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9/21/2022

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**Re: In The Matter of the Proposed Rules of the Board of Cosmetologist Examiners
Governing Schools, Instructors and School Managers; Minnesota Rules, Chapter
2110; Revisor's ID Number 4456**

Dear Librarian:

The Minnesota Board of Cosmetologist Examiners intends to adopt rules governing schools, instructors and school managers. We plan to publish a Dual Notice of Intent to Adopt Rules in the September 26, 2022 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 sending our Notice of Intent to Adopt Rules.

If you have questions, please contact me at 651-201-2816.

Yours very truly,

Jill Freudenwald
Chief of Staff

Enclosure: Statement of Need and Reasonableness



STATEMENT OF NEED AND REASONABLENESS

In the Matter of Proposed Revisions of Minnesota
Rules Chapter 2105 and 2110, Governing Schools,
Instructors and School Managers

Revisor ID No. 4456

Minnesota Board of Cosmetologist Examiners

September 13, 2022

General information:

- 1) Availability: The State Register notice, this Statement of Need and Reasonableness (SONAR), and the proposed rule will be available during the public comment period on the Agency's Public Notices website: <https://mn.gov/boards/cosmetology/>
- 2) View older rule records at: [Minnesota Rule Statutes https://www.revisor.mn.gov/rules/status/](https://www.revisor.mn.gov/rules/status/)
- 3) Agency contact for information, documents, or alternative formats: Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact Jill Freudenwald, Chief of Staff, Minnesota Board of Cosmetologist Examiners, 1000 University Avenue W, Suite 100, St. Paul, Minnesota 55104; telephone 651-201-2742; email jill.freudenwald@state.mn.us
- 4) How to read a Minnesota Statutes citation: Minn. Stat. § 999.09, subd. 9(f)(1)(ii)(A) is read as Minnesota Statutes, section 999.079, subdivision 9, paragraph (f), clause (1), item (ii), subitem (A).
- 5) How to read a Minnesota Rules citation: Minn. R. 9999.0909, subp. 9(B)(3)(b)(i) is read as Minnesota Rules, chapter 9999, part 0909, subpart 9, item B, subitem (3), unit (b), subunit (i).

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Acronyms

ALJ	Administrative Law Judge
Board	Board of Cosmetologist Examiners
CCC	Course Completion Certificate
CDC	Centers for Disease Control and Prevention
CE	Continuing Education
CFR	Code of Federal Regulations
Chapter 2105	Minnesota Rules chapter 2105
Chapter 2110	Minnesota Rules chapter 2110
Minn. Stat.	Minnesota Statutes
Minn. R.	Minnesota Rules
MMB	Minnesota Management and Budget
NACCAS	National Accrediting Commission of Career Arts and Sciences
OHE	Minnesota Office of Higher Education
PST	Practical Skills Test
RFC	Request for Comments
SONAR	Statement of Need and Reasonableness
Task Force	Practical Skills Task Force

Introduction and overview

Introduction

The Board of Cosmetologist Examiners (Board) proposes to amend its rules governing schools, instructors, and school managers. The Board plans to update the rules addressing issues regarding student records, curriculum topics, school and clinic operations, instructor ratios, high school cosmetology programs, and other requirements for schools. In addition, the Board seeks to clarify rules which have been subjected to multiple interpretations by licensees referring to the rules for guidance. The Board intends to carefully review the effectiveness and need for each existing rule in Minn. R. Chapter 2110 and consider reasonable alternatives which may be less burdensome and to amend or repeal existing rules as needed.

Background

The Minnesota Board of Cosmetologist Examiners is the regulatory agency charged with the licensing and regulating of cosmetologists, estheticians, advanced practice estheticians, nail technicians, eyelash technicians, salon managers, salons, instructors, school managers, and cosmetology schools in 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 was changed to Board of Cosmetology. In 1981, regulatory authority was transferred to the Commissioner of Commerce when the Board was eliminated. In 2003, the licensing and regulatory responsibility was 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 7 members appointed by the Governor and a small staff. Currently, there are approximately 33,000 practitioners, 5,200 salons and 38 schools licensed by the Board.

Rules for schools and licensing training program requirements in Chapter 2110 have not been updated in decades. The current rules are woefully inadequate for reasons discussed in the SONAR under the Statement of General Need.

Statement of General 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 proposed rule amendments are necessary to update the rules governing schools, instructors, and school managers which have not been updated in decades. The proposed rule amendments are necessary to update language addressing issues of student records, curriculum topics, school operations, instructor ratios, high school cosmetology programs, school clinic operations, and other requirements for schools. In addition, the proposed rule amendments are necessary to update language to reflect current practices in the industry, clarify existing Board procedures, and remove unnecessary, conflicting, burdensome or confusing requirements.

These rule amendments are necessary to fulfill the statutory duties of the Board as set forth in Minn.

Stat. Chapter 155A and they provide the regulatory and administrative framework for licensing and regulation of cosmetology schools.

Scope of the proposed amendments:

The following existing rules are affected by the proposed changes:

Minn. R. 2110.0010
Minn. R. 2110.0125
Minn. R. 2110.0190
Minn. R. 2110.0310
Minn. R. 2110.0320
Minn. R. 2110.0330
Minn. R. 2110.0390
Minn. R. 2110.0400
Minn. R. 2110.0410
Minn. R. 2110.0500
Minn. R. 2110.0510
Minn. R. 2110.0520
Minn. R. 2110.0525
Minn. R. 2110.0530
Minn. R. 2110.0545
Minn. R. 2110.0550
Minn. R. 2110.0580
Minn. R. 2110.0625
Minn. R. 2110.0630
Minn. R. 2110.0640
Minn. R. 2110.0650
Minn. R. 2110.0660
Minn. R. 2110.0670
Minn. R. 2110.0680
Minn. R. 2110.0690
Minn. R. 2110.0705
Minn. R. 2110.0730
Minn. R. 2110.0740

The following rules are proposed for repeal:

Minn. R. 2110.0100
Minn. R. 2110.0710

The following rules are proposed new rules to be added to Chapter 2110:

Minn. R. 2110.0395
Minn. R. 2110.0505
Minn. R. 2110.0590
Minn. R. 2110.0671

Public participation and stakeholder involvement

The Board sought public participation for this rulemaking through a number of different means including:

Listening Sessions

In 2018, the Board held six listening sessions to solicit ideas for new school rules. The listening sessions were offered at different days and times as well as in-person and online. To promote the listening sessions an email was sent to over 300 schools, instructors, and school managers. The listening sessions focused on the following topics: student attendance, progress reports, curriculum, clinical service exercises and instructor ratios.

Request for Comments

The Board published a Request for Comments (RFC) on school rules in the State Register on November 4, 2019 (44 SR 541) identifying topics for possible rule changes and inviting comments on any rule changes sought by interested parties. The Board posted the RFC on the Board's website, on the Board's Facebook page, and emailed it to the licensees with an email address (over 33,000 licensees). During this initial comment period, the Board received 11 comments. Comments were submitted by licensed practitioners and reviewed by the Board's Rules Committee.

Website

The Board posted updates regarding the rulemaking process to the Board's website at <https://mn.gov/boards/cosmetology/laws-and-rules/rule-making/>. The website also includes information on how to sign up for email updates regarding the Board's rulemaking activities. Questions regarding rulemaking activities can be sent to the Board via the Board's email address at cosmetology@state.mn.us or via a designated rulemaking email address at cosmorules@state.mn.us.

GovDelivery

The Board utilizes GovDelivery, an email subscription service, to send updates and relevant documents to over 33,000 licensed practitioners, 5,200 licensed salons, 38 licensed schools, and 5,000 individuals who are subscribed to the Board's rulemaking list.

Advisory Committee on School Rules

In the RFC, the Board sought applications for an Advisory Committee on School Rules. The Board received 27 applicants representing a variety of schools and licenses. On January 15, 2020, the Board's Rules Committee appointed 12 members to the Advisory Committee representing both urban and rural areas as well as public schools, private schools, and high schools with cosmetology programs.

The Advisory Committee met multiple times in 2020 and 2021. Advisory Committee meetings were open to the public.

Board Meetings

From 2020 through 2022, the Board's Rules Committee met 7 times in properly noticed public meetings to discuss the Advisory Committee comments and proposed rule changes. At the July 20, 2022, the Rules Committee approved the rules draft and made a motion to bring the rules draft to a meeting of the full Board.

At the August 1, 2022 meeting of the Board, the Board approved the rules draft and SONAR and passed a resolution authorizing the publishing of the Dual Notice of Intent to Adopt Rules with or without a

Hearing.

Statutory authority

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

A. §155A.26, which states:

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

B. §155A.27 subdivision 2, which states:

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

C. §155A.30 subdivision 2, which states:

The board shall by rule establish minimum standards of course content and length specific to the educational preparation prerequisite to testing and licensing as cosmetologist, esthetician, and nail technician.

D. §155A.30 subdivision 3(8), which states:

Other financial guarantees which would assure protection of the public as determined by rule;

E. §155A.30 subdivision 6(c), which states:

Application for renewal of license shall be made as provided in rules adopted by the board and on forms supplied by the board.

Under this statute, the Board has the necessary statutory authority to adopt the proposed rules.

Reasonableness of the amendments

General Reasonableness

As noted above in the General Statement of Need, the rules governing cosmetology schools, instructors, and school managers have not been updated in decades. It is reasonable to propose rule amendments necessary to update language to reflect current practices in the industry, clarify existing Board procedures, and remove unnecessary, conflicting, burdensome or confusing requirements.

When considering the reasonableness of the proposed rules, it should be noted that the rules were developed with the assistance of an Advisory Committee comprised of representatives of cosmetology schools and the Board-appointed Rules Committee comprised of licensed Board members. The goal of the Board is to design rules that satisfy the Board's mission to constantly strive to serve and care for our licensees, applicants, and the public by being committed to public protection, superior service, excellence, and continuous improvement. The Board also has a statutory duty to ensure that the health and safety of the people of the state are served by the licensing of the practice of cosmetology. In addition, the Board's executive director meets with other state Boards to discuss national best practices regarding education, licensing examinations, and infection control.

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. The amendments to Minnesota Rules, Chapter 2110 are needed because many of the existing rules do not reflect current Board and cosmetology school practices or existing rules may be overly burdensome. The amendments to Minnesota Rules, Chapter 2110 are reasonable because they are consistent with modern cosmetology school practices and promote better training of licensees.

2110.0110 DEFINITIONS.

New subpart

This will be named subpart 12a. A definition for course completion certificate is being added to clarify that the Practical Skills Test is a requirement for initial licensure. Per Minn. R. 2105.0145, the course completion certification is part of the initial licensure application.

Subpart 14.

This definition is being repealed because the term is no longer used under proposed rule changes.

Subpart 15.

This definition is being repealed because not all documentation must be notarized.

New subpart

This will be named subpart 17f. A definition for introductory service skills is necessary and reasonable to make it clear that the first hours of training do not involve clinical practice. Some schools have interpreted introductory service skills to mean that the student may provide services in the clinic to clients. However, the intent of learning introductory service skills is to ensure that students have the proper and necessary theoretical background before attempting to provide services to clients.

New subparts

Three new definitions are added to provide clarity. Curriculum and training requirements in Chapter 2110 reference these different types of instruction. Statute limits the type of instruction that can be

offered online. The Board discovered there was a need for clarification when schools quickly pivoted to instruction online during the pandemic. Defining these terms will ensure schools are labeling their curriculum submissions appropriately and adhering to the theory/practical hour requirements of each program. These subparts will be named subpart 18d, 18e and 19a.

2110.0100 UNREGULATED SERVICES.

This rule is being repealed, as the need and reasonableness of the requirement for signage listing unregulated services offered at the school could not be supported. The current rule requires a school to list any service that is not regulated by the State of Minnesota. The Board is not necessarily aware of all personal services that are regulated by various state agencies and is not in a position to enforce the rule. The Board considered proposing an amendment to the rule limiting the list to services not regulated by the Board rather than the entire State of Minnesota, but rejected that idea because the Board currently limits answers to questions regarding services by providing the statutory definition of cosmetology and suggesting that the questioner seek legal advice in interpreting the statute and applying the definition to the service in question. This is because the Board does not want to be seen as giving legal advice.

Language in subpart 2 regarding the total instructional time and clinical experience in unregulated services allowed already exists in Minn. R. 2110.0500 subpart 4. This repeal mirrors a repeal in Chapter 2105 in for salons (rules adopted September 13, 2016, R-04258)

2110.0125 INSPECTIONS.

Subpart 1. Protocol.

New subpart

Language is being proposed to mirror the language from Minn. R. 2105.0375 subpart 1 regarding infection control requirements. This will bring Chapter 2105 and Chapter 2110 into alignment. The amendment does not add any additional requirements.

This language is needed and reasonable because inspections of schools and infection control requirements are fundamental to the protection of the health and safety of the public. There are 38 licensed schools in Minnesota. Inspections of schools, including clinics and classrooms, student break rooms, and dispensaries ensure that infection control standards are being met. Each school has a clinic where cosmetology services are offered by students to the public or on live student models under the supervision of instructors, providing practice opportunities for the students. All students practice services in other areas of the school on mannequins and/or live models prior to providing services on the school's clinic floor. All services performed in the school prepare students for professional practice, so it is reasonable that all areas of a school be held to the same infection control standards. Inspectors also address various school operating requirements, including those regarding equipment, insurance, instructor to student ratios, student records, etc. Schools prepare students to provide licensed cosmetology services in Minnesota, and compliance issues found in schools and in school clinics are often reflected in the practices of those students when the student becomes licensed.

2110.0190 REINSTATEMENT AFTER SUSPENSION OR REVOCATION.

The Board is proposing splitting this rule into two subparts for purposes of better organization. Subpart 1 would be License after Suspension and subpart 2 would be License after Revocation.

New subpart 1.**Item B.**

Language regarding revocation has been moved to new subpart 2.

Item C.

Changes are being proposed to allow for a school whose license has been suspended to pay the fees associated with the cost of a school renewal license application instead of an initial school license application. The school renewal fee costs \$1,500 less than the initial application fee. It is reasonable to require a school with a suspended license to demonstrate that it meets all requirements to renew a school license, rather than initial licensure requirements.

New subpart 2.**Items A, B, and C.**

Newly proposed language in subpart 2 reflects the language found in subpart 1 except that subpart 2 is specific to revocation. Language in both subparts is nearly identical except that a school whose license has been revoked must demonstrate that it meets all initial licensure requirements and pay the fees required for an initial school application found in Minn. Stat. 155A.25.

2110.0310 SCHOOL LICENSURE.**Subpart 1. Application contents.****Item A.**

The changes made to this item are technical and for clarification.

Item D.

The changes made to this item are technical and for clarification.

Item G.

Minn. Stat. 155A.30 subpart 5(6) requires that schools maintain professional liability insurance coverage. However, schools in the Minnesota State Colleges and University system have different statutory insurance requirements found in Minnesota Statutes, Chapter 3.732 and Chapter 3.736. These requirements supersede the requirements of the Board. Therefore, it is reasonable to amend the language to allow schools in the Minnesota State Colleges and University system to meet the requirements of Minn. Stat. 155A.30 subpart 5(6) by demonstrating compliance with Minnesota Statutes, Chapter 3.732 and Chapter 3.736.

Item H.

Minn. Stat. 155A.30 subpart 5(7) requires that schools maintain workers' compensation insurance coverage. However, schools in the Minnesota State Colleges and University system have different statutory insurance requirements found in Minnesota Statutes, Chapter 276.541 and Chapter 176.591.

These requirements supersede the requirements of the Board. Therefore, it is reasonable to amend the language to allow schools in the Minnesota State Colleges and University system to meet the requirements of Minn. Stat. 155A.30 subpart 5(7) by demonstrating compliance with Minnesota Statutes, Chapter 276.541 and Chapter 176.591.

Item K.

Proposed changes to this rule clarify that a school must attest to being in compliance with the Minnesota State Building Code and not building codes in general.

Item M.

Language was added to require the roster of instructors to designate the training program that each instructor will teach. It is needed and reasonable to request this, because instructors are restricted to teaching within the area of their practitioner license. Since schools can offer up to five different program types, it is reasonable to ask schools to identify which instructors will teach which program. Adding this information to the already required roster of instructors should take minimal time and should not result in any additional cost to schools.

Item N.

Item N was amended to remove reference to “size” of entrances and exits. The whole floorplan should be provided in scale, thus, requiring the size of entrances and exits is redundant. Additional language was moved from Minn. R. 2110.0310 subpart 1(P) regarding demonstration of sufficient space for the clinic and the classroom. Language was revised to provide clarity and brevity.

Item O.

To provide clarity and precision, the language has been updated to be more descriptive and to specify more clearly what information should be included in the initial school license application. This change is needed in order to reduce confusion for school applicants and to establish a framework for standardizing the relevant information schools provide.

Item P.

A reference to student kits was added because existing rules require schools to provide each student with a student kit that contains a majority of the implements and equipment required for the course of training for which the student has enrolled. As student kits are provided to each student and directly relate to the school’s overall inventory, it is reasonable to request to review the student kit contents.

Item Q.

The changes made to this item are technical and for clarification. Language regarding demonstration of sufficient space for the clinic and the classroom was moved from this part to Minn. R. 2110.0310 subpart 1(N). Current language is being repealed. The Board does not need to know the maximum number of students the school will be able to accommodate for each course scheduled the first year.

Item R.

Changes to this part will bring it into alignment with changes made to Minn. R. 2110.0500. In addition, proposed amendments clarify curriculum submission requirements, delete dated curriculum elements, and remove burdensome, unnecessary, and redundant reporting requirements.

New language in subpart 2(c) and subpart 4 acknowledge the increase in online theory instruction. It is necessary to standardize how schools report this curriculum information in order to facilitate curriculum review and approval.

Items S, T, U and V.

Items S, T, U and V are being combined into one section for purposes of better organization and clarity. All of these items are official school documents that schools currently maintain.

Language has been removed requiring copies of financial aid policies, because the Board is not involved in financial aid matters. Also, a new requirement was added to require copies of all school-created templates that will be used by the school to fulfill student recordkeeping requirements outlined in Minn. R. 2110.0670 and 2110.0671. This is a necessary requirement because the lack of school acknowledgment and staff review of student recordkeeping infrastructure at initial licensure has led to egregious recordkeeping violations for schools. This is also reasonable as schools are already required to create and maintain all of these documents under Minn. R. 2110.0670 and 2110.0671. Requiring a review of these documents during the initial license application will help set schools up for success and provide an opportunity to identify any potential violations before they occur. Gathering these documents may take minimal staff time but should not result in any significant cost to schools.

New Item.

All training programs require students to complete a specific number of training hours. This new language is needed and reasonable, as there is currently nothing in rule that requires schools to discuss or document their timekeeping system with the Board. This has led to confusion and recordkeeping violations. Schools are required to track and document student hours accurately. Asking schools to demonstrate their timekeeping and recordkeeping plans during the initial licensure application process will prevent future misunderstandings and recording keeping violations once schools are licensed and operational. Current Minn. R. 2110.0400(F) requires schools to have a time clock or other reliable method of recording time to be used by the students when checking in and out of school. Minn. R. 2110.0680 addresses the certification of student hours and clinical service exercises. This requirement may take some additional staff time but should not result in any significant costs to schools.

New subpart 4.

It is not uncommon for schools to develop a need for additional space and sometimes that additional space may be in a nearby building or across the hall. Currently, there are two private schools with rule-waiver approval for noncontiguous classroom/clinic space due to increased student enrollment. Other schools, public and private, have contacted staff about adding additional space within the same school building. Requiring schools to apply for another license because the space is noncontiguous is an unnecessary burden. This language allows noncontiguous classroom or clinic space within 500 feet of the school.

2110.0320 MAINTAINING A SCHOOL LICENSE.

Subpart 4.

The Board is proposing to require schools to provide advance notice of the intent to change a school's name. This is a reasonable request in case a school begins to advertise to students under the new name before change of name paperwork has been submitted to the Board. Furthermore, the school manager has been removed as an entity who can inform the Board of a change of name. This is consistent with Minn. R. 2105.0322 subpart 7 regarding a change of name for a salon.

The requirement to return an old license to the Board upon receipt of a new license is being repealed. The Board does not require individuals to return their old license when they change their name.

Subpart 8.

All schools must have a designated school manager per Minn. Stat. 155A.30 subpart 5(9). The designated school manager shares responsibilities with the owner for overall school compliance, including management of instructors and students and recordkeeping requirements. The designated school manager is critical in ensuring school compliance with the rules and statutes governing cosmetology to protect the health and safety of the public. When the designated school manager departs from their role, current rule allows schools to appoint a temporary designated school manager but does not require schools to report the identity of the appointee. It is reasonable to require schools to report who the temporary or interim designated school manager is because they share responsibility for the school with the owner and may certify student records. The Board proposes requiring schools to report the identity of a temporary or interim designated school manager within 5 business days. This requirement may take some additional staff time but should not result in any significant costs to schools.

Further proposed amendments provide clarity and simplicity for purposes of better organization.

Subpart 9.

Subpart 9 is being repealed to remove an unnecessary burden. Schools will no longer be required to report instructor roster changes outside of the initial license and renewal application process.

Subpart 10.

Amendments to this subpart are being proposed to align with the curriculum approval requirement changes proposed for Minn. R. 2110.0310. In addition, these amendments remove the burden of reporting excessive inventory information. These changes are needed and reasonable and should make the application and review process more streamlined for both schools and Board staff.

Subpart 11.

Subpart 11 is being repealed. The Board is responsible for reviewing and approving curriculum content. The Board does not review or approve individual textbooks and does not require the use of specific textbooks in schools. Schools are also not required by rule to use published textbooks. A change or addition of a textbook in a school's curriculum will likely trigger a curriculum change approval request.

which is addressed in subpart 10. This rule has been determined to be unnecessary.

Subpart 12.

Subpart 12 is being repealed.

Subpart 13.

The language has been amended to align with Minn. Stat. 155A.30 subdivision 11 which states that instruction, with the exception of Board-approved theory-based classes, must be given within a licensed school building.

Subpart 14.

The title of this subpart is being amended to provide clarity.

Subpart 15.

The title of this subpart is being renamed to provide clarity. In addition, an amendment was made to require the corporate surety bond to run to the Board instead of the State. This is consistent with changes made to Minn. Stat. 155A.30 subdivision 5 in 2017.

New subpart.

This language has been moved from Minn. R. 2110.0320 subpart 12. An amendment was made to reduce the number of days in which the school must notify the Board of an emergency that disrupts scheduled instruction from 30 days to 5 days. Lowering the reporting timeframe is reasonable to ensure public protection is being considered by the school and is needed in order to be prepared to assist students who may be impacted by an emergency. In past emergencies, students have started calling the Board immediately with their concerns. In some cases, the school may propose to re-locate instruction from the licensed school building temporarily, which would require a rule waiver or variance.

2110.0330 SCHOOL LICENSE RENEWAL.

Subpart 1.

Amendments are being made to correct an error. The rule should refer to subparts 2 to 4 instead of subparts 3 to 6.

Subpart 2.

The Board is proposing to increase the number of days by which a school must submit a renewal application from 30 days to 45 days. Thirty days has proven to be insufficient time to allow for staff review, particularly if more than one school is up for renewal during the same month or if the school is submitting curriculum changes for review and approval as part of the renewal. Renewal applications are frequently submitted incomplete or are found to require corrections. Additional time is needed to allow a school to resubmit application materials before the license expires. Since schools are already submitting renewal applications, this change does not impose any new requirements and will not

impose any additional costs.

Subpart 2a.

Subparts 3, 4 and 5 are being repealed and combined into subpart 2a for purposes of better organization as well as to parallel the changes being made in Minn. R. 2110.0310 subpart 1.

Subpart 7.

An amendment is being made to correct an error to a statute citation in item B.

2110.0390 PHYSICAL REQUIREMENTS.

Subpart 1.

Language is clarified to require schools to demonstrate sufficient classroom and clinic space, and sufficient workstations on the clinic floor to support the scheduled instruction and technology requirements of the school's approved training programs. The 25 square feet requirement is being removed. All schools have more than 25 feet per student. This clarification is needed and reasonable because prospective schools have submitted initial licensure applications projecting enrollment numbers that exceed their available space, equipment, and supplies.

Subpart 3.

Item D.

Although current rule refers to electrical requirements for the classroom, proposed amendments add language regarding electrical requirements for the clinic area. It is necessary and reasonable to require that schools provide sufficient electrical infrastructure to support all equipment and technologies required to implement their training programs safely and appropriately in both the classroom and clinic areas. This should not result in any additional costs to schools as schools were already applying electrical requirements to clinic areas.

Subpart 3a.

Subpart 3a is being repealed and moved to subpart 3b.

New subpart 3b.

Rulemaking changes in 2020 revised requirements for sinks in salons in Minn. R. 2105.0360 subpart 6. Amendments proposed in this subpart will bring schools into alignment with salons.

Rule amendments require that each school must have at least one designated sink for handwashing and cleaning and disinfecting of tools and implements. The sink must not be a restroom sink, water fountain, mop sink, pedicure tub, or shampoo bowl. It is reasonable to prohibit the use of these types of sinks for disinfection purposes to protect the safety of the users because disinfectants are pesticides and are unsafe for human consumption or direct contact. It is also reasonable to require the designated sink to be available at all times so there is no delay or interference with infection control requirements. General

principles of sanitation prohibit the disinfection of instruments within a restroom. In addition, a student may not be aware of whether there has been pesticide in the shampoo bowl or water fountain, and whether the bowl or fountain has been rinsed sufficiently to remove any residue prior to use. Pesticides should not be consumed, come into contact with the client's skin, or splash into the client's eyes. Direct eye contact with disinfectants can cause burns, and in the worst-case scenario, cause blindness.

In addition, proposed rule amendments remove language that requires that all hazardous substances be inaccessible to the public. The hazardous products (hair dyes, acetone, perm solutions, disinfectants, etc.) in a school are similar or identical to hazardous products found on the open shelves of grocery stores, drug stores, big box retailers, beauty supply stores, and other retailers. It is not reasonable to place more restrictions on access to the hazardous products when the products are located in a school than when those products are located in a retail store. The potential threat to an unattended child, vulnerable adult, or adult is the same whether the product is in a school or on the shelf at a retailer. Schools should have the flexibility as a business to determine how to safely store these types of items, and to implement processes to prohibit unwanted access to them. This is needed and reasonable to remove an unnecessary burden on schools.

This proposed rule amendment aligns with requirements of Chapter 2105 and requires the sink to have plumbed hot and cold potable water, soap, towels and a waste receptacle as reasonable and needed items to enable compliance with handwashing requirements. Licensees are required to wash their hands before providing services and may only use alcohol-based hand sanitizer as a substitute when their hands are clean and have no product residue (Minn. R. 2105.0375 subpart 2). Licensees must also wash their hands before donning gloves (Minn. R. 2105.0375 subpart 7(O)) and must wash their hands during any blood exposure incident (Minn. R. 2105.0375 subpart 5). Thus, access to a sink is critical.

Subpart 5.

Proposed changes to this rule clarify that a school must attest to being in compliance with the Minnesota State Building Code and not building codes in general.

New Rule

2110.0395 INFECTION CONTROL REQUIREMENTS.

Per Minn. Stat. 155A.21, the legislature finds that the health and safety of the people of the state are served by the licensing of the practice of cosmetology because of infection control and the use of chemicals, implements, apparatus, and other appliances requiring special skills and education. This rule provides a cross reference to the infection control requirements as a reminder that schools must also follow inspection control requirements. Schools are already following these requirements.

2110.0400 FIXTURES, FURNITURE, EQUIPMENT.

Subpart A.

Proposed amendments replace program-specific requirements found in Minn. R. 2110.0400 subparts B, C, D, E and G with language that is broader and applies to all program types. This is needed and reasonable because the current rule was clearly written for a full cosmetology program. It is not appropriate to the specialty schools, such as eyelash technician schools or esthiology schools, which are now prevalent. The current rules also do not account for the workspace requirements of newer eyelash

technician training programs or advanced practice esthetician training programs. Additionally, schools may start or discontinue training programs and schedule student clinic services at their discretion. Both impact the demand and need for specific equipment. The demand for and necessity of specific equipment are driven by a school's business practices and schools should not be required to adhere to equipment requirements that do not apply to their current needs. The proposed amendments address student workspace requirements more generally so that they may apply universally to all schools and training program types. There are no costs associated with these changes.

Subparts B, C, D, E and G are being repealed. These subparts refer to general equipment requirements such as a hair dryer, facial chair, manicure table, skin care machine and shampoo bowl and do not apply to schools that choose to specialize in a specific training program. These subparts are being incorporated more generally in subpart A.

Subpart B.

Amendments to this subpart update the language to reflect advancements in technology since the rules were last updated. Electronic timekeeping has become the industry standard for hour-based training programs. Electronic timekeeping systems are already widely if not primarily used among cosmetology schools in Minnesota. Electronic timekeeping systems add a level of accuracy which may not be attained by a manual timekeeping system. Often, modern electronic timekeeping systems include the ability for schools to pull reports which in turn can be used to ensure accurate student records. In addition, a reference to Minn. R. 2110.0680 regarding certification of student hours is added for clarification purposes. Since most schools are already using an electronic time clock or electronic timekeeping systems, no significant cost or burden is anticipated.

Subpart C.

The changes made to this subpart are technical and for clarification.

Subpart D.

The changes made to this subpart are technical and for clarification.

2110.0410 SUPPLIES AND MATERIALS.

Subpart 1.

Item A

The title of subpart 1 is being changed to include student kits. Student kits contain beginning professional implements and equipment required for the course of training for which the student has enrolled. Per Minn. R. 2110.0410 subpart 1(A), schools are already required to provide student kits to all enrolled students and may charge students for them. This change is for clarity and better organization and will not result in any additional cost to schools.

Item B.

Amendments to item B expand on the existing rule part regarding supplies and align with rules

surrounding supply volume for salons found in Chapter 2105. The proposed amendment specifies the supplies and materials must be relevant to each student's chosen training program. It is reasonable to expect that there will be sufficient quantities of supplies for all students during their training program, as these items may be provided by the school outside of the contents of the student kit.

Item C.

Language in item C has been updated to apply to all training programs. There may be a slight cost if a school needs to buy additional mannequins for student practice. However, typically, at least one mannequin is included in student kits and schools typically keep a stock of mannequins on-hand in the school for students to use before they perform services on live models. Mannequin use is also permitted for certain services to fulfill clinical service exercise requirements.

Subpart 2.

Subpart 2 is being repealed. Minn. R. 2110.0410 subpart 1(B) already requires schools to provide all supplies and materials, which would include towels and linens. Additionally, the need for, and use of, towels may vary depending on the program offered. Removing this requirement aligns with the proposed change to Minn. R. 2110.0400, which replaces program-specific requirements with a broader requirement that applies to all program types.

Subpart 3.

Proposed amendments to this subpart update the language to reflect realities of the current teaching and learning environment, including considerations for online instruction and the access limitations of electronic textbook publishers, as well as the online-only publication of Minnesota laws and rules. These amendments do not pose any additional costs to schools.

Subpart 5.

This subpart is being repealed. The description of the dictionary required in item A is inaccurate. The materials required in item B are standard information found in cosmetology textbooks. The materials in items C through E are readily available in electronic formats, so it is unreasonable to require schools to provide physical copies. Notably, physical copies of Minnesota Statutes and Rules are no longer published and are available exclusively online for free. References to instructional materials and access to Minnesota Statutes and Rules were moved to Minn. R. 2110.0410.

SCHOOL CURRICULA

Minn. R. 2110.0500 through 2110.0580 contain school curriculum requirements for the six types of licenses offered by the Board. The six license types include cosmetology, esthology, advanced practice esthology, nail technology, eyelash technology, and instructor. Throughout Minn. R. 2110.0500 through 2110.0580 changes have been proposed to update and simplify the language. The proposed changes are needed and reasonable to ensure the terms and phrases used throughout Minn. R. 2110.0500 through 2110.0580 are clear, consistent, and reflect the terminology used by schools today.

2110.0500 CURRICULUM APPROVAL AND CONTENT.

Subpart 1. Curriculum approval.

This subpart was amended to remove the requirement of submitting a daily lesson plan. While school applicants must still submit curriculum for the Board's approval, the requirement to divide it into daily lesson plans was an unnecessary burden for applicants. Many of the school applicants and licensees already go through an additional evaluation to be licensed by the Minnesota Office of Higher Education (OHE) or the National Accrediting Commission of Career Arts and Sciences (NACCAS). Out of 36 schools licensed by the Board, 19 are licensed by OHE and 12 are licensed by NACCAS. Changing the requirement from a daily to a weekly lesson plan would allow schools much more flexibility in their scheduling without compromising the ability of Board staff to complete curriculum reviews, inspections, etc.

In 2017, the Board adopted rules to create a new eyelash technology license as required per Minnesota Session Laws 2017, 1st Special Session, Chapter 4, Article 2, Section 64. This subpart is amended to correct an oversight by adding the eyelash technology training found in Minn. R. 2110.0580 to this subpart on curriculum approval.

Subpart 2. Field trips and extracurricular activities.

The language has been amended to align rule with Minn. Stat. 155A.30 subdivision 11 which states that instruction, with the exception of Board-approved theory-based classes, must be given within a licensed school building.

Subpart 4. Unregulated services.

The cosmetology industry is changing rapidly and the Board cannot always foresee new trends in cosmetology services. Therefore, the rules allow schools to teach a certain percentage of unregulated services. This subpart has been amended to increase to three percent the total curriculum time that may be dedicated to teaching unregulated services. As cosmetology technologies and industry standards continue to advance and evolve, increasing the percentage of unregulated services will allow the industry to better serve their clients.

Additionally, instruction in unregulated services for eyelash technician training programs is not allowed. This is reasonable, because the eyelash technician program is so short. The Board has heard from schools that there is barely enough time in the course to cover all required curriculum content. Additionally, under current rule, eyelash technician programs are not permitted to use field trips or guest presenters.

New Rule

2110.0505 INSTRUCTOR TRAINING.

The Board is proposing adding a new rule regarding instructor training. Per Minn. Stat. 155A.27, a person must hold an individual license to practice in the state as an instructor. Qualifications for an instructor license must be determined by the Board and established by rule. Additionally, Minn. R. 2105.0145 subpart 4 D requires that applicants for an instructor license submit the course completion certificate of a Board-approved instructor course on teaching methodology not more than one year old. Prior to 2016, the rules contained requirements for a 38-hour Board-approved instructor course. The

reference to the length of the course as 38 hours was repealed because there was no national standard for cosmetology instructor requirements; however, the majority of states required training in excess of a 38-hour course and many states required courses in excess of 500 hours. Board approval of the instructor course would be based on review of the curriculum on teaching methodology in order to lay the proper foundation for effective instruction. Currently, there are 18 Board-approved instructor training courses.

The Board is proposing that an instructor training course be 45 hours of training and must address the following topics: lesson planning and development, pedagogy and teaching methodologies, classroom and clinic-floor management, student evaluation and assessment, social equity and cultural responsiveness, remote learning strategies, and Minnesota Statutes and rules. This is needed and reasonable in order to set a standard for training and to maintain consistency among instructor training programs. It is also reasonable to require the number of training hours in rule because all other training programs (cosmetology, esthology, advanced practice esthology, nail technology, and eyelash technology) have a specified number of training hours in rule.

Proposed training topics are based on the curriculum of currently approved instructor training courses. In addition, it is reasonable and necessary to require that cosmetology instructors receive basic training in social equity and cultural responsiveness. This aligns with Governor Walz's executive order establishing the One Minnesota Council on Inclusion and Equity, an interagency partnership. The governor asserts that that actively prioritizing diversity, inclusion, and equity as core values is essential to addressing inequities and achieving fair government. Additionally, there is a national trend in higher education for colleges and universities to require candidates for teaching positions to submit a personal statement on diversity and inclusion as part of their application packet, effectively asking candidates to demonstrate their understanding of the power educators have to either dismantle or uphold structural racism. Including "social equity and cultural responsiveness" as a training topic will better prepare instructors to address the needs of diverse clients in their communities.

Language requiring that a student enrolled in an instructor training program must not serve as an instructor in a cosmetology school without an active instructor license is consistent with Minn. Stat. 155A.27 subdivision 1.

Language is also added to clarify that non-schools can be approved to offer instructor training. Currently, the Board has approved four non-schools to offer instructor training and it would not be reasonable to not allow these entities to continue offering this training course.

2110.0510 COSMETOLOGIST TRAINING.

Subpart A.

The Board is proposing to relax and clarify the language which could have been interpreted in the past that the cosmetology training must include 600 hours of esthology, 350 hours of nail technology, and 600 hours of hair. However, since 2016 the Board has employed dedicated staff who review school curriculum in-depth and have discovered that this is not how curriculum is being developed and it is not a reasonable requirement. In-depth review of curriculum shows that the time dedicated to teaching each service can vary greatly. While it is essential that the cosmetology course include hair, skin, nail, and eyelash training, the proposed rule specifies the curriculum include a balance of instruction in the training topics outlined in Minn. R. 2110.0520, 2110.0530 and 2110.0580 and should not be heavily

weighted in one topic over the others.

In 2017, the Board adopted rules to create a new eyelash technician license as required per Minnesota Session Laws 2017, 1st Special Session, Chapter 4, Article 2, Section 64. The Board is proposing to amend subpart A to clarify that the eyelash technician course found in Minn. R. 2110.0580 is part of the cosmetology course.

Subpart B.

Language in subpart B was amended to clarify that “applied science and skills” means practical instruction and hands-on practice. In addition, terminology was updated to reflect the current terminology used in cosmetology today. These services were already part of the cosmetology curriculums approved by the Board and adding the words simply update the rule language so that it is consistent with school practice. The proposed amendment does not change the impact of the rule or add any additional requirements.

Subpart C.

Instruction in “electricity and light” is being removed from subpart C as this topic is now part of advanced practice esthetics which is located in Minn. R. 2110.0525. Electricity and light relate to electrical energy services and is part of the advanced practice esthetic scope of practice and curriculum. It is reasonable and necessary to remove this training topic from cosmetology training requirements, as the topic has been deemed to be beyond the scope of any basic esthiology training included in a cosmetology program.

This proposed amendment adds contraindications including diseases and disorders of the hair, skin, nails and eyes and safe use of electric tools and equipment to the preclinical portion of the curriculum requirement. A contraindication is a situation or condition in which a specific treatment or procedure could be harmful to the person receiving it. Identifying potential contraindications prior to providing a service to a client is an important part of the client consultation process. Without an evaluation of the client’s hair/skin/nails/eyes or a discussion about potential conditions, medications, etc. that may cause a negative reaction to the service being performed can pose a significant risk to client safety. This is an important part of public safety. With the creation of an advanced practice esthetician license, training on electricity and lights was removed from Minn. R. 2110.0520 and incorporated into advanced practice esthiology. Schools were required to update their existing cosmetology and esthiology curricula to align with scope of practice change. However, basic cosmetology and esthiology programs still use electrical equipment such as blow dryers, curling irons, facial scrubbers, steamers, etc. so it is reasonable to require training in the safe use of electric tools and equipment.

Subpart D.

Language is being proposed to clarify that students must receive relevant theoretical and safety instruction in all services prior to offering the service on a person. These clarifications are needed and reasonable as some schools have interpreted elementary service skills to mean that the student may provide services to other students on the first or second day of a program prior to any relevant instruction in infection control or safety for the service. The intent of the rule has been to ensure that students have the proper and necessary theoretical background before attempting to provide services to anyone. It is important that students learn the basics prior to offering any service on a person, even if

the service is being performed on a fellow student and not an outside client or model. This is important for both the student themselves as well as the person receiving the service. Without basic knowledge, providing services to clients could become a health and safety risk. Furthermore, the word “elementary” is being changed to “introductory” which is more modern terminology.

Subpart E.

As part of their training, a student must complete clinical service exercises or “quotas”. Per Minn. R. 2110.0740 subpart G, instructors must review and evaluate each clinical service exercise before, during, and after the service. A clinical service exercise is a full service completed as if the service was performed in a salon setting.

Since 2015, two new license types have been added to the list of licenses issued by the Board. These include the advanced practice esthetician license (Session Laws 2015, Chapter 77, art 2, s 81 (b)) and the eyelash technology license (Session Laws 2017, 1st Special Session, Chapter 4, Article 2, Section 64). Previously, the number of clinical service exercises were specified in rule for cosmetology (Minn. R. 2110.0510 subpart D), esthiology (Minn. R. 2110.0520 subpart D) and nail technology (Minn. R. 2110.0530 subpart D). However, with the creation of two new licenses – advanced practice esthiology and eyelash technology – the Board needed to approve new clinical service exercises. In response, the Board created a Practical Skills Task Force (“Task Force”) to review and recommend clinical service exercise requirements for advanced practice esthiology and eyelash technology training programs. The Task Force was comprised of 15 school instructors and subject matter experts. In addition, due to the rapidly changing industry, and feedback from schools that the number and types of clinical service exercises were outdated and burdensome, the Task Force also reviewed and recommended updated clinical service exercise requirements for cosmetology, esthiology, and nail technology training programs. The Task Force considered the types of services currently offered in schools and salons, various school curriculums, the primary cosmetology textbooks used in schools, as well as requirements in other states to develop modern clinical service exercise standards to adequately prepare students for professional practice.

Per direction from the Board, the cosmetology clinical service exercises recommended by the Task Force will be approved once the rules have been amended to remove the number and specific types of clinical service exercises and replace it with a list of topics to be covered that better reflect the current industry. The Board will also approve the number of clinical service exercises in each category.

Therefore, it is reasonable and necessary to amend subpart D to remove the clinical service exercises as they are deemed to be out of date. The list of clinical service exercises will be updated as needed as services in the field change. There may be an initial cost to schools if the school needs to acquire different products or equipment to keep abreast of new technology, but the Task Force anticipated costs to be minimal.

2110.0520 ESTHETICIAN TRAINING.

Subpart A.

The proposed changes to subpart A simplify and clarify the language. This amendment does not change the impact of the rule or add any additional requirements.

Subpart B.

This new subpart proposes adding a new subpart to require a minimum number of theory hours to the esthetician training course. The cosmetology training course in 2110.0510 subpart B requires a minimum number of theory hours. Adding a parallel minimum number of theory hours to the esthetician training course is needed and reasonable to ensure that every basic training program has a specified minimum number of theory hours. This will also help standardize curriculum between schools and ensure that all students have an adequate foundation of theoretical education. Under current rule, the minimum number of theory hours any esthetics program could be approved for is 120 hours. The Board is proposing a 180-hour minimum. All approved esthetician training curricula exceed 120 hours of theory instruction, and most if not all already exceed 180 hours of theory instruction. This change may require a few schools to modify their curriculum which would require school staff time but is not expected to result in any cost to schools. The services specified in this subpart reflect services that are already being taught in each approved esthetician curriculum. No school currently approved would need to adjust their curriculum to meet this rule change.

Subpart C.

A language change is proposed to reduce the number of preclinical hours from 120 hours to 90 hours of the esthetician training course. After a review of the number of preclinical hours in the cosmetology training course (Minn. R. 2110.0510 subpart C) and the nail technology training course (Minn. R. 2110.0530 subpart B), it was discovered that both the cosmetology and nail technology training courses require approximately 15 percent of the hours to be preclinical. However, the esthiology training course was requiring 20 percent of the hours to be preclinical. This change is needed and reasonable to ensure consistency with other rule parts that govern basic training programs.

In addition, this proposed amendment adds contraindications including diseases and disorders of the skin and eyes, and safe use of electric tools and equipment to the preclinical portion of the curriculum requirement. A contraindication is a situation or condition in which a specific treatment or procedure could be harmful to the person receiving it. Identifying potential contraindications prior to providing a service to a client is an important part of the client consultation process. Without an evaluation of the client's skin/eyes or a discussion about potential conditions, medications, etc. that may cause a negative reaction to the service being performed can pose a significant risk to client safety. This is an important part of public safety. With the creation of an advanced practice esthetician license, training on electricity and lights was removed from Minn. R. 2110.0520 and incorporated into advanced practice esthiology. Schools were required to update their existing cosmetology and esthiology curricula to align with scope of practice change. However, basic cosmetology and esthiology programs still use electrical equipment such as wax warmers, facial scrubbers, steamers, etc. so it is reasonable to require training in the safe use of electric tools and equipment.

Subpart D.

Language is also being proposed to clarify that students must receive relevant theoretical and safety instruction in all services prior to offering the service on a person. These clarifications are needed and reasonable as some schools have interpreted elementary service skills to mean that the student may provide services to other students on the first or second day of a program prior to any relevant instruction in infection control or safety for the service. The intent of the rule has been to ensure that students have the proper and necessary theoretical background before attempting to provide services

to anyone. It is important that students learn the basics prior to offering any service on a person, even if the service is being performed on a fellow student and not an outside client or model. This is important for both the student themselves as well as the person receiving the service. Without basic knowledge, providing services to clients could become a health and safety risk. Furthermore, the word “elementary” is being changed to “introductory” which is more modern terminology.

Subpart E.

As part of their training, a student must complete clinical service exercises or “quotas”. Per Minn. R. 2110.0740 subpart G, instructors must review and evaluate each clinical service exercise before, during, and after the service. A clinical service exercise is a full service completed as if the service was performed in a salon setting.

Since 2015, two new license types have been added to the list of licenses issued by the Board. These include the advanced practice esthetician license (Session Laws 2015, Chapter 77, art 2, s 81 (b)) and the eyelash technology license (Session Laws 2017, 1st Special Session, Chapter 4, Article 2, Section 64). Previously, the number of clinical service exercises were specified in rule for cosmetology (Minn. R. 2110.0510 subpart D), esthiology (Minn. R. 2110.0520 subpart D) and nail technology (Minn. R. 2110.0530 subpart D). However, with the creation of two new licenses – advanced practice esthiology and eyelash technology – the Board needed to approve new clinical service exercises. In response, the Board created a Practical Skills Task Force (“Task Force”) to review and recommend clinical service exercise requirements for advanced practice esthiology and eyelash technology training programs. The Task Force was comprised of 15 instructors and subject matter experts. In addition, due to the rapidly changing industry, and feedback from schools that the number and types of clinical service exercises were outdated and burdensome, the Task Force also reviewed and recommended updated clinical service exercise requirements for cosmetology, esthiology, and nail technology training programs. The Task Force considered the types of services currently offered in schools and salons, various school curriculums, the primary textbooks used in schools, as well as requirements in other states to develop modern clinical service exercise standards to adequately prepare students for professional practice.

Per direction from the Board, the esthiology clinical service exercises recommended by the Task Force will be approved once the rules have been amended to remove the number and specific types of clinical service exercises and replace it with a list of topics to be covered that better reflect the current industry. The Board will also approve the number of clinical service exercises in each category.

Therefore, it is reasonable and necessary to amend subpart D to remove the clinical service exercises as they are deemed to be out of date. The list of clinical service exercises will be updated as needed as services in the field change. There may be an initial cost to schools if the school needs to acquire different products or equipment to keep abreast of new technology, but the Task Force anticipated costs to be minimal.

Subpart F.

The changes made to this subpart are technical and for clarification.

2110.0525 ADVANCED PRACTICE ESTHETICIAN TRAINING.

Subpart A.

This proposed amendment simplifies the language and standardizes it across rule parts. The amendment does not change the impact of the rule or add any additional requirements.

Subpart B.

The language has been amended to align rule with Minn. Stat. 155A.30 subdivision 11 which states that instruction, with the exception of Board-approved theory-based classes, must be given within a licensed school building.

Further proposed amendments provide clarity and simplicity and do not add any additional requirements.

Subpart C.

The proposed amendment provides clarification that a school may provide a combined esthetician and advanced practice esthetician program. The 1,100-hour reference was added so there is an explicit reference to the number of training hours required for a combined esthetician/advanced practice esthetician training program. Current rule directs the reader to two separate rule parts, requiring the reader to locate these rules and to calculate the required training hour total themselves. Adding the 1,100-hour reference provides clarity for the reader and aligns with other training sections in rule which include the program hour requirement. This rule is needed and reasonable, and by itself, does not impose any additional burdens or requirements on licensees and has no associated cost.

Subpart D.

The proposed amendment clarifies that a school's curriculum must be within the scope of practice as defined in Minn. R. 2110.0105.

An amendment is proposed to add a minimum number of theory hours to the curriculum. Advanced practice esthetician services are changing and expanding at a rapid pace. New technology is emerging quickly. Requiring a minimum number of theory hours is needed and reasonable as required minimum theory hours is in parallel with requirements for other training programs in this rule part, and it supports public safety by ensuring that all advance practice estheticians will have a solid theoretical education. This will also help standardize curriculum between schools and ensure that all students have an adequate foundation of theoretical education.

Subpart E.

Language is being proposed to clarify that students must receive relevant theoretical and safety instruction in all services prior to offering the service on a person. These clarifications are needed and reasonable as some schools have interpreted the training rules to mean that the student may provide services to other students on the first or second day of a program prior to any relevant instruction in infection control or safety for the service. The intent of the rule has been to ensure that students have the proper and necessary theoretical background before attempting to provide services to anyone. It is important that students learn the basics prior to offering any service on a person, even if the service is being performed on a fellow student and not an outside client or model. This is important for both the

student themselves as well as the person receiving the service. Without basic knowledge, providing services to clients could become a health and safety risk.

Subpart F.

The advanced practice esthetician license was created as a new license under Session Laws 2015, Chapter 77, art 2, s 81 (b). As part of their training, a student must complete clinical service exercises or “quotas”. Per Minn. R. 2110.0740 subpart G, instructors must review and evaluate each clinical service exercise before, during, and after the service. A clinical service exercise is a full service completed as if the service was performed in a salon setting.

The advanced practice esthetician license was created as a new license under Session Laws 2015, Chapter 77, art 2, s 81 (b). In response to the Board’s need to create clinical service exercises for this new license type, the Board created a Practical Skills Task Force (“Task Force”) to review and recommend clinical service exercise requirements for advanced practice esthiology training program. The Task Force was comprised of 15 instructors and subject matter experts. The Task Force considered the types of services currently offered in schools and salons, various school curriculums, primary textbooks used in schools, as well as requirements in other states to develop modern clinical service exercises to adequately prepare students for professional practice.

The advance practice esthiology clinical service exercises and the number of exercises required were approved by the Board on July 16, 2018. The list of clinical service exercises will be updated as needed as services in the field change.

The list of topics for advanced practice esthiology in this subpart has been updated to align with clinical service exercises approved by the Board.

2110.0530 NAIL TECHNICIAN TRAINING.

Subpart A.

This proposed amendment simplifies the language and standardizes it across rule parts. The amendment does not change the impact of the rule or add any additional requirements.

Subpart B.

This new subpart proposes adding a new subpart to require a minimum number of theory hours to the nail technician training course. The cosmetology training course in 2110.0510 subpart B requires a minimum number of theory hours. Adding a parallel minimum number of hours to the nail technician training course is needed and reasonable to ensure that every basic training program has a specified minimum number of theory hours. This will also help standardize curriculum between schools and ensure that all students have an adequate foundation of theoretical education. Under current rule, the minimum number of theory hours any nail technician training program could be approved for is 50 hours. The Board is proposing a 105-hour minimum. All approved nail technician training curricula exceed 50 hours of theory instruction, and most, if not all, already exceed 105 hours of theory instruction. This change may require a few schools to modify their curriculum which would require school staff time but is not expected to result in any cost to schools. The services specified in this

subpart reflect services that are already being taught in each approved nail technician curriculum. No school currently approved would need to adjust their curriculum to meet this rule change.

Subpart C.

This proposed amendment adds contraindications including diseases and disorders of the skin and nails to the preclinical portion of the curriculum requirement. A contraindication is a situation or condition in which a specific treatment or procedure could be harmful to the person receiving it. Identifying potential contraindications prior to providing a service to a client is an important part of the client consultation process. Without an evaluation of the client's hair/skin/nails/eyes or a discussion about potential conditions, medications, etc. that may cause a negative reaction to the service being performed can pose a significant risk to client safety. This is an important part of public safety.

Subpart D.

Language is being proposed to clarify that students must receive relevant theoretical and safety instruction in all services prior to offering the service on a person. These clarifications are needed and reasonable as some schools have interpreted elementary service skills to mean that the student may provide services to other students on the first or second day of a program prior to any relevant instruction in infection control or safety for the service. The intent of the rule has been to ensure that students have the proper and necessary theoretical background before attempting to provide services to anyone. It is important that students learn the basics prior to offering any service on a person, even if the service is being performed on a fellow student and not an outside client or model. This is important for both the student themselves as well as the person receiving the service. Without basic knowledge, providing services to clients could become a health and safety risk. Furthermore, the word "elementary" is being changed to "introductory" which is more modern terminology.

Subpart E.

As part of their training, a student must complete clinical service exercises or "quotas". Per Minn. R. 2110.0740 subpart G, instructors must review and evaluate each clinical service exercise before, during, and after the service. A clinical service exercise is a full service completed as if the service was performed in a salon setting.

Since 2015, two new license types have been added to the list of licenses issued by the Board. These include the advanced practice esthetician license (Session Laws 2015, Chapter 77, art 2, s 81 (b)) and the eyelash technology license (Session Laws 2017, 1st Special Session, Chapter 4, Article 2, Section 64). Previously, the number of clinical service exercises were specified in rule for cosmetology (Minn. R. 2110.0510 subpart D), esthiology (Minn. R. 2110.0520 subpart D) and nail technology (Minn. R. 2110.0530 subpart D). However, with the creation of two new licenses – advanced practice esthiology and eyelash technology – the Board needed to approve new clinical service exercises. In response, the Board created a Practical Skills Task Force ("Task Force") to review and recommend clinical service exercise requirements for advanced practice esthiology and eyelash technology training programs. The Task Force was comprised of 15 instructors and subject matter experts. In addition, due to the rapidly changing industry, and feedback from schools that the number and types of clinical service exercises were outdated and burdensome, the Task Force also reviewed and recommended updated clinical service exercise requirements for cosmetology, esthiology, and nail technology training programs. The Task Force considered the types of services currently offered in schools and salons, various school

curriculums, the primary textbooks used in schools, as well as requirements in other states to develop modern clinical service exercise standards to adequately prepare students for professional practice.

Per direction from the Board, the nail technology clinical service exercises recommended by the Task Force will be approved once the rules have been amended to remove the number and specific types of clinical service exercises and replace it with a list of topics to be covered that better reflect the current industry. The Board will also approve the number of clinical service exercises in each category.

Therefore, it is reasonable and necessary to amend subpart D to remove the clinical service exercises as they are deemed to be out of date. The list of clinical service exercises will be updated as needed as services in the field change. It is unlikely schools will need to acquire different products to align with the proposed updates in this section, but if they do, the Task Force anticipated any costs to be minimal.

2110.0545 SKILLS COURSES

Subpart A.

The changes made to this subpart are primarily technical and for clarification.

Subpart C.

The proposed changes are an effort to streamline the information and to incorporate terms and rules that schools use and are familiar with. The changes should not result in any additional cost to schools.

Language from this subpart D has been incorporated in Minn. R. 2110.0545 subpart C to include that an individual must attend a skills course that is specific to the licensure field sought.

Subpart D.

The changes made to this subpart are primarily technical and for clarification. The proposed changes are an effort to streamline the information and to incorporate terms and rules that schools use and are familiar with. Subpart E still requires schools to retain records like all other school records, but now includes a reference to the Minn. R. 2110.0670 regarding student records. The only substantive change was extended the retention of records from five to ten years. This change is needed for consistency with changes made to Minn. R. 2110.0670 subpart D. Minn. R. 2110.0670 subpart D is being amended to increase from five to ten years the number of years the school must maintain student records from the date of the student's enrollment or completion of training. There may be minimal costs for schools to increase server space or physical storage space. However, OHE requires student records to be retained for 50 years. The University of Minnesota requires transcripts for graduates be retained for 50 years. Increasing the retention period to ten years enhances protection for students and ensures that their education history remains available to them.

Subpart E.

The changes made to this subpart are primarily technical and for clarification. The proposed changes are an effort to streamline the information and to incorporate terms and rules that schools use and are familiar with. The changes should not result in any additional cost to schools.

2110.0550 CREDIT TOWARD ANOTHER LICENSE.

Changes are being proposed to eliminate the five-year time limit a licensed esthetician or nail technician who completed licensure training has to receive credit toward another license. The Board has heard from licensees that students have difficulty affording school when they return to school for a subsequent training program in another discipline. Although the Board cannot ease the cost of schooling, the Board is in a position to remove the unnecessary burden of limiting the transfer of credits to a five-year period. These changes are needed and reasonable to allow students who have encountered difficult circumstances such as a long-term illness, financial setbacks or other life-altering changes to further their education when their circumstances allow without worrying about the five-year time limit or seeking a rule waiver from the Board.

Since 2015, two new license types have been added to the list of licenses issued by the Board. These include the advanced practice esthetician license (Session Laws 2015, Chapter 77, art 2, s 81 (b)) and the eyelash technology license (Session Laws 2017, 1st Special Session, Chapter 4, Article 2, Section 64). Amendments are being proposed to allow these two license types to transfer credit toward another license.

Additional language was added to clarify that the license must be current and active at the time credit is given by the school. This language does not change current practice.

A final amendment was made to clarify that licensees who pursue another license are not required to complete the clinical service exercises or the Practical Skills Test in the area in which they were already licensed. This language does not change current practice.

2110.0580 EYELASH TECHNICIAN TRAINING.

Subpart A, B, C, and D.

The changes made to these subparts are technical.

Subpart E.

As part of their training, a student must complete clinical service exercises or “quotas”. Per Minn. R. 2110.0740 subpart G, instructors must review and evaluate each clinical service exercise before, during, and after the service. A clinical service exercise is a full service completed as if the service was received in a salon setting.

The eyelash technology license was created as a new license under Session Laws 2017, 1st Special Session, Chapter 4, Article 2, Section 64. In response to the Board’s need to create clinical service exercises, the Board created a Practical Skills Task Force (“Task Force”) to review and recommend clinical service exercise requirements for eyelash technology training programs. The Task Force was comprised of 15 instructors and subject matter experts. The Task Force considered the types of services currently offered in schools and salons, various school curriculums, the primary textbooks used in schools, as well as requirements in other states to develop modern clinical service exercises to adequately prepare students for professional practice. In response to feedback from schools that the 38-hour eyelash technology training course was too short to adequately cover all required theoretical and practical instruction, the Task Force proposed reduced clinical service exercises for eyelash technology

training programs. The Board approved the reduced requirements on July 22, 2019.

A new section is added under Minn. R. 2110.0580 to refer to the clinical service exercises as approved by the Board. This is consistent with rule parts for other training programs. The service topics listed in this section mirror the eyelash extension services currently being offered in cosmetology, esthology and eyelash technology training programs and will not result in any additional costs to schools.

New Rule

2110.0590 TESTING

Per Minn. Stat. 155A.27 subdivision 4, appropriate standardized tests must be used and must include subject matter relative to the application of Minnesota law to safeguard the health and safety of consumers by determining the competency of the applicants to provide the services indicated. Per Minn. R. 2110.0670 subpart E(5), schools are required to provide documentation of the student's completion of the skills certification. The Board refers to this certification as the Practical Skills Test (PST). This new rule will provide clarification of the requirements and bring the rule into alignment with industry expectations and standards.

The PST is a Board-approved test designed to assess the competency of Minnesota students and is offered only by schools. Skills courses are outlined in Minn. R. 2110.0545. Minnesota cosmetology students, skills course participants, and some individuals coming to Minnesota from another state need to complete the PST in order to apply for licensure. Due to the changing nature of the industry, the PST was last reviewed by the Practical Skills Task Force ("Task Force") during meeting from 2017 through 2019. The Task Force was comprised of 15 instructors and subject matter experts. Meetings were open to the public. The Board continues to review the PST as necessary.

As the PST is already a requirement, this new rule does not change current practice.

2110.0625 DESIGNATED SCHOOL MANAGER.

Subpart D.

The proposed amendment corrects an error. Currently, the rule reads that a school manager is responsible for a salon. However, this is incorrect. A school manager is responsible for the school, instructors, and students. A designated licensed salon manager is responsible for a salon (Minn. R. 2105.0305).

2110.0630 INSTRUCTORS.

Subpart A.

During advisory committee meetings, the Board heard from members who had difficulty with continuously meeting instructor ratios. Additionally, some schools have as little as 10 students at a time and requiring two licensed instructors was an unnecessary burden for smaller schools. The Board continues to hear from licensees at Board meetings either through public comment or through the submission of a rule waiver request that it is difficult to always have two licensed instructors in the classroom or clinic. Since 2009, the Board has granted 19 rule waiver or variance requests related to the two instructor requirement that were submitted on the basis of financial hardship. The proposed rule

amendments in this part reduce potential costs to schools, provide more flexibility, and still meet the objective of protecting the health and safety of the public. Schools may see reduced costs by reducing the number of instructors that schools need to hire to meet the instructor ratio.

These changes remove an unnecessary burden to schools by removing the requirement to have two licensed instructors on the school premises whenever students are present. Licensed cosmetology schools have found this rule to be an unnecessary burden to their operation. It places a burden on budgets and can be prohibitive when the second licensed instructor is out unexpectedly due to illness or an emergency. Amending this part reduces the financial burden on schools. Schools also occasionally have crisis situations that may require more flexibility in the scheduling of instructors. Because the two licensed instructor requirement is being removed, the ratio of instructors to students has been lower from 20 to 15 students. This is reasonable to ensure that there is adequate oversight of students especially when students are working with chemicals or performing services on a client.

Item (1).

Under current rule, schools are allowed to use an unlicensed instructor who holds a salon manager's license as a substitute instructor. However, in 2020, rule changes went into effect that eliminated the requirement that in order to obtain a salon manager's license an applicant needed 2700 hours of work experience. Under the new 2020 rules, a salon manager license can be obtained directly out of school. Because of this, it is no longer necessary for a substitute instructor to hold a salon manager's license.

Because subpart A is being amended to reduce the requirement of having two licensed instructors by 50 percent, the allowance in subpart (A)1 to use an unlicensed substitute for up to 30 days has been reduced to 15 calendar days. An analysis of rule waiver requests heard by the Board indicates that schools generally will not need more than 15 calendar days to use an unlicensed substitute. Since 2009, only three schools have been granted a waiver specifically to allow the use of substitute instructors for more than 30 days. The majority of school instructor-related waiver requests pertain to the two instructor requirement and cite low enrollment and financial hardship.

New language is also added to require that when using an unlicensed instructor in the classroom or clinic area, there must be a licensed instructor on the school premises. Although the burden of having two licensed instructors is being removed, the solution is not to allow schools to have no licensed instructors on the premises. Rather, it is prudent and necessary for schools to develop staffing plans which provide some flexibility when absences occur and to develop relationships with licensed practitioners who might be able to substitute teach on short notice.

Items (2) and (3).

The proposed language changes in Items 2 and 3 simplify the reporting requirements for schools when notifying the Board of the use of unlicensed substitute instructors and instructor ratio failures.

These amendments do not change the impact of the previous reporting requirements, they only seek to tighten the parameters of the reporting through the use of a form prescribed by the Board and require the form to be submitted within 5 business days. Schools already report instructor information via email on a form prescribed by the Board, so this will not change current practice.

Additionally, the amendments extend the required notification period from same-day to within 5 business days. These changes are reasonable as it will allow schools more time to report the use of a substitute instructor or instructor ratio failure and not add an additional burden to a school on a day they are facing staffing challenges. Five business is a needed and reasonable requirement to assist both the school and the Board in avoiding situations where the school has used unlicensed instructors excessively, and where the students, whose tuition can run close to or more than ten thousand dollars for a cosmetology program, may lose credit for the hours of training completed. This language change enables schools to be acutely aware of how often an unlicensed substitute has been used and continues to alert the Board to schools where student training may be in jeopardy. This requirement is not unduly burdensome and has no realistic cost associated other than a few minutes of school staff time.

Subpart B.

This amendment clarifies that schools, rather than the Board, must notify students of any period of non-compliance. It does not change the impact of the notification requirement, it only seeks to tighten the parameters of the notification by requiring the school submit it to the Board within 5 business days. Requiring notification within 5 business days is a needed and reasonable requirement to assist both the school and the Board in avoiding situations where the school has used unlicensed instructors for an extended period of time, and where the students, whose tuition can run close to or more than twenty thousand dollars for a cosmetology program, may lose credit for the hours of training completed. This requirement is not unduly burdensome and has no realistic cost associated other than a few minutes of time.

Subpart C.

This proposed rule amendment simplifies the language and eliminates confusion as to when non-instructional duties or responsibilities can occur. The amendment does not change the impact of the rule or add any additional requirements.

Subpart D.

Subpart D is being repealed in this rule part and moved to Minn. R. 2110.0670 new subpart H for reasons of better organization and clarity.

2110.0640 ENROLLMENT CONTRACTS.

Subpart A, B and C.

Current subparts A, B and C have been repealed and replaced with updated language for clarity and to reflect current practice. Proposed amendments are designed to strengthen the enrollment contract requirements to ensure better protection for students, provide clarity for schools, and complement and make consistent with record keeping requirements of Minn. R. 2110.0670 and 2110.0671. New language requires a statement acknowledging student receipt and understanding of the school's refund policy and student handbook. Rule already requires schools to provide these documents to students. Adding an acknowledgment requirement enhances student protection. Frequent student questions that come to the Board relate to the enrollment contract, attendance, student access to their school records, and confusion over the school's obligation to the student. Having these requirements collocated in a single place will facilitate understanding of these rule requirements for students and schools.

Language in subpart B regarding additional training after failing the required state licensing tests has been removed. It is reasonable to remove this language, because there are no rules that require a student to re-enroll or receive remedial training if they fail state licensing tests.

2110.0650 REFUND POLICY.

Subpart 1.

Language is amended to change “must” to “may” regarding the maximum amount of total tuition the school may receive or retain if a student withdraws or is terminated after classes have started. This amendment relaxes the requirement by allowing schools to choose to return more of the tuition to students.

Language was added to exempt secondary schools licensed by the Board and schools licensed under OHE from Minn. R. 2110.0650. OHE oversees post-secondary schools and their refund policy overrides rules regarding refunds in Minn. R. 2110.0650. Secondary schools are exempt because students in high school do not pay tuition.

Subpart 2.

The changes made to these subparts are technical and do not change the requirements.

2110.0660 STUDENT REGULATIONS.

The Board proposes changing the heading of this rule from Student Regulations to Student Handbook. Changing the title provides consistency with the terminology used in Minn. R. 2110.0310 subpart 1(T).

Per Minn. R. 2110.0310 subpart 1(T), an application for school licensure must supply copies of all student rules, disciplinary policies, and a student handbook. The proposed amendments clarify that the student handbook must also include attendance policies and that all changes, not just rule changes, must be discussed with the students. Specifying that the student handbook include attendance policies is needed and reasonable for an hour-based training program where routine attendance is critical to program completion. Additionally, a school’s attendance policy demonstrates how a school offers curriculum and assists in staff review of school curriculum. The Board does not judge the school’s policies. The Board is only verifying that the school is supplying the students with its policies to ensure students are aware of the school’s expectations.

2110.0670 STUDENT RECORDS.

A change to the title of this rule is being proposed in order to better explain what this rule contains.

Subpart A.

This proposed amendment updates and clarifies the language. Language is also added to require schools to provide student records within 3 business days. This proposed amendment is needed and reasonable to ensure that the Board can conduct business in a timely manner and to minimize the possibility that records be altered by the school prior to submission. While student records may be requested by the

Board for routine inspection purposes, the majority of student records are requested as the result of a complaint or an ongoing investigation. The Board strives to analyze and compile investigative data in a timely manner to present to the first available meeting of the Board's Complaint Committee. In addition, it is reasonable to expect that student records are kept up-to-date and are readily available, because schools are keeping these records on a daily basis.

Subpart B.

Amendments in this subpart are needed for organization and clarity. These amendments do not create additional requirements for schools.

Subpart C.

Amendments in this subpart are needed for organization and clarity. These amendments do not create additional requirements for schools.

Subpart D.

Amendments are proposed to emphasize that if a school ceases operation, the school must designate a custodian of records and provide that information to the Board prior to the end of the school's operations or school closure. In the past, it has been difficult to hold a school responsible for maintaining student records after the school has disbanded. This hurts the students as they have difficulty obtaining the required records to transfer their credits to a new school. It is necessary and reasonable to expect a school to designate a custodian to hold on to school records if the school closes and to notify the Board of this information so staff may direct students who are seeking copies of their records.

Language regarding transcripts has been moved to newly proposed rule 2110.0671 subpart G. Language regarding the cost of obtaining a copy of a student transcript or records has been moved to Minn. R. 2110.0670 subpart E.

Subpart E.

This subpart contains language regarding the cost of obtaining a copy of a student transcript or records which has been moved from Minn. R. 2110.0670 subpart D for purposes of better organization. The proposed amendment would require schools to respond to student requests for transcripts or records within 10 business days, unless the student has not met their financial obligation to the school. This is needed and reasonable as students need a transcript and copies of their records to transfer their training to another school. The Board has heard from students who have had difficulty obtaining their records when the school was non-responsive. This amendment does not change the impact of the rule or add any additional requirements but will require schools to respond to student requests in a reasonable timeframe.

The rest of the language in subpart E items 1 through 6 is being repealed or moved to newly created Minn. R. 2110.0671. Language regarding a progress evaluation report and a certification of readiness currently located in Minn. R. 2110.0670 subpart E (3) and E (4) is being repealed. These requirements were determined to be overly burdensome for schools because student progress toward completion of

training is already tracked on a daily and monthly basis, and as the certification of readiness is no longer required upon initial application for licensure.

Subpart F.

New language is proposed that requires schools to maintain records related to students who complete a skills course. Rulemaking changes in 2016 created a skills course to replace the refresher courses previously required in rule. Skill courses are designed to assess the practical skill level of applicants and served nearly the same purpose as the refresher courses which were repealed in 2016 in Minn. R. 2105.0600. Skill courses are required in limited circumstances in conjunction with testing on theory and practice when:

- a student does not become licensed within five years of completing training; or
- an out-of-state applicant has an expired out-of-state license.

Although the skills courses have existed since 2016, the rule did not contain any corresponding language under the student record requirements. The rule was unclear as to whether skills course participants are considered students and if schools are supposed to maintain records for these individuals like they are for traditional students. This new section closes that gap and clearly specifies which documents schools must maintain for skills course participants. It is reasonable to add a requirement that schools treat skills course records as student records as the students likely pay a fee to the school and as they may complete remedial training. This requirement will benefit individuals who require a skills course to attain licensure. No significant costs are anticipated with this addition.

Subpart G.

Language regarding transfer students exists in Minn. R. 2110.0705. This subpart provides clarity on record keeping requirements for transfer students. This amendment does not create additional requirements for schools.

Subpart H.

Language regarding requirements for instructor roster documentation from Minn. R. 2110.0320 and instructor payroll recordkeeping requirements from Minn. R. 2110.0630 subpart D have been relocated here under a new subpart H for reasons of better organization and clarity. No additional costs are associated with this change. These amendments do not create additional requirements for schools.

Subpart I.

This new subpart collocates records retention requirements into a single item. This subpart relocates and enhances retention requirements for student records from subpart D by adding a provision that schools maintain records for at least 10 years for enrolled students (expanded from 5 years) or 5 years for prospective students (previously unspecified). The Minnesota Office of Higher Education (OHE) requires student records to be retained for 50 years. The Board is only proposing a fraction of the number of years that OHE requires. For cosmetology schools not licensed by OHE, this may result in a cost to the schools to implement a more robust record keeping system if they do not have one already. Cosmetology schools currently licensed under OHE will not have any additional requirements.

Additionally, increasing the retention requirement from 5 years to 10 years will benefit graduates who do not apply for an initial license soon after completion of training. Under the current 5-year retention policy, some graduates have been unable to obtain the required course completion certificate and/or other relevant training records from their school needed to apply for an initial license. These individuals and have needed to seek a rule waiver from the Board. The majority of individuals who request waivers of this nature approach the Board between five and ten years after graduating and cite personal medical or financial circumstances as reasons why they did not apply for an initial license in the five years after completion of training. In general, the Board has approved these waiver requests. Increasing the retention requirement to 10 years will make it easier for graduates to obtain required course completion documentation and alleviate the burden of requesting a waiver from the Board.

Minn. R. 2110.0630 subpart D requires instructor records be kept for three consecutive calendar years. This retention requirement is being relocated here and increased to five years to align with the five-year training expiration limit set in Chapter 2105.

New Rule

2110.0671 STUDENT RECORDS.

This new rule has been created to refer to specific types of documentation schools must keep within the record for each student. Schools have stated they find the current records rules difficult to navigate. Having one rule part that lists the types of documentation schools must keep aims to resolve this concern. Much of the language in this new rule has been moved from Minn. R. 2110.0670 subpart E. Redundant, burdensome, and inconsistent language has been removed. Language regarding a progress evaluation report and a certification of readiness currently located in Minn. R. 2110.0670 subpart E (3) and E (4) are being removed. These requirements were determined to be overly burdensome for schools.

Subpart 1 A.

The proposed language has been simplified from the language that was previously contained in Minn. R. 2110.0670 subpart E (1) which listed elements that are normally found in the enrollment contract. These elements are already specified in Minn. R. 2110.0640.

Subpart 1 B.

The proposed language in this new subpart has been moved from Minn. R. 2110.0670 subpart E (2). This subpart ensures that students have successfully completed the pre-clinical portion of the cosmetology, esthology, nail technology and eyelash technology training programs. This subpart does not apply to the advanced practice esthology program, because students in the advanced practice esthology program must first obtain cosmetology or esthology training. Therefore, there is no pre-clinical work in the advanced practice esthology program, because students have already completed this training. Further, the advanced practice esthology training rules do not require a pre-clinical training period, so this type of verification is not required. The proposed amendment does not change the impact of the rule or add any additional requirements and should not result in any additional costs.

Subpart 1 C.

Proposed language requires schools to document a student’s successful completion of training on a board-issued Course Completion Certificate, including the hours and clinical service exercises relevant to the training program, and completion of the Practical Skills Test. This requirement previously existed in Minn. R. 2110.0670 subpart E (5) and has been moved here for purposes of better organization.

The proposed amendment does not change the impact of the rule or add any additional requirements and should not result in any additional costs.

Subpart 1 D.

Language regarding documentation of accrued student hours in accordance with Minn. R. 2110.0680 is added here to provide clarity that this must be part of the student record. This requirement is also contained in current and proposed Minn. R. 2110.0670 subpart C.

The proposed amendment does not change the impact of the rule or add any additional requirements and should not result in any additional costs.

Subpart 1 E.

Language regarding documentation of accrued clinical service exercises in accordance with Minn. R. 2110.0680 is added here to provide clarity. This requirement is also contained in current Minn. R. 2110.0670 subpart C. This requirement previously existed in Minn. R. 2110.0670 subpart E (5) and has been moved here for purposed of better organization. Clinical service exercise topics for each training program are outlined in their respective rule parts in rule chapter 2110.

The proposed amendment does not change the impact of the rule or add any additional requirements and should not result in any additional costs.

Subpart 1 F.

Per Minnesota Statute 155A.27 subdivision 4, appropriate standardized tests must be used and must include subject matter relative to the application of Minnesota law to safeguard the health and safety of consumers by determining the competency of the applicants to provide the services indicated. Per Minn. R. 2110.0670 subpart E(5), schools were already required to provide documentation of the student's completion of the skills certification. The Board refers to this certification as the Practical Skills Test (PST).

Language is added here to clarify that the PST results form must be part of the student record. The proposed amendment does not change the impact of the rule, deviate from current practice, or add any additional requirements and should not result in any additional costs.

Subpart 1 G.

Language regarding transcripts has been moved here from Minn. R. 2110.0670 subpart D. The proposed amendment does not change the impact of the rule or add any additional requirements and should not result in any additional costs.

Subpart 2.

Skills course participants and transfer students will not generate all of the record types that are expected with students enrolled in a full course of training. This new subpart collocates preexisting recordkeeping exceptions into a single item for clarity.

2110.0680 CERTIFICATION OF STUDENT HOURS.

Subpart A.

The proposed changes were made for clarity and simplicity. Adding language regarding the recording of completed clinical services exercises is not an additional requirement. Clinical service exercises are already required to be tracked under Minn. R. 2110.0680 subpart C.

Current language from Minn. R. 2110.0680 subpart B was moved to under subpart A.

The proposed amendments do not change the impact of the rule or add any additional requirements and should not result in any additional costs.

Subpart B.

The Board proposes removing language regarding the documentation of clinical service exercises to a newly created section below for clarity. The language remaining in this subpart requires the documentation of hours spent in training.

The proposed amendment does not change the impact of the rule or add any additional requirements.

Subpart C.

Language regarding the documentation of clinical service exercises currently found in Minn. R. 2110.0680 subpart C has been moved to this new section. In addition, language has been added to require clinical service exercise to be reported on a form prescribed by the Board. Some schools have difficulty documenting student work and would appreciate a standard form to use in tracking clinical service exercises. A standardized form will clarify expectations and ensure that schools have the tools needed to accurately track all required clinical service exercises. A standardized form will also be easier for Board staff to read when conducting investigations and reviewing student records. Use of a new form may result in minimal costs for Board staff to create the form and schools to train staff on using the form. Schools may need to alter their current internal tracking processes to adapt to using a Board-prescribed form, but no cost to schools is anticipated.

Subpart F.

Changes have been proposed to simplify the language. The proposed amendments do not change the impact of the rule or add any additional requirements and should not result in any additional costs.

2110.0690 STUDENT DEADLINE TO BECOME LICENSED.

Additional rule citations are added to provide clarity. The proposed amendments do not change the impact of the rule or add any additional requirements and should not result in any additional costs.

2110.0705 TRANSFER STUDENTS.

Subpart 1.

Language has been proposed to clarify the intention of this rule and provide for better organization.

This rule acknowledges that schools may accept transfer students who have some training or credits from another school. However, the rule was not intended to exclude students who have completed a full training program in another state and who may need to complete additional training in Minnesota to meet minimum licensure requirements. Changing the language from “completed a portion of required training” to “received previous training” allows students who have completed a full training program in another state to be eligible to receive a license in Minnesota after undergoing an evaluation of their records. This change is reasonable and needed to align with real-life licensing scenarios for individuals who have completed a full training program in another state and may need to complete additional training in a Minnesota cosmetology school.

Furthermore, this subpart clarifies that the individual must be assessed prior to enrollment. This is expected to be current practice at cosmetology schools as an evaluation is critical to determine the individual’s skill level and knowledge, and to determine what additional training is relevant or required. Unfortunately, Board staff have heard from some students who were enrolled by a school prior to having their previous training evaluated and how it had a negative impact on the training they received and their subsequent eligibility for licensure. It is reasonable to expect that a school would need to assess an individual before offering to enroll the individual as a transfer student as the school must determine their competency and skill level to determine an adequate and appropriate training plan. The language also clarifies that training from another school or state must meet requirements of Minn. R. 2110.0680.

Board staff are of the understanding that most schools are already following this process for transfer students. The proposed amendments should not result in any additional costs to schools.

Subpart 2.

Language has been proposed for clarify and for purposes of better organization.

This subpart establishes requirements related to individuals who transfer from another country where there may be no licensure, no formal training, or where the training is an apprenticeship. This subpart clarifies that the individual must be assessed prior to enrollment. This is expected to be current practice at cosmetology schools as an evaluation is critical to determine the individual’s skill level and knowledge, and to determine what additional training is relevant or required. Unfortunately, Board staff have heard from some students who were enrolled by a school prior to having their previous training evaluated and how it had a negative impact on the training they received and their subsequent eligibility for licensure. It is reasonable to expect that a school would need to assess an individual before offering to enroll the individual as a transfer student as the school must determine their competency and skill level to determine an adequate and appropriate training plan. In addition, this subpart clarifies that the school must administer a Practical Skills Test (PST) as part of the student evaluation. The PST is a Board-approved test designed to assess the competency of students in the skills required of graduates for

Minnesota-licensed cosmetology schools. The PST assists the school in identifying any specific additional training that the individual will need to obtain eventual licensure in Minnesota.

Additionally, subpart 2 item B requires that the school maintain in the student's record all documentation of the evaluation, including records, the school's assessment, and information the school has collected on the student's background training and experience. It is reasonable and necessary to require school to document the evaluation and to retain records. This requirement is consistent with other rule requirements to maintain student records. Records are essential in reviewing a school's compliance with training requirements and ensure the integrity of the training requirements.

Subpart 3.

Current language in subpart 3 has been added to subparts 1 and 2. Language regarding records from another country or records that are not in English has been moved from subpart 1 for purposes of better organization and clarity. Evaluation by a board-approved credentialing agency applies only to foreign transfer students. Any records not in English must be translated into English regardless of the origin of the records.

The proposed amendments do not change the impact of the rule or add any additional requirements and should not result in any additional costs.

2110.0710 FULL COURSE OF INSTRUCTION.

This rule is being repealed. Since 2013, all four of the licensed cosmetology training programs embedded within secondary educational settings (high schools) have regularly requested variances to this rule. The Board routinely grants these variances, recognizing that these high school training programs are widely exploratory in nature and limited by the resources of the school districts in which they are embedded and may not be able to offer full courses of training or instruction as required in this rule chapter. Repealing this rule will allow licensed secondary schools to offer less than a full course of instruction and will relieve these schools of the burden of continually requesting variances for their partial training programs. Continuing to support licensed partial training programs within secondary schools creates opportunities for accelerated licensure for high school graduates, as hours earned in secondary education can be transferred to a post-secondary cosmetology training program after graduation, allowing these students to complete licensure requirements more quickly. The repeal does not add any additional requirements and should not result in any additional costs.

2110.0730 PREENROLLMENT DISCLOSURES

Proposed amendments are necessary to bring language into alignment with terminology used in Chapter 2105 and other parts of this rule chapter and to remove redundant language. Requirements specific to the refund policy have been removed from this rule part.

2110.0740 SCHOOL CLINICS.

Subpart B.

This subpart is being repealed. Subpart B is redundant and contains the same information found in Minn. R. 2110.0740 subpart F.

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.

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 persons most likely affected: The proposed rules will most likely affect cosmetology schools, instructors, school managers, applicants for school licenses, students who are applying to or attending cosmetology schools, and the clients who receive cosmetology services from students.

Classes that will bear the costs of the proposed rule changes: Licensed cosmetology schools will bear any potential costs associated with implementation or compliance with the proposed rules. Although many of the new rules seek to streamline practices or remove unnecessary burdens, there are changes that schools will need to meet that will likely require staff time for updating processes and procedures.

Classes that will benefit from the proposed rules: Cosmetology schools, instructors, school managers, applicants for school licenses, students who are applying to or attending cosmetology schools, and the clients who receive cosmetology services from students will benefit from the proposed rules because:

- Language is being updated to reflect current practices in the industry.
- Confusing rules are clarified and contradictions in current rule are resolved.
- Burdensome or unnecessary requirements are removed.
- Changes to instructor requirements will allow schools to operate more freely according to their current staffing situation or business model.

B. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

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

There is no anticipated significant effect on state revenue, as the Board does not anticipate that the proposed rules will impact the numbers of applicants for initial licensure or renewal of licenses.

C. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

As part of the rules drafting process, each current rule in Chapter 2110 was reviewed to determine if the rule was (1) needed and reasonable, (2) reflected current Board procedures, (3) reflected current school procedures, and (4) if the rule could be amended to utilize a less costly or less intrusive method for achieving the purpose of the current rule.

Rule language that was found to be unnecessary is proposed for repeal. Rules that did not reflect current procedures were proposed for amendment after reviewing whether a less costly or less intrusive

method existed which would achieve the purpose of the rule.

In most instances, there were no other methods found which would achieve the purpose of the rule draft or rule change. In instances where more than one method would achieve the desired result, the Board carefully considered the possible methods. When other methods were considered, the cost, intrusiveness, and alternative methods considered are discussed in the rule-by-rule analysis.

D. 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.

E. 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 cosmetology schools. 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.

F. The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.

The consequences of not adopting the proposed rules includes the continuation of unnecessary requirements for schools, which may result in increased costs in opening new schools and delays for new students seeking to enroll. In addition, lack of clarity in a few specific rule citations will continue to leave licensees and applicants confused about requirements.

G. An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.

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

H. 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.

Notice Plan

Minnesota Statutes, section 14.131, requires that an agency include in its SONAR a description of its efforts to provide additional notification to persons or classes of persons who may be affected by the proposed rule or must explain why these efforts were not made. This section addresses how the Board will provide the required notifications.

Additional notice plan

The Board's Additional Notice Plan was reviewed by the Office of Administrative Hearings and approved by Administrative Law Judge Ann C. O'Reilly on September 9, 2022. As part of additional notice, the Board will:

- Email every Board licensee who has an email address listed with the Board and include links to the Dual Notice of Intent to Adopt With or Without a Hearing, the draft rules, and the SONAR. Approximately 98% of our 33,000 licensees have an email address on file with the Board.
- Email every Board licensed salon who has an email address listed with the Board and include links to the Dual Notice of Intent to Adopt With or Without a Hearing, the draft rules, and the SONAR. Approximately 99% of our 5,200 licensed salons have an email address on file with the Board.
- Email or mail all 38 schools licensed with the Board and include links to or hard copies of the Dual Notice of Intent to Adopt With or Without a Hearing, the draft rules, and the SONAR.
- Post information about the proposed rules on the Board's website and Facebook page with links to the Dual Notice of Intent to Adopt Rules, SONAR, and the draft rules.
- Offer a copy of the Dual Notice of Intent to Adopt Rules, along with copies of the draft rules and SONAR to visitors at the Board's office.
- Email the Dual Notice of Intent to Adopt Rules, the SONAR, and the draft rules to:
 - The Salon and Spa Professional Association and the Beauty Certified Education Association (professional associations for Minnesota licensed practitioners);
 - The Minnesota Office of Higher Education;
- The Additional Notice Plan also includes giving notice required by statute. The Board 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.
- 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.

Under Minnesota Statutes, section 14.14, subdivision 1a, the Board believes its regular means of notice, including publication in the *State Register*, will adequately provide notice of this rulemaking to persons interested in or regulated by these rules.

Performance-based rules

Minnesota Statutes, section 14.002, requires state agencies, whenever feasible, to develop rules that are not overly prescriptive and inflexible, and rules that emphasize achievement of the Board's regulatory objectives while allowing maximum flexibility to regulated parties and to the Board in meeting those objectives.

During the rulemaking process, the Board considers how modifications to the rules might meet the requirement to support performance-based regulatory objectives. The Board strives to allow enough flexibility in the rules to allow licensees and schools to succeed in the industry. Furthermore, the Board strives to develop rules that focus on outcomes and objectives and not on prescriptive procedures. The

Board looks to licensees as well as other state boards to determine best practices in the cosmetology industry.

By clarifying procedures and processes, the proposed rule amendments help applicants and licensees to comply with requirements designed to protect the health and safety of the public. The nature of some requirements, particularly student record requirements, are incompatible with a purely performance-based standard. Student record requirements are necessarily prescriptive in order to protect the student's investment in the school. Schools that do not follow student record requirements put the student at risk of not achieving licensure if the proper number of training hours and clinical service exercises are not properly recorded. Furthermore, students who wish to transfer to another school need their student records to be accepted by the transfer school. Students pay upwards of \$20,000 to attend school and expect that schools are keeping accurate and up-to-date records.

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 for licensure.

Consult 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 will do this by sending MMB copies of the documents that we send to the Governor's Office for review and approval on the same day we send them to the Governor's office. We will do this before the Board's publishing the Dual Notice of Intent to Adopt with or without a Hearing.

The documents will include: 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 at the hearing or with the documents it submits for ALJ review.

Impact on local government ordinances and rules

Minnesota Statutes, section 14.128, subdivision 1, requires an agency to make a determination of whether a proposed rule will require a local government to adopt or amend any ordinances or other regulation in order to comply with the rule. The Board has determined that the proposed amendments will not have any effect on local ordinances or regulations.

Costs of complying for small business or city

Minnesota Statutes, section 14.127, subdivisions 1 and 2, require an agency to "determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed \$25,000 for any one business that has less than 50 full-time employees, or any one statutory or home rule charter city that has less than ten full-time employees."

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. 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. Where there is a cost to complying with a proposed rule amendment, the cost is discussed

in the rule-by-rule analysis.

Authors, witnesses and SONAR exhibits

- 1) Rhonda Besel, Member, Minnesota Board of Cosmetologist Examiners
- 2) Marcie Smith-Fields, Member, Minnesota Board of Cosmetologist Examiners
- 3) Donna Dungy, Member, Minnesota Board of Cosmetologist Examiners
- 4) Mahogany Plautz, Member, Minnesota Board of Cosmetologist Examiners
- 5) Gina Fast, Executive Director, Minnesota Board of Cosmetologist Examiners
- 6) Jill Freudenwald, Chief of Staff, Minnesota Board of Cosmetologist Examiners
- 7) Alex Herbert, School Liaison, Minnesota Board of Cosmetologist Examiners
- 8) Nora Wakefield, School Liaison, Minnesota Board of Cosmetologist Examiners

Witnesses and other staff

In the event that a hearing is necessary, the Board anticipates having the above testify in support of the need for and reasonableness of the rules.

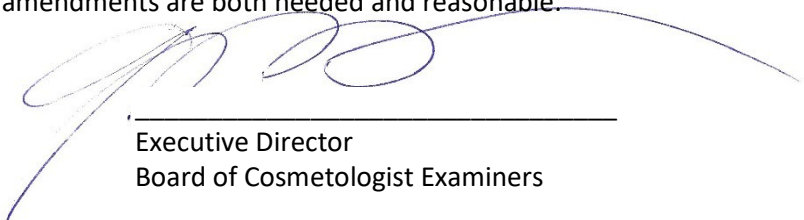
SONAR exhibits

None

Conclusion

In this SONAR, the agency has established the need for and the reasonableness of each of the proposed amendments to Minnesota Rules, chapter 2110. The agency has provided the necessary notice and in this SONAR documented its compliance with all applicable administrative rulemaking requirements of Minnesota statute and rules.

Based on the forgoing, the proposed amendments are both needed and reasonable.



Executive Director
Board of Cosmetologist Examiners

9/13/2022

Date