

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
OFFICE OF THE COMMISSIONER

In the Matter of the Proposed
Amendment of Rules Relating
to Minnesota Statutes
Chapter 155A (Cosmetology)

STATEMENT OF
NEED AND
REASONABLENESS

Statement of Authority

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

I. BACKGROUND

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

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

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

Recommendations for amendments to the rules have also been received from individuals and professional associations within the cosmetology industry. Among efforts to involve these persons and to solicit their response to the amendment proposed were the following:

1. On July 30, 1984, the department published a notice of intent to solicit outside opinions with regard to amending the cosmetology rules in the State Register. The notice was published as a result of the Department's ongoing review of the existing rules. The review pointed out a number of flaws and shortcomings in the existing rules which necessitated change.

2. In September, 1984, a mailing was sent to every licensed cosmetology salon in Minnesota. The mailing provided background on the transfer of the Office of Consumer Services and subsequent assumption of regulatory authority by the Commerce Department. It also discusses the Commissioner's intent to make changes to the cosmetology rules based on comments received from industry members and the public over the one and a half year since their initial adoption. Eight major rule changes were discussed. Comment on these and suggestion for other possible changes was requested by the Commissioner. Over 500 letters of suggestion and/or support for the amendments were received and considered. Several of these ideas were incorporated into the final proposed amendments to the rules.

3. The Commissioner and the staff of the Cosmetology Unit have met formally and informally with members of professional industry associations including the Minnesota Hairdressers and Cosmetologists Association and the Minnesota Cosmetology Schools Association to discuss proposed amendments to the rules. Input was received as to the effectiveness of the existing rules, impact of possible changes and improvements that would enhance regulatory effectiveness while limiting burdensome compliance requirements. These associations have been provided with copies of final proposed amendments and have indicated their support.

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

II. AMENDMENTS TO THE COSMETOLOGY RULES

Minn. Rule 2640.0100. DEFINITIONS

Subp. 16. Good Repair. Amendments made to this subpart are designed to clarify the existing language. Reference to the words "a thing" is removed and replaced with the words "an item". The new term does not result in a consequential change in the meaning of the subpart, but rather is more grammatically appropriate within the context of the rule.

Subp. 18. Office. This amendment removes the reference to the "Office of Consumer Services" and replaces it with reference to the "Department of Commerce". The change reflects the transfer and regulatory authority to the Department of Commerce and makes the rules consistent with present law.

Subp. 20. Staff. This amendment removes reference to the Cosmetology Unit, Office of Consumer Services and replaces it with reference to the Department of Commerce. This is consistent with the law and is a technical amendment which clarifies the rules.

Minn. Rules 2640.0600. ADVERTISING.

Item A is amended to clarify the existing rules by removing the cross reference to other Minnesota Statutes and replacing it with clarifying language that more fully states in a single location the prohibition against misleading or inaccurate advertising of cosmetology services or policies offered by a licensee. This amendment is designed to eliminate the necessity of referring to a copy of the Minnesota Statutes which may not be readily available to those who use or reference these rules.

Item B is amended to remove the reference to the "Office of Consumer Services" and replace this with reference to the "Department of Commerce." This amendment is designed to properly reference the Department of Commerce as provided for in existing state law.

Item C is amended to provide a better grammatical construction of the present rule. Further, Item C requires that if a salon or school chooses to advertise, it shall also indicate what type of license is held and the licensed name of the establishment. This is intended to give the reader of the advertisement a clear understanding of the type of services provided by the advertiser.

Minn. Rules 2640.0700. INSPECTIONS.

Subp. 4. Cost and frequency of inspections. The existing cosmetology rule requires each salon and school to be inspected annually. Additional inspections required to confirm the compliance of a salon or school with the corrections required in a previous inspection report will be paid for by the facility which requires additional inspection. The department has determined that it is proper to have those licensees who generate inspection expenses over and above the cost of a single annual inspection should bear the burden of those additional inspections rather than place them on other licensees or on the general public through increases in licensing fees or additional budget expenditures. This procedure results in the cost of additional inspections being placed on the particular salon or school which by its activities for failure to comply with existing rules generates additional inspection expense.

Amendment to this subpart adds the term "or salon" to clarify this inspection requirement. This amendment reflects the statutory requirement that salons and schools be inspected annually by the department.

Minn. Rules 2640.1100. EXAMINATION ADMINISTRATION.

Subp. 4. Reexam limit. This rule is amended to allow a licensed applicant to take an examination as often as he or she wishes. The rule previously limited an applicant to three examinations in any twelve month period. It is the position of the Department that an applicant should be allowed to retake an examination at his or her discretion. The existing rule unfairly restricts a licensed applicant from taking an exam more than three times in a twelve month period. It is more fair and appropriate to allow a potential licensee to take the licensing examination at his or her discretion whenever that person is prepared to do so. The test is offered numerous times throughout the year, and any restriction on retesting simply places an economic burden on the potential licensee and does not assure that the individual will have a better chance at passing the test simply because they are restricted from taking the test a limited number of times in any twelve month period.

The amendment further clarifies the intent of the rule by stating that no passing score on an examination shall be considered valid for more than twelve months.

Subp. 5. Exam administered in English. The present rule does not allow examinations to be conducted with the assistance of an interpreter or a reader. The amendment is designed to allow the use of a reader in administration of a cosmetology examination where an examinee is able to document the existence of a reading disability. Use of a reader is a valid request where an examinee may suffer from a reading disability such as dyslexia or has another serious disability which prevents them from taking the examination in the usual manner.

The Department has been advised that the rule on this current form is also a likely violation of Federal Equal Opportunity laws. Since other professions allow the use of readers for those licensees who have reading disabilities, the Department proposes to amend the existing law to bring it into compliance with federal requirements.

Use of a reader must be approved by the Commissioner prior to taking the examination. This amendment allows the Department advance notice to inform its testing service of the need for the provision of a reader. The reader then is made available by the testing service at the time the license applicant reports for his or her examination.

Minn. Rules 2640.1200. APPLICANTS FOR INDIVIDUAL LICENSE

The requirement of Item B, that a cosmetology applicant provide evidence from a physician that he or she is free of all communicable diseases and parasites, is deleted from the rules. The term "communicable" disease is vague and could include such illnesses as colds, the flu, or other minor infections. The rule is at best, therefore, inappropriate as few people would be able to meet such a standard.

Furthermore, other health related fields do not place such a requirement on their applicants. Doctors do not have to take a physical examination for licensure. Nurses do not have to take a physical examination. The rule, therefore, places an unequal burden on those seeking cosmetology licensure.

Item D is amended by deleting the requirement that an applicant must provide a photograph along with his or her application for licensure. The present regulation requires that license applications be accompanied by a 2" x 2" photo of the applicant. Such a requirement serves no purpose in the application. Positive identification, if ever required, can easily be accomplished through other means should a question arise. Again, no other profession has such a regulation and since the requirement is an unnecessary cost to the applicant and of no use to the Department, the Department proposes that the rule be dropped.

Item C is amended to remove redundant language in the present rules and, thereby, making them more grammatically appropriate.

The remaining sections under this rule are renumbered in line with the amendments made.

Minn. Rules 2640.1300. COSMETOLOGISTS, MANICURISTS, AND ESTHETICIANS.

Item C of this rule, which allows for licensure of cosmetologists currently licensed in another state, is amended to delete the requirement that an individual provide a copy of his or her current license. This is a costly and unnecessary expense. The amendment to the rule states that a certified statement from the licensing body in which the applicant is currently licensed shall be sufficient evidence of the applicants current status as a cosmetologist in another jurisdiction. This amendment removes an unnecessary provision but retains the essential requirement that appropriate evidence of current licensure be provided by the applicant.

Minn. Rules 2640.1500. INSTRUCTORS.

Current cosmetology rules require that instructors receive adequate continuing education to assure that they are familiar with the current techniques and practices of the industry. The amendment reduces the continuing education requirement from 48 to 38 hours of training approved by the office. Over the year and a half that the present rules have been in effect, the Department has determined that several schools offer adequate programs for continuing education within the 38 hour requirement. To obtain the last 10 hours of continuing education, many instructors are required to take courses that far exceed the additional 10 hours needed. The amendment to the rule is designed to accomplish the objective of assigning current, up to date training for instructors without burdening them with the cost and time requirement of additional unnecessary training.

Minn. Rules 2640.1700. LICENSE RECIPROCITY WITH OTHER JURISDICTIONS.

Subp. 2. Compliance with state rules. This subpart is renumbered to make it consistent with the renumbering in Minn. Rules 2640.1200.

Subp. 4. Specific requirements for instructor. This subpart is renumbered to make it consistent with the change in the continuing education requirement for cosmetology instructors as provided in Minn. Rules 2640.1500.

Minn. Rules 2640.1800. MAINTAINING INDIVIDUAL LICENSES.

Subp. 2. Presently cosmetology licensees are required to provide a physicians certification that they are free of communicable diseases at the time of application for relicensure. The requirements of this subpart are deleted to make it consistent with the removal of the

requirement as provided for in Minn. Rules 2640.1200. The need for removal of this requirement is discussed earlier in this statement.

The remainder of the rule is renumbered accordingly.

Minn. Rules 2640.1900. LICENSE RENEWAL FOR INDIVIDUALS.

Subp. 1. Application. Under the present rules cosmetology licensees are required to renew their licenses every three years upon the date of initial issuance. The Department proposes to set a consistent renewal deadline for all licensees on December 31 in the year of expiration. The objective is to make it easier for licensees to remember when their licenses must be renewed and to facilitate more efficient processing of license renewals by the Licensing Division of the Department of Commerce. As at present, licensees will be advised of their responsibility to renew their license by notification from the Department.

Subp. 4. This section is repealed to provide consistency with the new license renewal procedure as provided in Subpart 1.

Subp. 5. This subpart is renumbered to make it consistent with the renumbering of other subparts in the rule.

Minn. Rules 2640. 2000. PROCEDURE FOR ACTIVATING A LAPSED LICENSE.

Subp. 1 and Subp. 2. These subparts are amended to remove unnecessary and complicated procedures for renewal of a lapsed license. At the present time if a practitioner fails to renew his or her license prior to the date of license expiration, he or she is required to pay a penalty if reapplication is made within 30 days of that date. If more than 30 days have elapsed the individual is required to submit to a reexamination and payment of applicable late penalties. For a practitioner who inadvertently allows his or her license to lapse through oversight or failure to receive a renewal notice, the penalties imposed by the present rule are harsh and unnecessary. Under the proposed amendment, if an individual's license expires that person would be given up to one year to renew their license upon submitting the required license renewal information. It would eliminate an unnecessary and unfair penalty where a license has lapsed by oversight. This amendment makes the rule fairer, less burdensome and, yet, accomplishes the objective of assuring current licensure by practicing cosmetologists.

Subp. 3. Penalty. Amendment to this subpart renumbers it consistent with the repeal of the language in Subpart 1. The subpart retains the penalty on a salon or school which hires or allows an individual to practice cosmetology while not licensed. The new language "was hired" clarifies the fact that the manager of the salon or school will be responsible for any person practicing under their supervision from the time that person was hired. The existing

language "commenced this practice" might otherwise be confused with the entire period of time that an individual has been providing cosmetology services. The new language, therefore, is designed to better state the intent of the rule and the responsibilities of the manager of a salon.

Minn. Rules 2640. 2100. REINSTATEMENT AFTER DENIAL, SUSPENSION, OR REVOCATION.

Item B of this rule is amended to make it consistent with the new procedure for activating a lapsed license as provided for in Minn. Rules 2640.2000. Likewise, subitem 5 is amended to correct a typographical error in the present rules and renumber the proposed rules in accordance with changes made elsewhere in earlier sections.

Minn. Rules 2640.3200. SALON LICENSURE.

The present rules governing the licensure and operation of cosmetology salons require that such facilities meet the standards set out in the State Building Code. At the present time the State Building Code has been adopted by only three of Minnesota's 87 counties. Requirements that a salon meet codes standards which are not adopted or enforced by building inspectors in most parts of the state make compliance with this rule at best, difficult, if not impossible. It is the Department's position that salons be required to comply with the existing local building codes and ordinances in effect at the time of application for licensure, and not the State Building Code. To impose a requirement that exceeds a building code applicable to all other business operators within a local area would produce an undue and costly requirement on salon operators. The Department believes that compliance with local building codes coupled with annual inspections by the Department will provide the same health and safety protection to the public that now exists without the burden of meeting a state code which is not applicable in most areas of Minnesota.

The change in this rule, however, retains the requirement that a salon must meet the State Fire Code if no local fire codes exist. These amendments to the cosmetology rules will insure that salons are constructed and maintained in accordance with the codes applicable to all other businesses within a localized area and assure that the safety of salon operators and patrons will remain protected in the instance where a municipality or other unit of government does not have an established fire code.

Minn. Rules 2640.3400. SALON LICENSE RENEWAL.

Subp. 2. This section is amended to make the date and requirements for salon license renewal consistent with those for renewal of individual cosmetology licenses. Upon adoption of these

amended rules all salon licenses will expire on December 31 of the year due rather than at a variety of times throughout the year as is the case under the present rules. This amendment will make it easier for a salon owner to remember his or her license renewal date as well as facilitate more efficient and expeditious processing of renewal application by the Licensing Division of the Department of Commerce.

Subp. 7. Identity of manager. This subpart is amended by adding clarifying language. At the time of a salon license renewal, the name and license number of the salon manager must be provided so that the Licensing Division can ascertain that there is an identified licensed manager responsible for the salon. This amendment simply clarifies the requirement that this information be included on the renewal application.

Minn. Rules 2640.3600. SALON REQUIREMENTS.

Subp. 4. Termination of license. Present regulations effectively require the closing of a salon when a change of address or ownership takes place. The salon reopens after the various building, fire, and cosmetology inspections have occurred. Due to the processing time for such inspections, an operator may be out of business for several days or weeks resulting in a loss of income and/or the allegiance of past customers. The amendment to this subpart proposes that a 60 day "grace" period for relicensing of a salon in such situations be allowed. The proposed 60 day period will allow adequate time for the salon owner to accomplish the required inspections and application for change in either ownership or address while not imposing the burden of an unnecessary loss of income or clientele.

Minn. Rules 2640.3700. PHYSICAL REQUIREMENTS.

Subp. 2. Entrance and exist. This subpart is amended by removing the requirement that a salon have at least two entrance/exit points. This requirement is replaced with language that requires that a salon shall comply with local building codes and ordinances. The amendment is designed to insure that salons meet the requirements for similar operations in their local area and thereby maintain a standard which is required for similar operations in their locale. The Department believes that it is easier and more appropriate for local building code inspectors to certify as to the physical adequacy of cosmetology salons when this is determined by the standards established and used in their own communities. Building code inspectors are trained and authorized to make such certifications and this change removes the requirement that cosmetology health and safety inspectors enforce building code requirements. Each inspector then is responsible for conducting the inspections which they are properly trained to do.

Subp. 4, Subp. 5, Subp. 6. These subparts are amended to make appropriate grammatical changes in the existing cosmetology rules to make them consistent with standards established by the Revisor of Statutes.

Subp. 7. Ventilation. The requirement in present rules regarding ventilation in cosmetology salons has, in many instances, placed an undue and costly burden on salon operators. The Department received numerous complaints that compliance with the requirement as it is presently stated would require major and costly rehabilitation to many existing establishments. The present rule goes beyond even the standards established in the State Building Code. We have been informed that compliance with the ventilation standard as set out in the present rules could cost operators up to \$6,000 per salon and would result in considerably higher energy bills due to heat and air conditioning loss. In some instances, operators who could not afford such costs would be required to close their businesses.

As with the amendments to other subparts regarding physical requirements, the Department proposes that the salon meet local building codes and ordinances as required of all other business establishments in their area. The Department believes that the change will result in continued protection of consumers of cosmetology services while eliminating the extremely harsh requirement of the present rule.

Minn. Rules 2640.3800. FIXTURES, FURNITURE AND EQUIPMENT.

Item E is amended to require that only furniture in the service area of a salon be covered with washable materials. This amendment is designed to assure that furniture used in a salon's service area is covered with material that can be cleaned and maintained in a manner which meets appropriate health standards. At the same time other furniture, such as that in a lobby or waiting area, would not be required to meet the same standards. Such furniture is often made with fabric coverings and is completely adequate and appropriate for its intended use. The Department believes that furniture used in areas other than the service area of a salon can be appropriately left to the discretion of the salon operator and need not come under this requirement.

Item F currently provides that containers for the disposal of rubbish or the accumulation of soiled towels must be made of metal and covered with metal lids. The objective of the regulation is to reduce potential fire hazards. However, the Department has been informed that there are products which are not metal and yet meet appropriate fire safety standards. Again, the Department proposes that such containers comply with local fire codes or, if none exist, with the standards set forth in the State Fire Code. This amendment assures that the original objective of the regulation will continue to be met and yet allows for discretion on the part of a salon operator in the selection of the equipment used in his or her salon.

Minn. Rules 2640.3900. OPERATIONAL REQUIREMENTS FOR SALONS

Item J is amended to remove the requirement for use of metal containers and allow for the use of any container which complies with appropriate fire safety codes. The rationale here is the same as that set forth in the amendments to Minn. Rules 2640.3800 above.

Item K is amended at part 3 and part 4 to correct a discrepancy in the present cosmetology rules. The rule is designed to establish parameters for the strength of disinfecting solutions used in cosmetology salons. As stated in the present rules one standard is established for ethyl alcohol and another is set for isopropyl alcohol. The intent of the original rule is thereby accomplished through this grammatical change.

Item Y is amended to remove the requirement that a photograph of a cosmetology licensee accompany that individual's license when it is displayed in his or her work area. This is an unnecessary requirement and is removed through this amendment. Should there be a need to verify a licensee's identity, this can be accomplished through any variety of other methods other than attaching a photograph to a license. The requirement that the photograph be current and of a specific size, as is presently the case, serves no purpose within the health and safety inspection objective of the rules.

Item Y is further amended to require that the salon manager be responsible for assuring that all persons practicing cosmetology in a salon maintain current licenses. While each individual cosmetologists is required to abide by the Department's licensing rules, it is appropriate that the salon manager also be held responsible for overseeing the license status of those working in his or her salon. This appropriately places responsibility on the employer to assure that his or her employees are working within the requirements of these rules and the laws of the State of Minnesota.

Item Z is amended to remove unnecessary and overly-specific requirements as to the posting of a cosmetology salon license. The change will allow greater discretion on the part of a salon operator in the posting of a license while maintaining the requirement that it be placed in conspicuous public view.

Minn. Rules 2640.4100. SPECIFIC TYPES OF SALON LICENSES

Subp. 4. Mobile salons. The prohibition against mobile salons is removed from the present cosmetology rules to allow for the use of mobile salon units where appropriate. The earlier restriction against mobile salons was designed to prevent the use of facilities which might be unhealthy or unsanitary. The Department has become aware, however, that mobile salons can be designed to meet the same health requirements established for all other salons. Earlier concerns over the inability of Cosmetology Unit Inspectors to properly inspect mobile salons has been shown to be misplaced. Mobile salons, like any other salon, will be required to be inspected annually at a time

and place designated by the Cosmetology Unit. Likewise, cosmetology services provided through the use of mobile salons can be especially beneficial to elderly or disabled persons who may be otherwise unable to take advantage of such services beyond their easy access. Building code requirements for fixed structures will obviously not be applicable to mobile salons. Mobile salons, however, will be required to meet the health and safety provisions provided elsewhere in these rules. They will also be required to meet the standards, where applicable, set forth in the State Fire Code as provided in the rules. These inspections will assure that mobile salons operate under conditions which properly protect the health and safety of cosmetology services to consumers.

Subp. 6. item E is amended to allow the use of primary toilet facilities in residential salons. Such facilities will be required to comply with the standards for health and cleanliness established for any other salon. This amendment is designed to eliminate a costly burden to residential salon operators who would otherwise be required to install separate toilet facilities to service their operations. This requirement is unnecessary and its amendment will eliminate an unreasonable cost placed on the small business operators.

REPEALER

Minn. Rules 2640.1900, subp. 4. This subpart is repealed to eliminate unnecessary language with regard to licence renewal for individuals. Due to the amendments made to the requirement for renewal of cosmetology licenses, a method for otherwise determining the timeliness of a renewal application is unnecessary.

Minn. Rules 2640.3400, subp. 6. Repeal of this subpart eliminates unnecessary language regarding the determination of timely renewal application for salon licenses. With the amendment to licensing procedures for cosmetology salons, this language becomes unnecessary.

Minn. Rules 2640.4100, subp. 4. Rationale for repeal of this subpart is provided in the earlier discussion regarding this rule.

Impact on Small Business

Minnesota Statute Section 14.115 requires that the impact of proposed rules on small businesses be considered in the development of rules. Specifically, the statute at subdivision 2, requires a less stringent compliance standard and reporting requirement for small businesses be considered. The statute also requires that methods designed to reduce the impacts of the rules on small businesses be incorporated into the rules if they are feasible and consistent with the statutory objectives with the rules.

Despite the lack of comments resulting from the Department's notice to solicit outside opinion, the Commissioner considered whether the provisions of the rules might be modified to accommodate the interest of small businesses. Consideration was given as to possible ways in which the requirements might be relaxed for small businesses or amended to reduce any burden on some small businesses.

These particular rule changes resulted from comments received by the Commissioner and the Department in regard to the existing rules. An evaluation of the rules determined that many of them were unnecessarily technical and overly burdensome. This impact was equally borne by both large and small businesses. However, the vast majority of licensees subject to these rules are small businesses. Accordingly, all of the changes proposed in these rules are proposed with the intent of reducing the burden of existing rules on the small business licensees.

Consideration was given in the promulgation of these rules to the fact that most licensees subject to them will be sole proprietors or have only one or two employees. Their ability to monitor compliance with stringent or overly technical rules is limited at best. Accordingly, these rules attempt to insure the safety of the patrons of the licensees while at the same time not imposing a burdensome regulatory requirement on the licensees. The impact of the rules on the licensees, who as previously stated are almost all small businesses, is discussed in the foregoing parts of the Statement of Need and Reasonableness.

Each of the methods described in Minnesota Statutes § 14.115, subdivision 2(a) - 3 were considered in proposing the rules. Provisions contained in the proposed rules are believed to be necessary to achieve the legislative purposes with the least burdensome effect upon small businesses.