

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
OFFICE OF THE COMMISSIONER

In the Matter of the Proposed
Amendment of Rules Relating
to Cosmetology

SUPPLEMENT TO
STATEMENT OF
NEED AND
REASONABLENESS

After the publication of the Notice of Intent to Adopt Rules Without Hearing it was brought to the attention of the Department that a number of inconsistencies still exist in the rules over the title of the Administrative Agency and the Administrative Officer overseeing the regulation of the rules. The reason for this confusion is because of the recent history of this area. Prior to 1981 an independent and separate Board of Cosmetology existed. In 1981 the board's function was transferred to the Office of Consumer Affairs which was at that time part of the Department of Commerce then functioning under a Commerce Commission. There was an independent director of the cosmetology unit. In 1983 as part of the reorganization of the Commerce Department the Office of Consumer Affairs was for the most part transferred to the Office of the Attorney General. However, the cosmetology unit did remain in the Department of Commerce under the direct authority of the new Commissioner of Commerce. Accordingly internal references in the rules to "office", when in the past meant the "Office of Consumer Affairs", to "unit" to the "board" or other similar references should all be changed to "Department" or "Department of Commerce" to reflect present statutory scheme. For the same reasons the term "director" or similar references should be changed to "Commissioner" or "Commissioner of Commerce" as is appropriate. These changes are needed and reasonable to prevent any confusion as to the appropriate authority for regulation in the area of cosmetology. These references should have been corrected under the general statutory instructions to the Revisor's Office that were part of the reorganization bill for the new Department of Commerce in 1983. However, for whatever reason this was not done and it needs to be done at this time.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
OFFICE OF THE COMMISSIONER

In the Matter of the Proposed
Amendment of Rules Relating
to Cosmetology

STATEMENT OF
NEED AND
REASONABLENESS

STATEMENT OF AUTHORITY

The authority to promulgate rules for Minnesota Statute Chapter 155A is set forth in Minnesota Statute Section 155A.05 as well as Minnesota Statute Section 45.023.

I. BACKGROUND

A comprehensive set of rules governing the teaching, licensing, practice and regulation of cosmetology services in Minnesota were adopted in early 1983. These rules were promulgated as a result of the transfer of the authority for licensing and regulation of the former Minnesota Board of Cosmetology Examiners to the Director of the Office of Consumer Services on July 1, 1981.

Thereafter, by Act of the Minnesota Legislature, the Office of Consumer Services was, in part, transferred to the Office of Attorney General effective July 1, 1983. Responsibility for regulation of the cosmetology industry as required under Minnesota Statutes Chapter 155A was placed, however, under the newly formed Department of Commerce.

Since assumption of regulatory authority for the cosmetology industry, the Commissioner of Commerce and the staff of the Cosmetology Unit have been actively involved in enforcement of the existing cosmetology rules and have sought public comment as to their fairness, effectiveness and regulatory impact. Much input has been received from the Minnesota Cosmetology Advisory Council (MCAC), a eleven member citizen body appointed by the Commissioner pursuant to Chapter 155A, to advise him on matters relating to cosmetology. This council includes representatives of cosmetology training schools, practitioners and members of the public. The amendments to the cosmetology rules presented herein have been thoroughly reviewed and subsequently approved by MCAC.

Recommendations for amendments to the rules have also been received from individuals and professional associations

within the cosmetology industry. Among efforts to involve these persons and to solicit their response to the amendment proposed were the following:

1. During 1984, the Department amended the Cosmetology Rules as they pertain to individual practitioners and the maintenance and operation of cosmetology salons. Substantial changes were made to the rules at that time to make them more equitable and less burdensome to the individual practitioner. These changes were made without negatively impacting the regulation of the practice of cosmetology in Minnesota and resulted in an overall improvement in the Department's ability to properly regulate this industry. In the process of making these earlier amendments, it became apparent that there was a definite need to amend other cosmetology rules relating to the regulation of training schools. Also, during 1984 the Minnesota Legislature amended Chapter 155A to allow for the independent operation of salons for estheticians. These administrative and legislative changes have thus been incorporated into these proposed rules.
2. On July 1, 1985 at 10 S.R.1B, the Department published a Notice of Intent to Solicit Outside Opinions with regard to amending the cosmetology rules in the State Register. The notice was published as a result of the Department's ongoing review of the existing rules. The review pointed out a number of flaws and shortcomings in the existing rules which necessitated change.
3. The Commissioner and the staff of the Cosmetology Unit have met formally and informally with members of professional industry associations including the Minnesota Hairdressers and Cosmetologist Association and the Minnesota Cosmetology Schools Association to discuss proposed amendments to the rules. Input was received as to the effectiveness of the existing rules, impact of possible changes and improvements that would enhance regulatory effectiveness while limiting burdensome compliance requirements. These associations have been provided with copies of final proposed amendments and have indicated their support.

These efforts have resulted in a great deal of thoughtful, constructive suggestion and guidance in the development of these proposed amendments to the Minnesota Cosmetology Rules. The objective of maintaining sound regulation while limiting potentially onerous compliance requirements will be served by adoption of the changes proposed.

II. AMENDMENTS TO THE COSMETOLOGY RULES

Minnesota Rule 2640.0100. DEFINITIONS.

Subpart 22. Wet Disinfectant. Under the current rules only glass receptacles may be used to hold disinfectant solution in which cosmetology tools are sterilized. Due to advances in technology, new types of plastic receptacles are now available which meet the same sanitation standards as the original glass containers but are much less susceptible to breakage should they be dropped or otherwise damaged. These new containers are, therefore, safer and at that same time as sanitary as their earlier glass counterparts. The use of appropriate plastic containers will now be allowed by the proposed amendments to the Cosmetology Rules.

Minnesota Rule 2640.1100. EXAMINATION ADMINISTRATION.

Subpart 4. Re-exam Limit. This subpart is being reworded to make it clearer that a passing exam score is valid for twelve months. It removes the negative assertion of the earlier language and presents the rule in a straight forward fashion. This amendment makes the language more grammatically correct and straight forward.

Minnesota Rule 2640.1300. COSMETOLOGISTS, MANICURISTS, AND ESTHETICIANS.

This amendment simply deletes the word obtained and replaces it with the word completed in describing the requirements that must be met prior to licensing. The amendment makes the language of the rule clear and straight forward.

Minnesota Rule 2640.1400. MANAGERS.

The Minnesota Legislature during its 1984 Session authorized the creation of a separate license for esthetician salon. This amendment to the existing rules establishes a separate class of license for these practitioners.

Minnesota Rule 2640.1500. INSTRUCTORS.

Subpart. 1. Full Instructors. Under this change the number of hours of practical experience which a cosmetologist must have before being licensed as a cosmetology instructor has been reduced from 1,800 to 1,400 hours. This change is being made in part to accommodate the need for additional cosmetology instructors within the industry. Prior to being licensed as an instructor, a cosmetologist will have to have

nearly six months of practical full time experience as a practitioner. The cosmetology staff, in consultation with representatives of the industry and schools, believe that this will provide an adequate amount of practical experience for instructors and will be useful in passing this experience along to cosmetology trainees.

It should also be noted that prior to the development of the initial cosmetology rules in 1983, junior instructors were allowed to teach in cosmetology schools without the requirement of having first practiced within the industry. Their practical experience was essentially developed through working in school related clinics. The requirement in the original rules for 1800 hours of actual practical experience before qualifying for an instructor's license was designed to assure that teachers had an understanding of the type of environment that their students would be faced with upon graduation from school. Thus, the junior instructor license was phased out in favor of a single set of requirements for all instructors. The current amendment to the rules maintains this policy of requiring first hand experience as a practitioner prior to being licensed as an instructor, yet reduces the number of hours needed before licensing to a more reasonable level.

Minnesota Rule 2640.2000. PROCEDURE FOR ACTIVATING A LAPSED LICENSE.

Subpart 1. Procedure for Lapsed Licensee. The first amendment to this subpart makes the language grammatically correct and is therefore only a technical change.

This subpart is further amended to allow an individual practitioner to renew his or her license within three years after it has lapsed without re-examination. The current one year standard works a particular hardship on some individuals who may for one reason or another be required to discontinue their practice of cosmetology for an extended period of time. Without this change, a licensee would have to incur the costs of additional schooling and take a re-examination prior to re-activating his or her license. The extension of the period for reactivation of up to three years does not jeopardize an individual's ability to practice but does remove the burden of incurring the additional costs of unnecessary training.

Minnesota Rule 2640.3100. SCOPE OF RULES.

As noted earlier, the 1984 Minnesota Legislature authorized the licensing of esthetician salons. The amendment to this rule implements that legislation.

Estheticians, however, provide only skin care services and therefore esthetician salons will not be required to maintain all the tools and accessories necessary for the operation of a full service cosmetology salon. These exemptions are noted in the new language that is added to this rule.

Minnesota Rule 2640.3200. SALON LICENSURE.

Subpart 2. Application. Again, this amendment implements the legislation enacted during 1984 to allow the the licensing of esthetician salons.

Minnesota Rule 2640.3300. MAINTAINING A SALON OR-BOOTH LICENSE.

The requirement for a booth license is being deleted from the Minnesota Cosmetology Rules. Further explanation of this change is provided later in this statement. To make the language of the rules consistent the terms "and booths" is deleted from this section of the rules.

Minnesota Rule 2640.3600. SALON REQUIREMENTS.

Subpart 1. Location. The term esthetician salon is added to this section of the rules to implement the 1984 legislation authorizing establishment of these type of facilities.

Subpart 5. Change of Name. Under the current rules, when the name of a salon is changed, notification of that change must be made to the Department within 30 days. The amendment to this rule increases the number of days within which the Department must be notified from 30 to 60 days. This change allows sufficient time for a salon manager or owner to notify the Department of such a change prior to being in violation of the rules. This increase in the amount of time for notification does not in any way jeopardize salon regulation. The added time, however, will help to facilitate those situations where a change in ownership of a salon has taken place.

Minnesota Rule 2640.3700. PHYSICAL REQUIREMENTS.

Subpart 1. Space. This amendment to the rules adds a requirement of 110 square feet of working space for a one-practitioner esthetician salon. The new language is required as a result of the 1984 Legislature's authorization for the establishment of esthetician salons. This is in line with the amount of space required for a one-practitioner cosmetology salon, and takes into consideration the fact that less space is needed for an esthetician salon because of the reduced amount of facilities necessary for this practice.

Item B of this rule adds the terms "or an esthetician salon" to the existing requirement that there be 50 additional square feet of work space for each additional licensee simultaneously on duty in a salon. This amount of space is found to be the minimum requirement necessary for safe practice.

Minnesota Rule 2640.3900. OPERATIONAL REQUIREMENT FOR SALONS.

Item K(3) is amended to add the proper reference to the amount of germicidal detergent solution necessary to provide proper disinfecting of tools. The 1,600 PPM requirement is a standard within the industry and is thereby being adopted in these rules.

Item K(4) is amended to allow an alternative for disinfecting electric clippers. The change in the rule will allow the use of commercial disinfecting spray solutions in place of immersion of clippers. Again, this practice has become a standard within the industry and meets the health requirements for proper disinfecting of tools.

Minnesota Rule 2640.4000. SALON SUPERVISION.

Item B is changed to allow a single individual to be designated as a manager for more than one salon. This facilitates situations in which a person may work in more than one salon and does not limit their ability to do so. The rule, however, maintains the current standard that no manager may be concurrently responsible for more than one salon at a time.

This rule is further amended to allow for a licensed esthetician to serve as a manager in an esthetician salon and a licensed manicurist to serve as a manager in a manicurist salon. The requirement that only a cosmetologist may serve as a manager in any type of salon was overly broad and created a burden on those salons. Because a manager must understand the types of procedures which are being practiced in each particular type of salon, a person licensed in that type of practice has sufficient knowledge to carry out the duties of a manager.

Minnesota Rule 2640.4100. SPECIFIC TYPES OF SALON LICENSES.

Subpart 3. Esthetician and Manicure Services. This change implements the intent of the 1984 Legislature in authorizing the licensing of individual esthetician salons. It also limits the type of service that may be provided in each type of salon to either esthetician services or manicure services. Because the individuals performing these services need only have a limited number of hours of training in a particular field, it is inappropriate to allow other types of services to be performed within a specialized salon.

Subpart 7. Booth-license Independent Contractor.

The requirement for booth licenses is being deleted from the cosmetology rules as unnecessary and a regulatory burden. The objective of the cosmetology rules is to assure that cosmetology and related services are performed in a safe manner and under healthy conditions. The existing requirement that booth license be acquired before an individual can lease space in an existing salon and practice as in independent contractor extends far beyond the original intent of cosmetology regulation.

The amendment to this subpart, therefore, is designed to recognize a booth licensee's actual status as an independent contractor and limit the requirements of his or her activities in ways which are designed to protect the health and safety of the practitioner's clients but do not impose unnecessary or new bureaucratic administrative requirements. To operate as in independent contractor a licensee must have a current Minnesota manager's license, must meet the minimum requirements for adequate space for the provision of services, and provide evidence that there is adequate professional liability insurance coverage in place covering the lessee's activities. Finally, the owner or manager who rents space in a salon to an independent contractor is held responsible for assuring that the lessee is in compliance with the requirements of this rule during all time that the lease is in force and the independent contractor is providing services.

Minnesota Rule 2640.5100. COMPLIANCE BY PRESENT LICENSEES AND STUDENTS.

Subpart. 1. Scope. The phrase in the current cosmetology rules, "the effective date of these rules," is deleted and the date that the rules became effective is inserted in their place. This is a grammatical change which is done to reflect the actual date on which the rules became effective so outside sources do not have to be relied on for that information.

Subpart 3. Senior Instructor Licenses. The rules are amended to discontinue the license category earlier established for senior instruction licenses. Currently only one class of instructor license is issued by the Department. Existing senior instructor licenses will be phased out by January 1, 1988. Because junior instructor licenses are no longer issued, it is unnecessary to differentiate a senior instructor license class. Any individual currently holding a senior instructor license will have their license renewed as an instructor license only.

Other extraneous language in the rule is deleted as it is no longer operative.

Likewise, **Subparts. 2, 4, 5, and 9** which were originally included to facilitate the implementation of the original cosmetology rules are being repealed as unnecessary, extraneous or no longer effective.

Subpart 6. Salons and Booths, Temporary Exemptions. **Item A** is amended by deleting the current reference to subpart 7 of this rule. Subpart 7 is repealed and therefore the reference is inappropriate.

Subpart 7. Schools, Temporary Exemptions. This subpart is repealed because the language is outdated and no longer necessary. Its original purpose was to facilitate the implementation of the rules when they were first enacted. This language is no longer necessary.

Subpart. 8. Interpreters. The language of the original rules regarding their effective date is amended to reflect the actual date of their implementation which was April 1, 1983. Also the term "director" is replaced in favor of the term "Commissioner" which reflects the proper title for the administrative authority.

Subpart 10. Variances. The changes made to this subpart makes its language more grammatically correct and therefore easier to read and interpret. Also, this subpart also extends the authority of the Department to grant variances from the rules where there is a demonstrated physical limitation or economic hardship imposed by them. This authority allows for flexibility in the application of the rules while assuring that minimum health and safety requirements continue to be met by all salons and practitioners.

Minnesota Rule 2640.5200. SCHOOL LICENSURE.

Subpart 1. Application Contents. **Item D** of this rule is deleted as being unnecessary and burdensome. The Commissioner reviews the course content for all instruction conducted within cosmetology training schools. It is unnecessary, however, within this review to also review daily and weekly class schedules. An adequate review can be performed without the submission of unnecessary amounts of detailed technical information.

Item E is deleted and renumbered. This item is also amended to make it consistent with the earlier changes to the cosmetology rules which provide that facilities meet local requirements for zoning building codes fire codes and other appropriate ordinances. The Department believes that compliance with local building codes coupled with annual inspections by Department staff will provide the same health and safety protection to the public that now exists without the burden of meeting a state code which is not applicable in most areas of Minnesota.

Item J under this subpart is amended to delete the term "preparation" and insert the term "instruction." The term instruction is more descriptive of the training that is provided by a cosmetology school and is thereby more grammatically proper. The remaining items under this subpart are renumbered according to the amendments.

Minnesota Rule 2640.5300. MAINTAINING A SCHOOL LICENSE.

Subpart 2. Notification of Changes. Item A is amended to allow additional time for schools to notify the Department of changes in managerial or instructional staff. The current three day notice period is extended to ten days to allow sufficient time for school officials to provide this information to the Department without accidentally being placed in technical violation of the rules. This change allows additional time for mailing and processing of the information without placing a school in technical violation of the rules.

Item B is deleted as being an unnecessary regulatory burden. Inspections of schools are done on an annual basis and changes in any written material or advertising used to solicit prospective students are reviewed at that time. Schools are required to keep copies of these materials for five years after any amendment which provides adequate time and opportunity for review by Department.

Item E is deleted as being unnecessary and a potential invasion of privacy by the Department into the financial matters of cosmetology training schools. Likewise, the Department has only limited ability to adequately review these financial statements. The current requirement creates an unnecessary regulatory burden and is inappropriate.

Minnesota Rule 2640.5500. DELINQUENT SCHOOL LICENSES.

Item A is amended to delete the requirement for payment of a late penalty and replaces it with the payment of a required processing fee for reinstatement of an expired license. Processing fees will be charged for certain licensing activities which are outside the scope of the Department's usual licensing activities.

Minnesota Rule 2640.5800. BASIC REQUIREMENTS FOR SCHOOLS.

Subpart. 3. Employment of Licensed Instructors. The current rules allow for instruction to be provided by guest instructors or lecturers on an occasional basis. The rule is indefinite as to the amount of time that this type of instruction may constitute within a particular curriculum. The amendment to this subpart specifically provides that no more than three percent of the total course hours may

be given over to guest instruction and extra-curricular educational activities. This change sets a specific standard for teaching activities which are outside the normal course of the approved curriculum and also recognizes that certain extra-curricular educational activities provide a valuable learning experience for students. The purpose of this change is to allow for variations from the prescribed teaching curriculum without undermining the objective of providing a sound educational experience for cosmetology students.

Subpart 5. Change of Name. This rule is being amended to allow a school owner or manager to inform the Department of a change in the name of the school within 60 days of the effective date of the change. This is consistent with the amount of time that is allowed for notification of the office of a salon name change. Other amendments to this subpart are grammatical in nature and do not effect the meaning or intent of the language.

Minnesota Rule 2640.5900. FACILITIES REQUIREMENTS FOR LICENSURE.

The amendment to this rule is made to correct a revisor's error when the MCAR system was translated to the new Minnesota Rules system. The provisions of this rule have always been included in the requirements for facilities licensure. Thus, this change is a technical amendment.

Minnesota Rule 2640.6000. PHYSICAL REQUIREMENTS.

Subpart 1. Space. Item E has been deleted as the decision to provide an instructors' lounge is one which is most properly made by the various school owners. A lounge for students, however is still required under the rules.

Subpart 2. Entrances and Exits. The physical requirement for entrance and exit points has been changed to make it consistent with applicable local building codes and ordinances. This change is in line with the earlier amendments made to the cosmetology rules and places the determination of proper building construction on the appropriate government officials. Local building inspectors are best able to determine the numbers and locations of entrance and exit points in buildings within their jurisdiction.

Minnesota Rule 2640.6100. FIXTURES, FURNITURE, EQUIPMENT.

Item C. The requirement of one chair for each six enrollees has been increased to one chair for each ten enrollees. The new requirement is less burdensome and costly to the school while still providing an adequate amount of equipment available to each enrollee. The quality of the instruction received by the student is not impaired.

Item H of this rule is amended by deleting the last sentence which states that "each student's hours shall be recorded at the beginning and end of each day and before and after lunch." This sentence does not properly fall within the category of physical requirements and it is redundant of similar language appropriately located in the rule governing teaching procedures for cosmetology schools.

Minnesota Rule 2640.6300. ADVANCED TRAINING AND DEMONSTRATIONS.

Item B has been amended to provide a more specific reference to the part of the rules which governs the definition of community education classes. This is a technical change which makes the rule easier to understand and use.

Minnesota Rule 2640.6800. ESTHETICIAN TRAINING.

Item D is amended to delete the term "approximately." The presence of this term made the rule unnecessarily vague. Its deletion clears up any ambiguity as to the total number of hours of clinical instruction and experience required.

Minnesota Rule 2640.6900. MANICURIST TRAINING.

Item D under this rule has been changed to delete the term "approximately." This change removes any ambiguity that may exist in the rule.

Minnesota Rule 2640.7000. REFRESHER COURSES.

The requirements of this rule are being reduced to make it easier for persons or organizations who provide refresher courses to have those courses approved in a timely fashion. The requirement of notifying the Department of the proposed course has been reduced from 45 days to 10 business days prior to the course date. This provides adequate time for the Department to review the proposed course and yet does not create an unnecessary burden on the course sponsors. It also allows sponsors to offer courses where there may be a limited amount of time to train those persons who are required to take the refresher course.

Consistent with other amendments to these rules, the Department will no longer be a repository for numerous unnecessary forms and filings. Course sponsors and schools will be required to provide attendees with copies of appropriate course completion certificates. The attendees will in turn be responsible for providing evidence of their course completion to the Commerce Department as necessary for licensing renewal or other certification.

Minnesota Rule 2640.7100. CREDIT TOWARDS ANOTHER LICENSE.

Item D of this rule is amended to allow 100 hours of esthetician training to be counted toward the requirements for a manicurist license. Because much of the basic training in any cosmetology related field includes overlapping instructing, where basic training is for one type of license is the same as for another credit will be allowed toward either license application. In this instance, esthetician training requires additional credit hours beyond that which is required for a manicurist license. This training will, therefore, be allowed to count toward an application for a manicurist license.

Minnesota Rule 2640.7700. MANAGER.

Item A is amended to delete the restriction that only one person may be designated as a manager for each school. Experience has shown that this is an unnecessary restriction on schools where a particular individual could otherwise be designated as manager for more than one school so long as they meet the remaining requirement that a manager be responsible for overall operations of each school at all times. The rule retains the restriction that no manager may concurrently be responsible for more than one school or salon at a particular time. However, an identified manager may work in alternative schools or salons on different days.

Item D is amended to eliminate the requirement that the manager be held responsible for recruitment and advertising materials at a cosmetology training school. Because managers often have little to do with the development of recruitment or advertising materials, it is inappropriate to hold them responsible for the content of those materials. School owners, on the other hand, because they are generally involved in the development of these materials will be held responsible for making sure that the materials are properly prepared and correctly used. Thus, this amendment removes an inappropriate burden on the cosmetology school manager and places the burden where it should be.

Minnesota Rule 2640.7800. INSTRUCTORS.

Item A is amended to delete the term "direct" from the requirement for supervision of students by an instructor. This term has caused problems in its application in the past. Instructors are still required to supervise students at all times when they are in a classroom clinic or other area in which they are performing cosmetology services. However, the original intent of the rule was to assure that students have access to an instructor when necessary, and that person oversee student activities without necessarily being present at all times. Strictly interpreted, the rule would be impos-

sible to comply with and is thus open to arbitrary enforcement without this necessary change.

Item A(2) is amended to extend to time within which a school is required to notify the Department in writing of a failure to meet the required instructor quota. This period is extended from three to ten days to accommodate the time delays involved in processing, mailing and receipt of such notification. The change reduces the potential for technical violation of the rules, yet does not reduce the ability of the Department to properly regulate school activities.

Item D of this rule is amended to delete the requirement that instructors wear identification badges which carry their full name and title. Experience has shown there is the potential for harassment of instructors by clinic clients if they are able to learn a person's full name but then later attempt to contact that person at home or other locations. The use of a first name and the title instructor on badges is adequate for identification of these individuals should the need arise while services are being performed on a client or during a cosmetology inspection.

Minnesota Rule 2640.7900. ENROLLMENT CONTRACTS.

Additional requirements have been added to this rule to overcome difficulties that some students have experienced upon enrollment in or graduation from a cosmetology school. The enrollment contract must now state a starting date for schooling. This requirement is added to assure that the cosmetology student is included in the graduating class that he or she wants. This requirement also eliminates the possibility that a student would be "bumped" if a certain class was over-enrolled. It provides added protections for students and eliminates the possibility of a student not receiving the schooling that he or she has contracted for.

This rule also requires that the student be notified that the licensing examination is given only in English. It has been the experience of the Department that some students who do not speak English or who are not fluent in the language are allowed to train at a cosmetology school only to later find out that they are unable to take the examination test because they are unable to read it. This has resulted in a waste of tuition on the part of some students which will be eliminated by this requirement.

Minnesota Rule 2640.8200. STUDENT RECORDS. .

Item D of this rule is amended to assure that student records will be available in the event that a school is closed and the student still has need for accessing his or her

records. A school, upon closing, will be required to place student records with a custodian for a period of at least five years after the student has been terminated or has completed training. This new requirement will assure access by students to their records whether or not a school continues in operation.

The amendment to this rule also requires that students and former students be provided with copies of their records at the cost of duplication. A student's records may not be withheld from him or her by school officials, nor may school officials charge excessive costs in providing those records. The records must now be provided upon request and at minimal cost.

Item E of this rule is changed to eliminate the requirement of submission of student reports to the Department. Instead, the school will be required to maintain those reports for a period of up to five years for access by the student or the Department. This is designed to eliminate a large amount of unnecessary paperwork at the Department while continuing to assure that records are on hand and accessible to students and the proper authorities.

Item E(1) is also changed to eliminate the requirement that reports for cosmetology students be submitted to the Department. This is consistent with the change that eliminates the need to submit these reports to the Department but require their maintenance at the school.

Item E(5). Consistent with the other changes in this item, the certification of readiness to take the written exam will be provided by the school to the student rather than to the Department. The student will in turn be responsible for providing evidence of readiness to the Department at the time he or she wishes to take the written examination.

Item E(6) is amended to make the language of this paragraph more grammatically appropriate. This is a technical change which does not impact the rules.

Item E(7) is amended to require the cosmetology school to provide the student, rather than the Department, with a certification of training in situations where the student is suspended, expelled or otherwise terminates their education. The school will also be required to maintain a copy of the certification but will not be required to submit it to the Department. This is consistent with the change of policy in the rules which makes the school responsible for maintenance of student records and thereby eliminates the unnecessary requirement that the Department be provided with and keep on hand this information. The policy is designed to reduce paperwork and costs within the Department while, at the same time, assuring that adequate documentation of student activities is maintained and accessible.

Minnesota Rule 2640.8400. STUDENTS TO SUCCESSFULLY COMPLETE EXAMINATION WITHIN REQUIRED TIME.

The original rules required that cosmetology students be enrolled, complete their education and successfully complete an examination within no more than five years. The object of this rule was to assure that any student who undertook cosmetology training would remain current in the skills and knowledge necessary to practice and be able to successfully complete the licensing examination after having paid for and receiving the required training. The amendment to the rule focuses more correctly on the requirement that a license applicant pass the cosmetology examination. Training may be completed within any period of time without restriction on an applicant's ability to take an examination. The certification of successful completion of training will be valid for three years from the date of graduation. After this time a student will be required to take a refresher course to assure that he or she has the necessary skills to practice competently and to pass the examination.

The change in this rule was undertaken after a good deal of discussion with both students and instructors of cosmetology. It is believed that these changes will reduce any hardship that may occur in situations where a student will be unable to complete their training within five years due to financial difficulties or personal problems or preference. However, both practitioners and instructors believe that it is necessary to refresh a student's skills in situations where an individual has not been actively practicing for a period of more than three years. This is the maximum time that a person can away from the practice of cosmetology and still keep pace with the changes in this industry.

Minnesota Rule 2640.8500. TRANSFER STUDENTS.

This rule has been completely changed to eliminate the requirement that student records be provided to and maintained by the Department. Transfer students will not be required to get a copy of their certification of hours completed from the Department. Instead, this certification will be provided directly from one school to another upon request by the transferring student. Transfer of the records will be contingent only upon the students making arrangements to any outstanding tuition fees that may be due. The rules will also allow a nominal fee to be charged by the former school for providing certification and transfer of hours. Amendment of this rule eliminates unnecessary submissions on the part of schools and paper shuffling on the part of the Department. Likewise, it therefore enhances the ability of the Department to conduct its proper regulatory activities and reduces administrative costs.

Minnesota Rule 2640.8600. FULL COURSE OF INSTRUCTION.

The changes to this rule eliminate a conflict in the language of the current rule and add terms that make the new rule grammatically correct and consistent. The terms "unless licensed under provisions of Minnesota Statute, Chapter 155A" are deleted because their positioning in the rule acts as a qualifier on the terms "no student." This is inconsistent because students are not licensed under the provisions of the cosmetology laws. Likewise, additional terms that are added are simply designed to make the language the rule more clear and understandable.

Minnesota Rule 2640.8700. DISPLAY OF LICENSES.

Currently the licenses of all school personnel must include a picture of the licensee and the license must be placed at eye level in a conspicuous location within the reception area. The amendment to this rule will require only that the current license be conspicuously posted in the reception area. The requirement that the license include a photograph of the licensee is unnecessary to accomplish adequate regulation of schools. The removal of this requirement is consistent with an earlier amendment made to the rules governing the display of licenses within cosmetology salons. Likewise, the height at which a license is displayed is simply an unnecessary and inappropriate requirement. The objective of this rule is that licenses of school personnel be posted in a public area where they can be seen and examined by clientele or cosmetology inspectors. This amendment to the rule accomplishes that objective without being unduly specific.

The second sentence of this rule is rephrased to make it more grammatically correct and easier to understand. The amendment also allows school officials to determine where they wish to display their operating license. The intent of the rule continues to be served in that the school license must still be conspicuously posted.

Minnesota Rule 2640.8800. PRE-ENROLLMENT DISCLOSURES.

The first sentence of this rule is rephrased to clarify any ambiguity as to how enrollment information will be provided to prospective students. The materials will not be required to be included in any particular form of brochure, however, several specific items of information must be disclosed to a student prior to his or her enrollment in a school. Language is also added to the rule requiring that refund policies be discussed with a student prior to enrollment. The student must also acknowledge that he or she understands the refund policy. This language is added to inform the student prior to payment of tuition. It is designed to assure that prospec-

tive students fully understand their rights and obligations under the contract they enter with the school.

Additional amendments to this rule require that all materials used to solicit students must not be fraudulent or deceptive as required under Minnesota Consumer Protection laws. The school will also be required to keep copies of all solicitation materials on hand for five years from the last date of their use so that they are available for inspection by the Department.

Minnesota Rule 2640.8900. SCHOOL CLINICS.

Item E is amended to delete the requirement that certification of pre-clinical training be submitted to the Department. This is consistent with other amendments made to the rules which eliminate unnecessary filings and administrative expense. The intent of the rule, to assure that students do not perform clinical services until they have completed their basic training, remains in tact.

Item G provides a requirement that students and instructors wear identification badges at all times while they are on school premises. The requirement that student badges include the first and last name of the student is amended to allow a student to use only a first name for identification. This change is designed to protect the student's identity from clients who may attempt to make later contact with them outside the school setting. The use of a student's first and last name on an identification badge raises the potential for harassment by clients if they are able to locate a student or attempt to contact them outside the school.

The color coding requirement for student badges has also been deleted as being unnecessary and trivial. Schools will be allowed to designate various classes according to whatever color scheme they deem most appropriate. A standard color scheme is unnecessary for effective regulation of a school.

Item I is amended to make the proper reference to the standard for sanitation within a school setting. This standard is the same as that required of salons and is set forth in Rule 2640.3900, Item O.

Item J is amended to reflect earlier changes made in the cosmetology rules relating to salon practitioners. Under this item instructors must ensure that students observe the same standards of personal hygiene and safety as are imposed on salon practitioners. This requirement is presented in Rule 2640.3900, Item P. The amendment to this item reflects the correct correlation to the salon practitioner requirement.

Item K is amended by deleting the term "condition." This term is vague and ambiguous and its continued inclusion could lead to arbitrary enforcement of the regulations. The remaining terms achieve the objective of the item which is to assure that students are healthy and do not carry any diseases which could be passed along to clients, instructors or other students.

Minnesota Rule 2640.9100. FEE ADJUSTMENTS, LICENSING.

Subpart 1. Refunds. The language of this subpart is amended to reflect the refund policy of the Department of Commerce. Unnecessary and redundant language is removed to make the section clearer and more understandable.

Refunds will be provided in all specified instances, provided that a processing fee will be charged for ineligible applicants. Applicants should know if they are eligible or not. If the Department must expend time and effort reviewing an application that should not have been submitted the cost should be borne by the person unnecessarily generating that expenditure.

Minnesota Rule 2640.9200. FEE SCHEDULE.

Item A(3) deletes the worth "booth", one of the license categories because booth licenses have been terminated.

Item B penalties as stated in previous sections certain of the penalties for late filing and reinstatement were deemed to be inappropriate accordingly would be eliminated. Therefore, penalties pertaining to these particular sections have been deleted. The processing fee section has been amended to indicate the new items being charged for in regard to information supplied by the Department. Examination fees have been deleted as no longer being appropriate. In addition school name change fee has been deleted since a mere name change does not justify a hundred dollar fee merely for an insignificant change such as this.

Minnesota Rule 2640.9400. REQUEST FOR WAIVER.

Because persons by reason of medical necessity or other adequate reasons may from time to time find themselves unable to comply with certain specific rule requirements but may still be able to show sufficient compliance to meet the intent of the rules and statutes in regard to the cosmetology laws. Adequate provision must be given the commissioner to not impose an unduly harsh result by the rigid application of specifications of the rules. Accordingly this waiver provision is provided in the rules that would allow the commissioner to waive specific rule requirement where hardship of medical necessity is shown.

The repealer of part 2640.5100, subpart 2, 4, 5, 7, and 9 repeals rules that are no longer effective or appropriate. These were transitional provisions intended to allow for a gradual period of compliance after the original cosmetology rules were proposed several years ago. As subpart 6 and 8 are also transitional rules that are not intended to be continuing exemptions. Provisions for their repeal effective January 1, 1988 were also provided.

Small Business Consideration

Chapter 155A is applicable to licensees in the cosmetology field. These licensees are individual cosmetologists and others licensed under this chapter who work in salons, salon owners and operators and schools. By the nature of the industry virtually all of these licensees are within Minnesota Statutes § 14.115's definition of a small business. These rules were drafted with that in mind. No differing standard for small businesses is appropriate or contemplated since they are intended to apply to what are inherently small businesses.

To comply with Minnesota Statutes Section 14.115 the department did consider all of the criteria set forth in Subdivision 2 of that statute.

Item (a) of subdivision 2 requires the consideration of less stringent compliance or reporting requirements for small businesses. As noted above, these rules are presumed to apply to persons or entities that are small businesses. This item is therefore not applicable to these rules.

Item (b) requires the consideration of the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses. As noted above, these rules are presumed to apply to persons or entities that are small businesses. This item is therefore not applicable to these rules.

Item (c) requires the consideration of the consolidation or simplification of compliance or reporting requirements for small businesses. As noted above, these rules are presumed to apply to persons or entities that are small businesses. This item is therefore not applicable to these rules.

Item (d) requires consideration of the establishment of performance standards for small businesses to replace design or operational standards required in the rule. As noted above, these rules are presumed to apply to persons or entities that are small businesses. This item is therefore not applicable to these rules.

Item (e) requires the consideration of the exemption of small businesses from any and all requirements of the rule. As noted above, these rules are presumed to apply to persons

or entities that are small businesses. This item is therefore not applicable to these rules.

The drafting of the amendments involved the participation of members of the industry. These were primarily, if not entirely, small businesses. These rules are the second half of the two part amendment of all the cosmetology rules which began several years ago.

As noted previously, the Notice to Solicit Outside Opinions also requested input on the small business impact.

Despite the fact that small businesses were not separately considered in developing these rules, the intent of § 14.115 was more than adequately satisfied. The reason for the amendments was that the department had determined that the rules contained unnecessarily burdensome and restrictive provisions. The department undertook the revision of the rules to create a regulatory structure that would impose as light a regulatory burden as possible while still meeting its statutory obligations and protecting the public interest. Since the rules impact falls almost exclusively on small businesses, the result of the change will be of benefit to small businesses as § 14.115 intends.