Based on the foregoing, the proposed rules, rule amendments and repeals of rules are needed and reasonable.

Signed on xxx x, 2019 by Executive Director Gina Fast