



Minnesota Board of Cosmetologist Examiners

1000 University Avenue West, Suite 100 • Saint Paul, MN 55104
p: 651-201-2742 • f: 651-649-5702 • bce.board@state.mn.us • www.bceboard.state.mn.us

June 13, 2017

Legislative Reference Library
645 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, Minnesota 55155

Sent via email: sonars@lrl.leg.mn

Re: In The Matter of the Proposed Rules of the Board of Cosmetologist Examiners
Governing Advanced Practice Esthetics, and Proposed Amendments to Rules Governing
the Practice of Licensees and Curriculum Requirements for Cosmetologists and
Estheticians;
Revisor's ID Number 4342

Dear Librarian:

The Minnesota Board of Cosmetologist Examiners intends to adopt rules governing Advanced Practice Esthetics. We plan to publish a Dual Notice of Intent to Adopt Rules with or without a Public Hearing in the June 26, 2017, 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 Rebecca.Gaspard@state.mn.us or 651-201-2751.

Yours very truly,

Rebecca Gaspard
Policy Analyst

Enclosure: 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 Advanced Practice Esthetics
Revisor's # 4342



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 5

4. Public Participation and Stakeholder Involvement 6

5. Regulatory Analysis 6

6. Performance Based Rules..... 8

7. Additional Notice Plan for Notice of Intent to Adopt with or without a Hearing 9

8. Consultation with MMB on Local Government Impact. 9

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..... 14

Acronyms and Abbreviations

Administrative Law Judge	ALJ
Advisory Committee on Advanced Practice Esthetics	ACAPE
Advanced Practice	AP
Board of Cosmetologist Examiners	Board or BCE
Beauty Continued Education Association	BCEA
Minnesota Rules chapter 2105	Chapter 2105
Minnesota Rules chapter 2110	Chapter 2110
Code of Federal Regulations	CFR
Minnesota Department of Labor & Industry	DOLI
Designated Licensed Salon Manager	DLSM
Food and Drug Administration	FDA
Office of Administrative Hearings	OAH
Occupational Health and Safety Administration	OSHA
Minnesota Management and Budget	MMB
National Coalition of Estheticians, Manufacturers/Distributors & Associations	NCEA
Section (Minn. Stat. Section)	§
Salon and Spa Professional Association	SSPA
Statement of Need and Reasonableness	SONAR
US Food and Drug Administration	FDA

1. INTRODUCTION

The Board of Cosmetologist Examiners proposes to adopt new rules and amend its current rules to provide for the advanced practice esthetic license, as directed by the legislature. Minnesota Session Laws 2015, Chapter 77, art 2, s 81(b) directs the Board to "...adopt rules governing the advanced practice esthetician license, including the educational and training requirements, scope of practice, and the conditions and process of issuing and renewing the license".

Background

The Minnesota Board of Cosmetologist Examiners (BCE) 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.

2. STATUTORY AUTHORITY

In addition to Minnesota Session Laws 2015, Chapter 77, art 2, s 81 (b), the Board's additional 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.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.
- C. §155A.29 Subd. 3., which states:
Minimum infection control standards for the operation of a salon shall be established by rule.

Under the session law and the statute, 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.

The Minnesota Legislature directed the Board to develop rules for the advanced practice esthetic license (see Minnesota Session Laws 2015, Chapter 77, art 2, s 81(b)).

4. PUBLIC PARTICIPATION AND STAKEHOLDER INVOLVEMENT

The Board published a Request for Comments (RFC) on the Advanced Practice (AP) esthetic licenses in the State Register on February 22, 2016 (40 SR 1033). As part of the Board's Additional Notice Plan, approved by Administrative Law Judge Ann C. O'Reilly on February 11, 2016, the Board posted the RFC on the Board's website, posted information about it on the Board's Facebook page, and emailed the RFC to licensees with an email address. The Board also sent the RFC to SSPA, BCEA, the Minnesota Board of Medical Practice, and the Minnesota Medical Association as noted in the approved Additional Notice Plan. A total of 31 comments were received.

In the fall of 2016, the Board appointed an Advisory Committee on Advanced Practice Esthetics (ACAPE) with 13 participants. Participants included licensed cosmetologists, licensed estheticians, salon owners, esthetic instructors, and representatives of a professional association, the Minnesota Medical Association, and the Dermatology Association of Minnesota.

ACAPE met 12 times beginning in October 2016, to discuss the scope of practice for the AP esthetic license, possible grandfathering provisions, and provide input on issues related to curriculum and safety issues. ACAPE members represented diverse and sometimes conflicting interests, and were tasked by the Board with providing input and consensus recommendations on matters related to the AP esthetic licenses. The charge to ACAPE, ACAPE membership, and the final consensus recommendations from ACAPE are found in Appendix A. In addition, ACAPE input and recommendations are addressed as applicable in the rule-by-rule Analysis beginning on page 10.

AP esthetic rulemaking was discussed at properly noticed meetings of the Board's Rule Committee in 2016 and 2017, and discussed at properly noticed meetings of the Board in 2016 and 2017.

At the May 8, 2017 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 licensed estheticians, licensed cosmetologists, licensed esthetic and cosmetologist salons, schools, instructors, and clients who receive esthetic services.

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. 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?

Licenseses working in esthetic salons will benefit because the rules address health and safety issues related to advanced practice esthetic salons. The public who will receive advanced practice esthetic services will benefit from the rules related to proper training and licensure requirements because such rules will affect the health and safety of those receiving services. Applicants for an advanced practice esthetic license, schools, and the Board will benefit from the proposed rules amendments because greater transparency makes it easier to comply with requirements and to predict the outcome of applications for licensure, renewal applications, and inspections. Licenseses will benefit from the clarifications in scope of practice to ensure their practice is within the proper scope.

“(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 a one-time cost estimated to be approximately \$21,800 for changes to the Board’s licensing software programs, under the current vendor (less than 2% of the Board’s budget for Fiscal Year 2017). The software changes are necessary to address the new AP esthetic licensure requirements and renewal requirements.

There is no anticipated significant effect on state revenue, as the Board does not anticipate the new advanced practice esthetic licenses to draw in new salons or schools. The Board anticipates that some individuals who are currently licensed as estheticians or cosmetologists will apply for the advanced esthetic license under proposed grandfathering provisions. While this would result in a one-time boost in application fees, the anticipated small number of licenseses paying application fees for the AP esthetic license will result in an insignificant increase to the state general fund. Changing license classification will not result in a net increase in licenses issued. There may be a number of licensed cosmetologists who decide to both maintain a cosmetology license and an advanced practice esthetic license, but the Board anticipates this number will be too small to impact the licensure revenues to the state’s general fund.

“(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 has sought input from interested parties, including ACAPE and those contemplating obtaining an advanced practice esthetic license or operating an advanced practice esthetic salon. 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 for the advanced practice esthetic license and on schools offering an advanced practice esthetic license. 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”

There are no probable costs to not adopting the rule, other than potential litigation costs to the state should prospective licensees opt to litigate the Board’s failure to comply with the legislative directive to adopt rules. Without rules establishing the requirements for advanced practice licensure, the Board would be unable to issue advanced practice licenses.

The probable consequences of not adopting the proposed rules are:

- the Board would not be in compliance with the legislature’s directive to adopt rules on advanced practice esthetics.
- potential injury and health risks to persons receiving advanced esthetic services from untrained individuals, and resulting financial liability to licensees, and business owners of salons providing such services.

The consequences of not adopting the proposed rules changes will be borne by the public, licensees and applicants for licensure, clients, and the Board.

“(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, or the provision of advanced esthetic services. 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 BCE, 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.

BCE 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 Ann O'Reilly on May 30, 2017. As part of additional notice, the Board will:

- Email the Dual Notice of Intent to Adopt With or Without a Hearing, along with links to the draft rules and SONAR to every cosmetologist and esthetician, and every cosmetology school, school manager and instructors who has an email address listed with the Board. Approximately 94% of our 39,000 licensees list an email address.
- Post the Dual Notice of Intent to Adopt Rules on the Board's website and Facebook page with links to the draft rules and SONAR.
- 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. The Board averages 225 walk in applicants and licensees a month.
- 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 Board of Medical Practice;
 - the Minnesota Medical Association; and
 - the Minnesota Dermatological Society.
- 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 May 16, 2017. The documents sent included: the Governor's Office Proposed Rule and SONAR Form; the proposed rules; and the 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 for advanced practice esthetic licensure, 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. The Board consulted with Judy Garcia, a licensed esthetician, salon owner, and a member of the Advisory Committee on Advanced Practice Esthetics (ACAPE). Ms. Garcia stated that the cost of complying with the proposed rules would not exceed \$25,000 in the first year.

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, will testify in support of the need for and reasonableness of the rules:

Rhonda Besel, chair of the Board

Mary Finnegan, member of the Board

Judith Garcia, esthetician, salon owner, and member of ACAPE

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 addition of new definitions resulted in the re-numbering of current definitions as needed to retain an alphabetic order.

“Active license” is reasonably defined for the purposes of eliminating confusion in rules between license statuses, which can be current, expired, current and retired, or expired and retired. The definition is included in proposed rules as housekeeping measure, and does not impose any new requirement or burden on applicants or licensees.

“Advanced exfoliation” is reasonably defined to differentiate between exfoliation methods that fall under the esthetician license, and those exfoliation practices that require an advanced practice esthetician license. ACAPE supported this definition.

“Autoclave” is reasonably defined to differentiate between various devices that allegedly sterilize items, such as UV contraptions labeled sterilizers, and devices that actually sterilize by relying on the distinction of FDA approved devices.

“Chemical Peels” is repealed as the term has been deleted in proposed rule.

“Electrical Energy Treatments” is reasonably defined to clarify the types of treatments utilizing various devices included in the scope of practice for Advanced Practice esthetics.

“Lymphatic Drainage” is reasonably defined to clarify the term to eliminate any confusion. ACAPE supported the definition.

“Primary exfoliation” is reasonably defined to distinguish between primary exfoliation services which fall into the scope of basic esthetic practice and advanced exfoliation services which fall into the advanced practice esthetic scope. The definition limits the exfoliation services to those that impact only the stratum corneum layer of the epidermis.

Exfoliation methods include both manual and mechanical means, as well as chemical, enzyme, or combination peels. Peels will fall into either this exfoliation category or the advanced exfoliation category dependent on variables such as acidity level, PH level, combinations of buffering ingredients, application method, application time, and other variables. These variables determine whether a peel is superficial and removes only the uppermost layer of the epidermis (stratum corneum layer) or whether the peel removes more layers down to the dermal-epidermal junction (defined as an advanced exfoliation method).

“Sterilization” is reasonably defined to distinguish sterilization from disinfection, and is a necessary definition because the proposed rule requirements include sterilization.

“Unregulated services” is amended to include, as an unregulated service, lymphatic drainage treatments when performed by a massage therapist. It is not the intent of the Board to attempt to regulate the practice of massage therapists who are currently providing lymphatic massage treatments. While lymphatic services, massages, and treatments are also provided or prescribed by medical personnel, it was unnecessary to repeat the exemption to the Board’s regulation of cosmetology as cited in Minnesota Statutes, section 155A.34 which clarifies that the practice of medicine is exempted from the regulation of cosmetology.

In a housekeeping amendment to this rule, the word "which" was replaced with "that" for reasons of better clarity.

“Work area” is reasonably amended to replace the list of services with the word “regulated” to avoid the necessity of amending rules to add each license type of services when new licenses are created in statute. The change does not add any new restrictions to applicants or licensees, and falls under the housekeeping category of proposed rule changes.

2105.0105 Scope.

Subp. 1. Cosmetology. This proposed amendment clarifies that cosmetology services do not include advanced practice (AP) esthetic services. It is appropriate to make this distinction because previously, the cosmetology license was an umbrella license with esthetic and nail services part of the scope of practice for a cosmetologist. The AP esthetic services are not included in the theory and practical education required of the cosmetology curriculum and training, and as a result, are outside the scope of general cosmetology services. As noted in the rule-by-rule analysis of proposed rule amendments to Subp. 2 and Subp. 3, further clarification on the scope of practice for cosmetologists, estheticians, and nail technicians is needed because of the rapid increase in a variety of services that appear cosmetic but aren’t regulated by the Board. Microblading is an example of such a service. Involving surgical blades (penetrating beyond the stratum corneum of the epidermis), pigment is inserted into the skin in the eyebrow area. Like other forms of permanent makeup, this is

regulated as body art by the Minnesota Department of Health.

The proposed amendment in this subpart, and repeated in subparts 2 and 3, clarifies that the use of any tool or equipment meant to penetrate beyond the stratum corneum is out of scope of practice.

2105.0105 Scope.

Subp. 2. Esthetics. As discussed above under Subp. 1, the proposed amendment in this subpart, and repeated in subparts 1 and 3, clarifies that the use of any tool or equipment that is meant to penetrate beyond the stratum corneum is out of scope of practice.

Additional proposed amendments to this part reflect the separation of primary esthetics (esthetics) and advanced practice esthetics (AP esthetics).

Item A: This change removes the reference to using devices or apparatuses to avoid confusion between the scope of esthetic practitioners and AP esthetic practitioners. The use of most devices will fall under the new AP esthetic license. ACAPE reached a consensus agreement supporting this change in the current esthetic scope of practice

Under this change, galvanic current treatments are removed from the esthetic scope of practice and moved to the new AP esthetic scope. Galvanic current treatments utilize a low-level, medium amperage direct electrical current. Such treatments logically fall within the proposed AP esthetic scope, which includes electrical energy treatments.

This change is reasonable and needed for two reasons. First, the increasing number of types of esthetic services demanded by consumers are straining the limited 600 hour curriculum for esthetic training. Schools have found it a challenge to address the increased market emphasis on exfoliation services and waxing services (including the 2016 rule changes in clinical waxing services) for the basic esthetic program within the allotted curriculum hours. Salons have complained that newly licensed estheticians and cosmetologists are inadequately prepared to provide such services. Placing electrical energy treatments, including galvanic current, in the scope of AP esthetics will allow more time in the basic esthetic curriculum to adequately educate and train students in basic esthetics, and to practice basic exfoliation and waxing services in the school clinic.

Secondly, although galvanic current treatments are part of the current esthetic curriculum, most of the licensed schools are able to give only an introduction to the theory and either limited or no time at all to the practice of galvanic treatments. A significant number of cosmetology programs (which includes esthetic training) do not include galvanic and other electrical energy equipment or treatments in clinic services offered in the school's clinic where students practice treatments.

This change in scope is not expected to have a significant impact on currently licensed estheticians because of the grandfathering provisions included in the proposed rules. Most estheticians practice in a spa environment, or in conjunction with medical treatments in skin clinics. Spa environments typically focus on facials, exfoliation, hair removal, and basic skin care treatments, and rarely offer galvanic current treatments. Skin clinics focus on cosmetic and medical treatments for aging skins and various skin conditions, and are more likely to offer galvanic treatments in conjunction with other services.

Item B: This proposed change also removes the word “appliance” to avoid confusion with the practice of AP esthetics, and clarifies the exception to devices, that being the use

of skin cleansing devices such as a sonic skin cleanser that utilizes motorized brushes. Basic cleaning of the skin remains in the esthetic scope of practice.

Item C: No change proposed.

Item D: The proposed amendments in this item replaces two types of exfoliation (“microdermabrasion” and “chemical peel”) with the broader term “primary exfoliation”.

Primary exfoliation services includes chemical peels, enzyme peels, manual means of exfoliation and any other exfoliation method which limits the depth of the exfoliation to the stratum corneum layer of the epidermis. This change allows the separation of those exfoliation services addressed in the training and practice requirements for the esthetic license from those advanced exfoliation services in the scope of the advanced practice esthetic license, and is also discussed on page 10 under the definitions of primary exfoliation and advanced exfoliation.

Item E: The proposed rule amendments clarify that other personal services in this scope are those that occur on the stratum corneum layer of the epidermis.

2105.0105 Scope.

Subp. 3. Nail technician services.

Item F. This proposed rule amendment adds a clarification that nail technicians must not use equipment to penetrate the skin. This is a reasonable clarification recommended by ACAPE. This does not impose a new restriction to licensees, but is an effort to clarify the boundaries of the scope of practice for licensed nail technicians.

2105.0105 Scope.

Subp. 4. Advanced practice esthetics. This proposed rule identifies the scope of advanced practice (AP) esthetics and limits the practice area to the epidermal layer of the skin. Below the epidermal layer is the dermis, which is living skin. Services which access the dermis and deeper layers of the living skin are outside the scope of the AP esthetic practice. ACAPE supports this proposed scope of practice.

Item A: This proposed rule identifies advanced exfoliation (defined in proposed rule) as within the scope. Advanced exfoliation treatments include chemical peels, microdermabrasion, dermaplaning and other services designed to remove all or part of the epidermis. These services provide cosmetic enhancement of the skin, and can be safely provided to the public with the required theoretical and practical training for the AP esthetic licensure.

Item B: This proposed rule identifies electrical energy treatments and gives common examples of such treatments. Electrical energy services provide cosmetic enhancement of the skin, and with the required theoretical and practical training for the AP esthetic licensure may be safely provided to the public.

Item C: This proposed rule specifies that lymphatic drainage is a part of AP esthetic practices. While basic lymphatic massage techniques are taught in esthetics as part of a facial service so that application movements do not run counter to the lymphatic system, a cosmetic lymphatic drainage service is focused on moving lymph to reduce inflammation and redness.

Item D: This proposed rule clarifies that other cosmetic care services on the epidermal layer of the skin are within the scope of AP esthetic practice, and provides a means to

determine whether future new cosmetic services and equipment fall into this scope of practice.

2105.0110 Advertising.

Item C: This proposed rule change is a housekeeping item intended to clarify that appointment reminder cards and business cards, etc. that have the name of the salon as listed on the license may use only the first name of the licensee. The intent of the current rule, implemented in September 2016, was to ensure that the card contained sufficient information to establish the licensed status of the advertiser. The unintended consequence was that salons that use a business card for an appointment reminder card interpreted the rule as prohibiting the cards unless the full name of the licensee was included. This clarification is reasonable and provides more flexibility for salons and licensees, while meeting the original need for the rule, and does not increase the burden on individuals or salons.

Item E: This proposed rule stems from ACAPE discussions and concerns regarding the apparently providers of various cosmetic medical services such as laser treatments and dermafillers, who represent themselves as medical estheticians, medical aestheticians, or clinical estheticians. These licenses do not exist under the Board of Cosmetologist Examiners, which has regulatory authority over the practice of esthetics, or under the Board of Medical Practice, which has regulatory authority over the practice of medicine. The use of such titles suggests that the service provider has specialized training and licensure in both cosmetic and medical fields, and is misleading to the public.

2105.0115 Inspections.

Subp. 4. Inspection penalties and discipline. The proposed amendments to this part are the replacement of the term “current” with the newly defined term “active” in each of four occurrences. This is a minor housekeeping amendment and does not change the impact of the amended rules.

2105.0145 Applicants for individual licenses.

Subp. 1. Cosmetologists, nail technicians and estheticians.

Item D: Throughout this item, the amendments change “course certificate” to “course completion certificate” for reasons of clarity. The change is a housekeeping change and has no impact on the requirements for applicants.

Subp. 1A. Advanced practice estheticians. This proposed rule explains that an applicant holding a salon manager license in another license category (cosmetologist salon manager, esthetician salon manager, and nail technician salon manager) who meets the application requirements for an AP esthetician is granted an AP esthetician salon manager license. This is reasonable because the applicant already met the additional experience and testing requirements for the salon manager licenses, and it is unnecessary to require the licensee to meet the same requirements (work experience and testing) a second time.

The proposed rule also clarifies that an AP esthetician license replaces an esthetician license when application requirements are met. This is reasonable because the AP esthetic license incorporates the scope of the basic esthetic license, making it unnecessary to maintain both licenses.

Item A: This proposed rule applies to applicants who hold an active underlying license, and identifies four requirements for application.

- (1) This establishes that a completed application form is required, and is a needed and necessary requirement that does not provide any new cost burden. The use of an application form standardizes the presentation of the applicant’s credentials for more

efficient application review and processing by the Board.

- (2) This proposed rule identifies the tests required for the AP esthetic license, consistent with the theoretical and practical testing requirements of other licenses. The tests help to ensure that the applicant has the minimal knowledge and practical skills necessary to protect the health and safety of the public.
- (3) This proposed rule explains that the applicant must have completed the curriculum required for the AP esthetic licensure, and identifies the specific documentation required from the schools. The proposed rule also explains that if it has been more than five years since the training was completed, the applicant must update the training by taking a skills course. The five year breakpoint is consistent with current application requirements for other licenses, and is reasonable to ensure that the applicant's knowledge and skills are up to date. The skills course, as outlined in current rule 2110.0545, is a means of establishing that the applicant's practical skills meet the current minimums. AP esthetics is a rapidly advancing field, and it is reasonable and appropriate to ensure that the practical skills are consistent with current technology. Curriculum and training requirements are established in proposed rule 2110.0525.
- (4) This proposed rule regarding the payment of licensing fees required in statute is consistent with all licensing application requirements.

Item B: This proposed rule applies to Minnesota applicants who completed the training program for the AP esthetic license and who are not currently licensed. It includes, in items 1-7, the requirements for the AP esthetic license as identified in Item A, and the current requirements in part 2105.0145 Subp. 1 for the underlying cosmetologist or basic esthetic license. This provision allows a student to enroll in one combined course including both the underlying license training and the AP training, providing more flexibility for both applicants and schools.

- (1) This establishes that a completed application form is required, and is a needed and necessary requirement that does not provide any new cost burden. The use of an application form standardizes the presentation of the applicant's credentials for more efficient application review and processing by the Board.
- (2) This proposed rule explains the documentation necessary to establish the applicant holds a high school diploma or equivalent, which is a current rule requirement (part 2105.0145, Subpart 1) for the underlying license that is a prerequisite.
- (3) This proposed rule identifies the currently required training for the underlying prerequisite license as a cosmetologist or esthetician, as required in current rule 2105.0145, Subpart 1 D(2) or (3). The requirement assures that the applicant has the underlying knowledge base that is the prerequisite for the AP esthetic license.
- (4) This proposed rule identifies the currently required testing for the underlying prerequisite license as a cosmetologist or esthetician, as required in current rule 2105.0145, Subpart 1 D(2) or (3). These tests are the theoretical test, the practical test, and the Minnesota laws and rules test.
- (5) This proposed rule identifies the tests (theoretical and practical) required for the AP esthetic license, consistent with the theoretical and practical testing requirements of other licenses. The tests help establish whether an applicant has met minimum qualifications necessary to protect the health and safety of the public by ensuring minimal knowledge and practical skills related to the practice of the AP esthetic license.
- (6) This proposed rule explains that the applicant must have completed the AP esthetician curriculum required for the AP esthetic licensure, and identifies the specific documentation required from the schools. The proposed rule also explains that if it has been more than five years since the training was completed, the applicant must update the training by taking a skills course. The skills tests, as outlined in current rule part 2105.0187 are a means of establishing that the applicant's practical skills meet the

current minimums. Esthetics is a rapidly advancing field, and it is reasonable and appropriate to ensure that the practical skills are current. Curriculum and training requirements are established in proposed rule 2105.0187.

- (7) This proposed rule regarding the payment of licensing fees required in statute is consistent with all licensing application requirements.

Item C: This proposed rule part applies to applicants who completed the underlying esthetic or cosmetology training in another state without obtaining the underlying license before completing the AP esthetic training in Minnesota. The requirements for these applicants are identified in 1–7, and are a combination of existing requirements for the underlying licensure in Minnesota, and the new requirements in proposed rule for the AP esthetic license.

- (1) This establishes that a completed application form is required, and is a needed and necessary requirement that does not provide any new cost burden. The use of an application form standardizes the presentation of the applicant’s credentials for more efficient application review and processing by the Board.
- (2) This proposed rule explains the documentation necessary to establish the applicant holds a high school diploma or equivalent, which is a current rule requirement (part 2105.0145, Subpart 1) for the underlying license that is a prerequisite.
- (3) This proposed rule identifies the required training for the underlying prerequisite license as a cosmetologist or esthetician, as required in current rule 2105.0145, Subpart 1 D(2) or (3).
- (4) This proposed rule identifies the required testing for the underlying prerequisite license as a cosmetologist or esthetician, as required in current rule 2105.0145, Subpart 1 D(2) or (3).
- (5) This proposed rule identifies the tests required for the AP esthetic license, consistent with the theoretical and practical testing requirements of other licenses. The tests help establish whether an applicant has met minimum qualifications necessary to protect the health and safety of the public by ensuring minimal knowledge and practical skills related to the practice of the AP esthetic license.
- (6) This proposed rule explains that the applicant must have completed the curriculum required for the AP esthetic licensure, and identifies the specific documentation required from the schools. The proposed rule also explains that if it has been more than five years since the training was completed, the applicant must update the training by taking a skills course. The skills course, as outlined in current part 2110.0545, is a means of establishing that the applicant’s practical skills meet the current minimums. Esthetics is a rapidly advancing field, and it is reasonable and appropriate to ensure that the practical skills are consistent with current practices. Curriculum and training requirements are established in proposed rule 2110.0525.
- (7) This proposed rule regarding the payment of licensing fees required in statute is consistent with all licensing application requirements.

Item D: This proposed rule part applies to applicants whose underlying esthetic or cosmetology license is from another state, who are not licensed in Minnesota, and who have completed their AP esthetic training in Minnesota. It also clarifies that applicants with an AP esthetic license from another state apply under a different rule part as a transfer applicant. Again, the requirements, listed in 1-9, are a combination of the current rule requirements for transferring an underlying license in part 2105.0183, and the requirements in proposed rule for an AP esthetic license.

- (1) This establishes that a completed application form is required, and is a needed and necessary requirement that does not provide any new cost burden. The use of an application form standardizes the presentation of the applicant’s credentials for more

efficient application review and processing by the Board.

- (2) This proposed rule reiterates the current rule requirements (part 2105.0183) for applicants of any license who have been licensed previously in another state, and treats out of state licensed applicants for the AP esthetic license consistently with applicants for other licenses. It requires, from states where the applicant holds a license, a verification of the license status, disciplinary history, and the standards (testing and training) met by the applicant in gaining the out of state license, to establish whether the applicant has met the requirements for the underlying, prerequisite training.
- (3) This proposed rule explains the documentation necessary to establish the applicant holds a high school diploma or equivalent, which is a current rule requirement (part 2105.0183) for licensure in Minnesota.
- (4) This proposed rule identifies the required theoretical testing for the transferring prerequisite license as a cosmetologist or esthetician, as required in current rule 2105.0183. A testing vendor under contract with the Board administers the tests.
- (5) This proposed rule identifies the required practical testing for transferring the prerequisite license as a cosmetologist or esthetician, as required in current rule 2105.0183. A testing vendor under contract with the Board administers the tests.
- (6) This proposed rule identifies the Minnesota laws and rules test required of all new license applicants transferring from another state in current rule part 2105.0183, and ensures the applicant is familiar with Minnesota laws and rules under which the Minnesota license is issued.
- (7) This proposed rule identifies the tests required for the AP esthetic license, consistent with the theoretical and practical testing requirements of other licenses. The tests help establish whether an applicant has met minimum qualifications necessary to protect the health and safety of the public by ensuring minimal knowledge and practical skills related to the practice of the AP esthetic license.
- (8) This proposed rule explains that applicants must have completed the curriculum required for the AP esthetic licensure, and identifies the specific documentation required from the schools. The proposed rule also explains that if it has been more than 5 years since the training was completed, the applicant must update the training by taking a skills course. The skills course, as outlined in current rule 2110.0545, is a means of establishing that the applicant's practical skills meet the current minimum. Esthetics is a rapidly advancing field, and it is reasonable and appropriate to ensure that the applicant's practical skills are consistent with current practices. Curriculum and training requirements are established in proposed rule 2110.0525.
- (9) This proposed rule regarding the payment of licensing fees required in statute is consistent with all licensing application requirements.

2105.0145 Subp. 2. Salon Managers, Item B. This proposed rule amendment replaces “current” with “active”, consistent with the new proposed definition, and adds the AP esthetic license to the list of licenses that may serve to meet the prerequisite for a salon manager license.

2105.0145 Subp. 3. School Managers, Item B. This proposed housekeeping rule change replaces “current” with “active” consistent with the proposed definition of “active”.

2105.0145 Subp. 4. Instructors.

Item B: This proposed housekeeping rule amendment replaces “current” with “active”, consistent with the proposed definition, and adds the AP esthetic license to the list of licenses that may serve to meet the prerequisite for a salon manager license.

Item C: This proposed housekeeping rule amendment adds the AP esthetic license to the list of licenses that may serve to meet the underlying license requirement for the instructor

license.

2105.0155 Grandfathered Advanced Practice Estheticians.

The grandfathering requirements are consistent with ACAPE recommendations, allowing some flexibility for practicing estheticians and cosmetologists. The requirements allow those licensees who have been providing services that are now within the scope of the advanced license to qualify through their experience or through testing.

Subp. 1: This proposed rule identifies the requirements to be grandfathered from an esthetician or cosmetologist operator's license to an advanced practice (AP) esthetician operator's license. The proposed rule provides a reasonable deadline providing approximately 6 months from the anticipated effective date of the proposed rules to take advantage of the grandfathering provisions. The proposed rule also clarifies that a cosmetologist may retain the cosmetologist license when issued an AP esthetic license, because the cosmetology license scope does not include any AP esthetic services. A cosmetologist may wish to retain the cosmetology license necessary to provide cosmetology services.

Item A: This establishes that a completed application form is required, and is a needed and necessary requirement that does not provide any new cost burden. The use of an application form standardizes the presentation of the applicant's credentials for more efficient application review and processing by the Board.

Item B: This proposed rule clarifies that the applicant must currently hold the necessary prerequisite underlying license for the advanced practice esthetic license. The purpose of grandfathering is to provide persons who are already providing services that fall into the scope of the new license with a means to continue to do so without meeting the full training and testing requirements of the new license.

Item C: This proposed rule provides two options to qualify for a grandfathered esthetic license. The first option requires work experience over a 3-year period representing experience in three or more specific AP esthetic services including both advanced exfoliation and electrical energy services. Applicants who do not have the work experience may opt to qualify by passing the theory and practical tests as a means of establishing the necessary base knowledge level to provide the advanced practice esthetic services safely. This is a reasonable option because some licensees will have a more narrow range of experience in the proposed scope of practice for the advanced license, and may not meet the experience qualifications. Providing a testing option allows those licensees to qualify by demonstrating the theoretical and practical knowledge necessary, and allows such licensees to remain in their current employment status.

Item D: This proposed rule regarding the payment of licensing fees required in statute is consistent with all licensing application requirements.

Subp. 2: Grandfathering provisions for advanced practice esthetician salon managers. The proposed rules in this part for salon managers are identical to the provisions for grandfathering operators, as discussed in Subpart 1 above.

Subp. 3: Grandfathering provisions for advanced practice esthetician instructors. This proposed rule explains that a currently licensed cosmetology or esthetician instructor may apply for a grandfathered AP esthetician operator or salon manager license to qualify for a grandfathered instructor license.

Applicants with an esthetician instructor license meeting the grandfathering requirements for an AP esthetician license will be issued an AP esthetic instructor license replacing the esthetic instructor license. Applicants with a cosmetology instructor license meeting the grandfathering requirements for an AP esthetician license will receive an AP esthetic instructor license in addition to the cosmetology instructor license. Such individuals may retain the cosmetology instructor license because it allows instruction in fields (cosmetology and nail technology) in addition to AP esthetics.

Item A: This establishes that a completed application form is required, and is a needed and necessary requirement that does not provide any new cost burden. The use of an application form standardizes the presentation of the applicant’s credentials for more efficient application review and processing by the Board.

Item B: This proposed rule clarifies that the applicant must currently hold an esthetic or cosmetology instructor license in order to receive a grandfathered AP instructor license. Individuals not currently qualified as an instructor are not eligible for a grandfathered instructor license.

Item C: This proposed rule requires the underlying AP esthetic operator or salon manager license, as the underlying license is a consistent requirement for all instructor licenses. It is necessary and reasonable to require the possession of the skills and knowledge in the subject matter taught.

Item D: This proposed rule simply requires the licensing fees required by Minnesota Statute.

2105.0183 Transfer of license from other states or countries.

Subp. 1:

Item C: This proposed housekeeping rule amendment removes the term “current” and replaces it with “active”, consistent with the new proposed definition of active.

Subp. 2:

Item B: Item C: This proposed housekeeping rule amendment removes the term “current” and replaces it with “active”, consistent with the new proposed definition of active. The amendment also adds “completion” to clarify the course certificate required to verify training.

Item D: This proposed housekeeping rule amendment removes the term “current” and replaces it with “active”, consistent with the new proposed definition of active.

Item F: This proposed housekeeping rule simply adds the word “test” to “general theory” to add clarity and does not add any new requirement.

Subp. 4: The proposed housekeeping rule amendment replaces the word “current” with “active” as consistent with the proposed definition.

Item B: This proposed housekeeping rule amendment removes the term “current” as it is no longer necessary under the proposed definition of active, and adds “advanced practice esthetician” to the list of licenses that can be used to qualify for the instructor license.

Item E: This proposed housekeeping rule amendment removes the term “current” as it is no longer necessary under the proposed definition of active, and adds “completion” to clarify the course certificate required to verify training.

Item F: The proposed housekeeping rule amendment replaces the word “current” with “active” as consistent with the proposed definition.

Item G: The proposed housekeeping rule amendment replaces the word “current” with “active” as consistent with the new definition.

Subp. 4a. This proposed rule applies to applicants who wish to transfer an advanced practice esthetic or similar license from another state or country.

Item A: This proposed rule requires the applicant to apply to a school as a transfer student for the purpose of having their training and experience evaluated, consistent with current rules in part 2105.0183 addressing applicants from another state or country applying for other Board licenses. The scope of practice for master or advanced esthetic licenses from other states varies from the proposed scope of the Minnesota AP esthetic license. The varied scope is reflected in the training requirements for those states. It is reasonable to evaluate whether the training received meets the Board’s requirements for the proposed scope of practice for the Minnesota AP esthetic license.

Item B: This establishes that a completed application form is required, and is a needed and necessary requirement that does not provide any new cost burden. The use of an application form standardizes the presentation of the applicant’s credentials for more efficient application review and processing by the Board.

- (1) This proposed rule explains the documentation necessary to establish the applicant holds a high school diploma or equivalent, which is a current rule requirement (part 2105.0183) for licensure in Minnesota that is equally applicable to such applicants.
- (2) This proposed rule reiterates the current rule requirements (parts 2105.0183) for applicants of any license who have been licensed previously in another state, and treats out of state licensed applicants for the AP esthetic license consistently with such applicants for other licenses.
- (3 &4) These proposed rules apply existing standards for licensure for cosmetology, esthetic and nail technician licenses to the AP esthetic license, requiring theoretical and practical testing for the underlying license being transferred.
- (5 &6) These proposed rules apply the same requirements for the theory and the practical tests for the AP license applied to in-state applicants. It is reasonable to use testing to ascertain whether an applicant possesses the necessary knowledge to safely provide AP esthetic services.
- (7) This proposed rule requires the Minnesota state laws and rules test to ensure the applicants are aware of the requirements for licensure and practice.
- (8) This proposed rule simply refers to the licensing fees required under statute.

2105.0184 Military Temporary License

Subp. 1. This proposed rule adds “advanced practice esthetician” to the list of licenses that can be issued as a military temporary license.

Item C: The proposed housekeeping rule amendment replaces the word “current” with “active” consistent with the new definition, and adds the advanced practice esthetic license to the licenses that qualify for the military temporary license.

2105.0187 Skills Course.

Item A: The proposed rule amendment simply adds the advanced practice esthetic skills course to the list of skill courses.

Item C: The proposed rule amendment adds the advanced practice esthetic skills course to

the list of skill courses.

2105.0190 Maintaining Individual Licenses.

Subp. 1: The proposed housekeeping rule amendment replaces the word “current” with “active” consistent with the new definition of current.

Subp. 4: This proposed housekeeping rule amendment replaces the term “current” with “active” consistent with the new definition of current.

Item C: This proposed housekeeping rule amendment replaces the term “current” with “active” consistent with the new definition of current.

2105.0200 License Renewal for Individuals.

Subp. 2: This proposed housekeeping amendment adds “continuing education” to (CE) for reasons of clarity.

Item A: This rule part is proposed for repeal because it refers to requirements in effect prior to August 1, 2017, and that date will be in the past and no longer applicable when these rules are adopted.

Subp. 2a:

Item A: This proposed amendment repeals a requirement that expires August 1, 2017 because that date will be in the past and no longer applicable when these rules are adopted.

2105.0205 Retired License. The proposed housekeeping rule amendment replaces the word “current” with “active” consistent with the new definition of current.

Item B: The proposed housekeeping rule amendment replaces the word “current” with “active” consistent with the new definition of current.

2105.0215 Procedure for Renewing an Expired License.

Subp. 3, Item A: The proposed housekeeping rule amendment replaces the word “current” with “active” consistent with the proposed definition of active.

Subp. 4, Item A: The proposed housekeeping rule amendment replaces the word “current” with “active” consistent with the proposed definition of active.

2105.0305 Designated Licensed Salon Manager.

Item G: This proposed rule clarifies that an AP esthetician salon manager may serve as the Designated Licensed Salon Manager (DLSM) for either an esthetic or an AP esthetic salon. It also clarifies that a cosmetologist salon manager, who under current rule qualifies as a DLSM for any salon, would still qualify as a DLSM for cosmetology salons, esthetic salons, and nail salons but would not qualify to serve as a DLSM for an AP esthetic salon. This is needed and reasonable because the cosmetology license scope does not include the practice of the AP esthetic license.

2105.0310 Salon Licensure Application.

Subp. 1: This housekeeping rule amendment corrects an error in the rule citations listed. The rule incorrectly includes part 2105.0401 as a rule that salon applicants must meet. Part 2105.0401 is not related to any requirement for salon licensure and refers to services that are not provided in a licensed salon.

Subp. 1a: This proposed rule amendment adds AP esthetic salons to the lists of salon licenses, and identifies the type of services (esthetic and AP esthetic) that may be offered in an AP licensed

salon.

Subp. 2: This proposed rule amendment replaces a list of types of salon licenses with a generic reference to simplify the rule.

Item H: This housekeeping amendment adds a citation to the reference to the Minnesota Workers' Compensation Act, and does not add change or add a new requirement.

Item K: This rule amendment clarifies that a salon's designated licensed salon manager (DLSM) must meet the requirements of part 2105.0305, which as discussed above, includes a rule amendment to sort out the types of salon manager licenses that qualify for the DLSM position in various types of salon licenses. This is needed and reasonable because the new AP esthetic license does not fall under the umbrella of a cosmetologist license. Previously, a cosmetologist could serve as a DLSM for any type of salon license because the cosmetology scope of practice included all the other practitioner licenses. The AP license represents a new license not included in the cosmetology scope of practice, necessitating this clarification in DLSM qualifications.

2105.0322 Maintaining a Salon License.

Subp. 5: This proposed rule edits a listing of types of salon licenses with simpler language in the interests of avoiding the need to avoid a growing and lengthy list of types of salon licenses. It does not change the impact or effect of the rule but makes it easier to understand.

Subp. 10: This proposed rule amendment incorporates changes proposed to part 2105.0305 by referring to that rule part. It is reasonable to alert salons facing a change in the designated licensed salon (DLSM) manager to the qualifications for the DLSM position.

2105.0370 Salon Operational Requirements.

Item C: This proposed housekeeping rule amendment replaces the word "current" with "active" consistent with the proposed definition of active.

2105.0375 Infection Control Requirements.

Subp. 4:

Item D: This proposed rule clarifies disinfection requirements. Since the adoption of the rules in September 2016 on disinfectants requiring that disinfectants be prepared and disposed of daily, new disinfectants have appeared. The proposed rule amendment allows licensees to use disinfectants according to manufacturer directions, so that the rule does not require unnecessary disposal and waste of these new disinfectants that have been approved as effective even if older than 24 hours.

Subp. 4a: This proposed rule establishes a procedure for sterilizing tools and equipment to provide necessary protection for clients receiving certain AP esthetic services the risk of infection is greater because the skin barrier is broken.

Item A: This proposed rule identifies tools and implements that must be sterilized, requiring the use of an autoclave, heat sterilizer, or a chemiclave. These are needed and reasonable requirements to ensure the safety of clients. There are costs to complying with these requirements. An autoclave or steam sterilizer can be purchased for cost ranges of \$700 to \$3,500.

Item B: This proposed rule reasonably requires that the sterilizing device used must be registered with the FDA, which has oversight responsibility for such devices. This is reasonable and necessary, as there are many ineffective devices marketed in a misleading

manner and which do not sterilize.

Item C: This proposed rule moves current rule language requiring spore testing from current rule 2105.0377 Item E to this part for reasons of better organization. The efficacy of the sterilizing device can be monitored by several means but the most accepted means is through the use of a spore test, which is a biological indicator that resistant microorganisms (usually *Geobacillus* or *Bacillus* species) have or have not been killed. To ensure that autoclave is functioning properly, routine spore tests must be conducted by placing a spore-laden paper strip in the autoclave, processing it, and submitting the spore strip to a testing center. Based on testing of the sterilized spore strip, the testing center determines whether the autoclave is functioning properly by the presence or absence of any bacterial growth from the test strip. Failed spore tests can reflect malfunctions, but also may reflect improper cleaning before sterilizing, use of the wrong type of pouch, overloading, incorrect timing, etc.

The proposed rule requires salons using autoclaves and other sterilizing devices to use a test strip indicator known as autoclave tape with each use, to obtain spore tests results monthly from a contracted laboratory, and to maintain a log of each use, each spore test and results, and all maintenance.

The costs of complying with the monthly spore test requirement are under one hundred dollars a year in Minnesota. Autoclave tape in a sixty-foot length is less than five dollars, and sterilization pouches run about five cents each. Costs for the tape and pouches would vary with the number of times tools are sterilized and the number of clients served daily. These costs may be offset by the reduced use of disinfectant since tools that are to be sterilized do not need to be disinfected before being sterilized.

Item D. This proposed rule is reasonable and represents the standard practice in medical settings of storing sterilized items in the package used when sterilization occurs. Part of this standard practice includes recording a batch number and sterilization date on each package at the time of sterilization, with this information retained in a log. The reasoning is that this allows the items not sterilized because of a processing failure to be identified and retrieved in the event of a testing sample failure.

Subp. 5. Blood and body fluid exposure.

Item G: This proposed rule amendment adds sterilization as an option in addition to disinfection for contaminated tools.

Subp. 6. Storage of Items.

Item B: This proposed rule amendment changes a reference to a rule citation to update it to the new reference in these proposed rules.

Subp. 7. Safety and infection control practices.

Item A: This proposed rule amendment simply adds sterilized as another possible status of tools.

Item B: This proposed rule amendment adds sterilized as another possible status of tools and implements.

Item F: This proposed amendment adds that licensees follow not only the manufacturer's

directions for using products, but also for using equipment. This is in recognition that many of the devices used in advanced practice esthetics may have directions requiring patch tests, or specific manufacturer's directions regarding the disinfection and sterilization of the equipment. It is a reasonable and needed requirement that licensees follow manufacturer's directions in such circumstances to protect the health and safety of their clients.

Item M: This proposed rule amendment simply adds sterilization as an addition to disinfecting for the process of handling tools or implements contaminated during a service.

Item O: This proposed rule identifies situations when licensees must wear gloves. The proposed rule requires the wearing of gloves when providing skin care and waxing services, when exposure to blood borne pathogens is possible, or when using implements that penetrate the skin. This is reasonable and necessary for the safety of both the licensee and the client. Transmission of viruses and bacteria are a risk during general skin care. Waxing services often create microscopic entry points into the skin, and represent a risk to the client.

The rule also requires the wearing of gloves when the licensee anticipates the possible presence of blood, or when using a device that penetrates the skin. In both these circumstances, it is reasonable to provide the extra precaution of a protective barrier for both parties.

Subp. 11. Electrical and electronic tools.

Item B: This proposed amendment is the result of questions from licensees about the intent of the rule. The proposed change changes "removable parts" to "parts designed to be removed" because some licensees were confused because they could, with screwdrivers or other tools, dismantle a tool. The intent of the rule was to address parts that were intended to be removed in the normal course of use, and the proposed language should make this clearer. The proposed rule also clarifies that the brush or towel used to brush off debris in the process of preparing a removable part should be a disinfected or clean item.

Item E: This proposed rule specifically addresses skin care machines and equipment. For the protection of the health and safety of the clients receiving services, the rule clarifies that skin care machines and equipment must be cleaned, and then disinfected or sterilized as instructed by the manufacturer.

2105.0377 Salon Prohibitions.

Item C: This proposed rule repeats the proposed rule provisions in scope of practice (part 2105.0105) regarding the penetration of skin by licensees. The prohibitions are repeated here because this rule section is consulted by salon owners and designated licensed salon managers.

Item E re-lettered as Item F: This rule amendment removes language that is now located in proposed rule part 2105.0375 Subp 4a, which addresses sterilization.

Item G re-lettered as Item H: This proposed rule now includes sterilizing as an option in addition to disinfecting tools before use on a client.

Item I: This rule is proposed for repeal because it is duplicative and already addressed in part 2105.0310 Subp. 1a.

Item J: This proposed rule, recommended by ACAPE, clarifies that only single use lancets may be used. Lancets are designed to penetrate the skin. Sterile, single use lancets are widely available and have a finer point than most traditional metal lancets.

2105.0390 Salon Supervision.

Item B: This proposed rule change incorporates by reference the new proposed rule in part 2105.0305 related to which salon manager licenses qualify a salon manager to serve as the Designated Licensed Salon Manager (DLSM) for a salon. The rule also clarifies that an AP esthetician salon manager may serve as a DLSM only for esthetic and AP esthetic salons.

2105.0410 Licensed Services Not Offered in a Licensed Salon.

Subp. 2.

Item A: This proposed housekeeping rule amendment replaces the word “current” with “active” consistent with the proposed definition of active.

Item B: This proposed amendment adds AP estheticians to the licensees who may provide certain services under a special event permit.

Item C: This proposed amendment removes the word “current” and replaces it with the newly defined “active” and includes a housekeeping amendment from the Office of the Revisor.

Item E: This housekeeping rule change simply moves a current rule from the section on mobile salons, part 2105.0420, and places it in this subpart addressing special event permits. It is better suited here because it pertains to special event permit holders who may wish to use a mobile vehicle or mobile structure in conjunction with the special event permit.

Subp. 3:

Item A: This proposed rule amendment replaces “current” with “active”, and adds advanced practice esthetician to those eligible to hold a homebound service permit.

Item C: This proposed housekeeping rule amendment replaces the word “current” with “active” consistent with the proposed definition of active.

~~2105.0420 Special Event Permits:~~ This rule part is proposed for repeal because the rule is moved to the section on special event permits, 2105.0410, new Item E for reasons of better organization.

2105.0830 Compliance with other Regulations. This proposed rule is intended to clarify that complying with the rules of the Board of Cosmetologist Examiners does not mean that a licensee is not subject to other ordinances, regulations, codes, etc.

Chapter 2110

2110.0010 Definitions.

“Active license” is reasonably defined for the purposes of eliminating confusion in rules between license statuses, which can be current, expired, current and retired, or expired and retired. The definition is included in proposed rules as housekeeping measure, and does not impose any new requirement or burden on applicants or licensees.

“Advanced exfoliation” is reasonably defined to differentiate between exfoliation methods that

fall under the esthetician license, and those exfoliation practices that require an advanced practice esthetician license. This definition is supported by ACAPE.

“Electrical Energy Treatments” This term is reasonably defined to clarify the types of treatments utilizing various devices included in the scope of practice for Advanced Practice esthetics. ACAPE recommended changing the word “electrical” to “electromagnetic”. The Board, in the interests of simple language initiatives, and because “electrical” is used nationally in textbooks and curriculums, prefers the term “electrical. “Electrical” is also consistent with current rule which identifies required curriculum topics as including “electricity and light (part 2110.0510 through 2110.0530). Esthetic textbooks generally mention “electromagnetic” in the context of the electromagnetic spectrum and not in reference to the cosmetic services.

“Unregulated services” is amended to include, as an unregulated service, lymphatic drainage treatments when performed by a massage therapist. It is not the intent of the board to attempt to regulate the practice of massage therapists who are currently providing lymphatic massage treatments. While lymphatic services, massages, and treatments are also provided or prescribed by medical personnel, it was unnecessary to repeat the exemption to the Board’s regulation of cosmetology as cited in Minnesota Statutes, section 155A.34 which clarifies that the practice of medicine is excepted from the regulation of cosmetology.

2110.0125 Inspections.

Subp. 4., Item B: This proposed rule amendment replaces the word “current” with the newly defined “active” in three places.

2110.0310 School Licensure.

Subp. 1.

Item M: This housekeeping change is from the Revisor’s Office and does not change the impact of the rule.

Item O: This proposed rule amendment adds machines to the inventory of facilities and equipment required on the license application. This is reasonable and necessary because the AP esthetic curriculum involves electrical energy machine services.

2110.0320 Maintaining a School License.

Subp. 14: This proposed housekeeping rule amendment replaces the word “current” with “active” consistent with the proposed definition of active.

Subp. 16: This proposed rule amendment replaces the list of types of salon licenses with the generic term “salon” for simplicity.

2110.0500 Curriculum Approval and Content.

Subp. 1: This housekeeping change is from the Revisor’s Office and does not change the impact of the rule.

Subp. 3: This proposed housekeeping rule amendment replaces the word “current” with “active” consistent with the proposed definition of active.

2110.0520 Esthetician Training.

Item B: This proposed rule amendment removes electricity and light as a curriculum topic. Electricity and light relates to the electrical energy services, and is part of the AP esthetic scope of practice and curriculum. Although an introductory approach to the topic could be part of the basic esthetic curriculum, it is reasonable to move the topic to the AP

curriculum. Given that the Board has heard complaints from schools that there is insufficient time to cover the esthetic curriculum, particularly as it relates to waxing services, and given that electricity and light are better addressed as part of the AP curriculum.

Item C: This proposed rule amendment adds client consultation and skin analysis to the applied science and skills portion of the curriculum requirement as recommended by ACAPE. This is reasonable because proper consultation and skin analysis is necessary for nearly every esthetic service.

2110.0525 Advanced Practice Esthetician Training. This proposed rule part addresses the curriculum requirements for the AP esthetician license.

Item A: This proposed rule identifies the curriculum as 600. The Board determined that these hours are consistent with the theoretical and practical training necessary to address the proposed scope of practice for the AP esthetician and AP esthetician salon manager. Nationally, there are three other advanced or master esthetician licenses (Virginia, Washington, and Utah). In addition to consideration of the advice and expertise of ACAPE (which includes two members who are instructors in the field of advanced esthetics), the Board considered the three advanced practice licenses offered nationally (Virginia, Washington, and Utah).

Virginia and Utah both have a master esthetician license with a similar scope of practice to the proposed scope of Minnesota's AP esthetic license, and require 600 hours of training.

Washington also has a master esthetician license, but the practice scope is very different because it focuses on laser and other services considered the practice of medicine in Minnesota. The Washington license requires 450 hours of training, and licensees work under medical supervision.

The proposed rule also identifies completion of the curriculum and training for the esthetic license as a prerequisite for the advanced practice esthetic training. This is needed and reasonable because the AP esthetic curriculum will build on the theory and practical knowledge behind basic skin care practices as identified in current rule in part 2110.0520. If the applicant is not currently licensed as an esthetician or cosmetologist, the proposed rule requires that the training has been completed within the past 5 years. This is consistent with part 2110.0680, Item B which states that accrued student hours are valid for no more than 5 years.

Item B: This proposed rule addresses the need for flexibility in the AP esthetic training to allow for additional time on field trips and with guest presenters, and is supported by ACAPE. Current rule (2110.0500) allows using up to 1% of curriculum hours on field trips, and 1% on guest presenters. The proposed rule for the AP esthetic curriculum increases this to 5% on field trips and 5% on guest presenters. This is reasonable and necessary because the AP esthetic curriculum addresses electrical energy services that encompass a wide variety of machines and equipment. Because this equipment is expensive, it is not likely that a school will have all the latest variations of equipment, and it may be that field trips would provide an exposure to these. In addition, it is reasonable that students benefit from exposure to both spa and medical work settings. Increasing the curriculum time that can be spent on guest presenters is also necessary and reasonable, particularly since the field of AP esthetics evolves quickly, and the rapid innovation results in new equipment, techniques, and

services. Students will benefit from the flexibility in bringing in guest presenters who are familiar with the newest services and techniques.

Item C: This proposed rule addresses the question of whether or not a school may provide a combined esthetic and AP esthetic program. The Board found no reason to prohibit a combined program. The proposed rule clarifies that this is possible, and addresses circumstances in which a student of a combined program does not complete the entire program and wishes to obtain only the basic esthetic license. The proposed rule provides that the student would be eligible for the basic esthetic license if the student has completed the curriculum requirements in rule for the basic esthetic license.

Item D: This proposed rule identifies the required curriculum topics in theoretical instruction. The Board considered various curriculums in textbooks for advanced esthetics, curriculum requirements for the master esthetician licenses in other states; the recommended curriculum for master esthetics from the NCEA; and the recommendations of SCAPE in identifying the proposed curriculum topics.

Item E: This proposed rule identifies the required clinical instruction topics in professional skin treatments within the scope of AP esthetics as well as practical application of client consultation, infection control and safety procedures. The Board considered various curriculums in textbooks for advanced esthetics, curriculum requirements for the master esthetician licenses in other states, the recommended curriculum for master esthetics from the NCEA, and the recommendations of SCAPE in identifying the clinical instruction topic areas. Clinical instruction topics were not identified in some of the states that offer an advanced esthetic license.

2110.0545 Skills Courses.

Item C: This proposed rule amendment identifies AP esthetic instructors as instructors for esthetician skills courses, and clarifies that only the AP esthetic instructor may teach the AP esthetic skills course. This is consistent with the requirements for instructor qualifications for the other licensure skills courses.

2110.0630 Instructors.

Item E: This proposed rule amendment simply adds the AP esthetician instructor to the list of licensed instructors and clarifies that the AP esthetic instructor may teach esthetic courses or AP esthetic courses.

2110.0670 Student Records. A housekeeping amendment from the Revisor's office eliminates unnecessary language.

Item E(5): This proposed rule amendment adds the AP esthetic curriculum to documentation requirements for schools, and indicates that exercises should be documented as required by the Board approved curriculum. It is reasonable to clarify that the AP esthetic practical exercises should be part of the student records.

2110.0705 Transfer Students.

Subp. 1: This housekeeping amendment clarifies a common question from the schools regarding transfer students. The amendment does not create a new restriction or requirement, but repeats an existing rule in 2110.0680 regarding how long student hours remain valid. The existing rule is repeated here because this rule part is consulted by schools when working with transfer students. The amendment does not create a new requirement.

2110.0710 Full Course of Instruction. This proposed rule amendment removes a list of courses and lets stand “a full course of instruction” for reasons of simplicity. This avoids the necessity of updating a rule each time a new course is added. The change does not add a new requirement or burden on schools or students.

2110.0750 Display of Licenses. This proposed housekeeping rule amendment replaces the word “current” with “active” consistent with the proposed definition of active.

2110.0740 School Clinics.

Item H: This proposed rule amendment adds “AP Esthetician Student” to the list of badges that must be worn to identify students.

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 June 6, 2017 by Executive Director Gina Fast