Minnesota Board of Cosmetologist Examiners

STATEMENT OF NEED AND REASONABLENESS

In the Matter of Proposed Revisions of Minnesota Rule Chapters 2015 and 2110, Governing the Licensure and Practice of Cosmetologists, Estheticians, Nail Technicians, Instructors and School Managers, and the Licensure and Operation of Salons and Schools

Revisor's # 4258

ALTERNATIVE FORMAT

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

Administrative Law Judge	ALJ
Board of Cosmetologist Examiners	Board or BCE
Centers for Disease Control and Prevention	CDC
Continuing Education Credits	CEs or CE
Minnesota Rules chapter 2105	Chapter 2105
Minnesota Rules chapter 2110	Chapter 2110
Code of Federal Regulations	CFR
Minnesota Department of Labor & Industry	DOLI
Designated Licensed Salon Manager	DLSM
Designated School Manager	DSM
Environmental Protection Agency	EPA
Federal Insecticide, Fungicide and Rodenticide Act	FIFRA
Human Immunodeficiency Virus	HIV
Office of Administrative Hearings	OAH
Order to Comply	OTC
Occupational Health and Safety Administration	OSHA
Minnesota Management and Budget	MMB
Minnesota Department of Health	MDH
Minnesota State Colleges and Universities	MNSCU
Section (Minn. Stat. Section)	§
Safety Data Sheets	SDS
Statement of Need and Reasonableness	SONAR
Ultraviolet Radiation	UV

1. INTRODUCTION

The Board of Cosmetologist Examiners proposes to amend its rules governing cosmetology. The proposed rules amendments update the rules to eliminate outdated rule language, address inconsistent and confusing requirements, incorporate statutory changes, articulate and clarify existing Board procedures, and amend procedural requirements permitting the Board to more effectively perform its regulatory duties, and to better protect the health and safety of the public.

Background

The Minnesota Board of Cosmetologist Examiners (BCE) is the regulatory agency charged with the licensing and regulating of Cosmetologists, Manicurists, Estheticians, Advanced Practice Estheticians, Salon Managers, Salons, Instructors, School Managers, and Cosmetology Schools in the State of 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.

The last major overhaul to the rules occurred in the early 1980's during the Commerce Department's oversight of cosmetology. Since that time, there have been only minor rule amendments and much of the rule language has been unchanged. The current rules are woefully inadequate for reasons discussed in the SONAR under the Statement of General Need.

The Board proposes a major overhaul of its rules, beginning with this rule initiative focusing primarily on Chapter 2105, which addresses licensing and operating requirements for individuals and salons. Although this initiative includes some limited changes on the rules on cosmetology schools contained in Chapter 2110, the Board plans a major overhaul of that chapter in the future.

1. STATUTORY AUTHORITY

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

A. §155A.23 Subd. 9, which states:
"Salon" does not include the home of a customer but the board may adopt health and sanitation rules governing practice in the homes of customers.

B. §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

C. §155A.27 Subd. 2., which states, regarding practitioners:
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 of the practitioner and the consumer of cosmetology services, including but not limited to chemical applications.

D. §155A.27 Subd. 7., which states, regarding renewal of individual licenses:
Renewal of license shall be for a period of three years under conditions and process established by rule.

E. §155A.29 Subd. 2., which states, regarding salons:
The conditions and process by which a salon is licensed shall be established by the board by rule.

F. §155A.29 Subd. 3., which states:
Minimum infection control standards for the operation of a salon shall be established by rule.

G. §155A.29 Subd. 4., which states, regarding salons;
Licenses shall be renewed every three years by a process established by rule.

H. §155A.30 Subd. 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 manicurist.

I. §155A.30 Subd. 8., which states, regarding required application information for school licensure:
Other financial guarantees which would assure protection of the public as determined by rule;

J. §155A.30 Subd. 6(c), which states, regarding schools:
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.

2. GENERAL STATEMENT OF NEED

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

The proposed rules amendments are necessary to update the Board's existing rules to reflect current practices in the industry, update infection control requirements, provide transparency regarding application and licensure procedures, eliminate outdated rule language, address statutory changes, clarify or codify existing Board procedures, remove unnecessary, conflicting, or confusing requirements and restrictions, and to establish procedural requirements to allow the Board to more effectively protect the health and safety of the licensees and the public, and to perform the board's regulatory functions.

Under the current rules, attempting to answer a single question often requires referring to multiple rule parts, and locating the relevant information is difficult under the current organization. For these reasons, the proposed rules are also reorganized in an effort to make the rules more accessible to licensees and applicants.

3. PUBLIC PARTICIPATION AND STAKEHOLDER INVOLVEMENT

The Board began work on revising its rules in 2012, and has publicized the rulemaking through a

variety of means. There have been discussions, updates on rule-making activity and a rulemaking email list sign-up sheets at nearly every board meeting in 2012, 2013, 2014 and in 2015. Information about this major overhaul of the rules has been posted on the Board's Facebook page, posted and maintained on the homepage and on the rules page of the Board's website at www.bceboard.state.mn.us; publicized at the Salon and Spa Professional Association's annual fall conference and reported in the annual board newsletter.

The board sought input from the Esthetician Task Force in 2013, and the Certification of Skills Task Force which met multiple times in 2014 - 2015.

At the July 12, 2014 meeting of the Board of Cosmetology board meeting, the Board passed a resolution authorizing the publishing of the Request for Comments for this rulemaking proceeding.

The Honorable James E. Lafave, approved an Additional Notice plan for the Request for Comments (RFC) on October 1, 2014, and approved an amended Additional Notice Plan on October 21, 2014. The Board:

- emailed the RFC and the rules drafts to 292 parties on the rulemaking notification list
- emailed the RFC and the rules drafts to parties listed in the additional notice plan
- emailed the RFC with a link to the rules draft of possible rule changes to all licensees with an email address; and
- published the RFC in the state register on October 13, 2014

The Board hosted six town hall meetings in Duluth, St. Cloud, Moorhead, Minneapolis, Maple Grove, and Rochester in the fall of 2014 to provide further opportunity for input and discussion on possible rule changes with licensees and interested parties. The town halls were publicized on the Board's website and Facebook page, and email notices of the town halls were sent to licensees.

The Board received over 450 oral and written comments on the initial drafts of possible rules changes during the Request for Comments phase of this rulemaking.

In 2015, the Board's rule committee met 5 times in properly noticed public meetings to discuss comments and proposed rule changes. Additional discussion occurred with licensees attending various board meetings in 2015.

At the January 12, 2016 meeting of the Board of Cosmetologist Examiners, the Board approved the SONAR and rules drafts, and passed a resolution authorizing the publishing of the Dual Notice of Intent to Adopt Rules with or without a Hearing.

4. REGULATORY ANALYSIS

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

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

Classes of affected persons: The proposed rules will affect applicants for individual licenses, applicants for salon licenses, applicants for school licenses, all licensee holders, students who are applying to or

attending cosmetology schools, and the clients who receive cosmetology services from licensees and students.

Who will bear the costs of the proposed rules? Licensees and applicants for licensure will bear any potential costs associated with implementation or compliance with the proposed rules. Where a particular proposed rule has a probable cost, that cost is discussed in the rule-by-rule analysis.

Who will benefit from the proposed rules?
Applicants for individual licenses, applicants for salon licenses, applicants for school licenses, all licensee holders, students who are applying to or attending cosmetology schools, clients who receive cosmetology services from licensees and students and the Board will benefit from the proposed rules amendments because:

- greater transparency makes it easier to comply with requirements and to predict the outcome of applications for licensure and renewal applications;
- the reorganization of rules makes it easier to find rules on specific topics;
- confusing rules are clarified and contradictions in current rule are resolved;
- unnecessary requirements for licensure, renewing or maintaining licensure, and operating salons are removed;
- updated infection control requirements reduce the risk of transmission of infections; and
- improved safety requirements reduce risks to the health and safety of the practitioner;

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

The probable costs to the Board are anticipated to be a one-time cost estimated to be $40,000 for potential software updates to the Board's licensing software programs, under the current vendor (less than 2% of the Board's budget for Fiscal Year 2016.) The software updates are necessary to address changes in initial licensure requirements and renewal requirements.

The costs may be partially offset as costs to administer the rules are reduced by removal of contradictory and outdated requirements, and the increased transparency of licensing and operational requirements. These improvements may reduce the number of contacts made by applicants and licensees with questions about procedures and requirements.

Enforcement costs, through inspections, are anticipated to decrease as the clarity achieved by the rules amendments should make operational requirements for salons and schools clearer, resulting in fewer violations and less time spent by inspectors educating licensees on infection control requirements and other rules.

Because other state agencies are not responsible for the regulation of cosmetology, there are no probable costs to any other agency of implementation and enforcement of the proposed rules amendments.

There is no anticipated effect on state revenue.

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

This rules overhaul involves the amendment, repeal, or promulgation of more than 500 rule citations. As part of the rules drafting process, each current rule in rules chapter 2105 was reviewed to determine

if the rule was (1) needed and reasonable, (2) reflected current Board procedures, and if so, (3) if the rule could be amended to utilize a less costly or less intrusive method for achieving the purpose of the current rule. Rules which were found to be unnecessary are proposed for repeal. Rules that were did not reflect current procedures are proposed for repeal or amendment after reviewing whether a less costly or less intrusive method existed which would achieve the purpose of the rule.

Proposed new rules were subjected to the same criteria and scrutiny.

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.

As noted earlier, it is not the Board's intent in this rulemaking process to address the entirety of Chapter 2110, which addresses schools. Because the Board will embark on a separate rules updating project for that chapter, the changes proposed to rules in Chapter 2110 are limited and found necessary for reasons of consistency with proposed rules in Chapter 2105, or because the proposed changes could not be delayed. Only *proposed* rule changes to Chapter 2110 were evaluated to determine whether any less costly or less intrusive methods could be substituted. When alternative methods were identified and considered, those methods and the Board's reasoning for the proposed rules amendments are discussed in the rule-by-rule analysis.

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

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

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

In relation to the current rules, the probable costs to comply with the proposed rules amendments are negligible in most instances, and would be borne by licensees and applicants for licensure. In the few instances where there is a probable cost to be borne, the cost and affected parties are identified in the rule-by-rule analysis.

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

The probable consequences of not adopting the proposed rules are:

- Difficulty in addressing changes in the cosmetology industry;
- Potentially inadequate protection of the health and safety of the public and licensees in the absence of updated infection control procedures;
- A lack of transparency resulting in the public, applicants for licensure, and licensees being unable to predict outcomes of applications for licensure and renewal of licensure;

- Continued difficulty for licensees in complying with, and the Board in administering, rules that are confusing, contradictory, and difficult to administer;
- Unnecessary and unreasonable restrictions and requirements for licensees and applicants;
- Inability to effectively implement various legislative requirements related to inspection penalties, military temporary licenses, and continuing education license renewal requirements.
- Continued requests to the Board for waivers of unnecessary rules

The probable costs of not adopting the proposed rules are difficult to assess because of the complexity and breadth of the proposed rules changes. Board expenditures are not expected to increase as a consequence if the proposed rules changes are not adopted, however, Board resources will continue to be diverted from services to licensees and the public to working around the current state of the rules, and this will be reflected in a continued loss of productivity and efficiency, and further delays in implementing improvements in board processes.

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

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

There are no existing federal regulations concerning the practice of cosmetology.

While the proposed rules may reference federal and state regulations related to OSHA in the areas of salon ventilation and the hazard communication standard, there are no differences between the proposed rules and existing federal regulations. Consequently, there are no differences to assess in this area.

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

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

6. PERFORMANCE-BASED RULES

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

BCE was guided by performance based regulatory principles as it developed these proposed amendments. By clarifying procedures and processes that applicants for licensure and licensees must follow, the proposed rules 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 infection control requirements, are incompatible with a purely performance based standard. Infection control standards and procedures in the proposed rules are necessarily prescriptive because of the serious risk of viral, bacterial, and fungal transmission and infection associated with the practice of cosmetology. 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.

7. ADDITIONAL NOTICE PLAN

The Board's Additional Notice Plan was reviewed by OAH and approved by Administrative Law Judge James. E. LaFave on March 3, 2016. As part of the plan, the Board will:

- Email the Dual Notice of Intent to Adopt with or without a Hearing with links to the rules drafts and SONAR to every licensee who has an email address listed with the board. Licensees include cosmetologists, estheticians, nail technicians, salon managers, salons, instructors, school managers, and schools. Approximately 92% of our 36,645 licensees list an email address.
- Post the Dual Notice of Intent to Adopt on the Board's website at bceboard@state.mn.us and Facebook Page at https://www.facebook.com/pages/Minnesota-Board-of-Cosmetologist-Examiners/215479148519882 with links to the rules drafts and SONAR.
- Offer visitors the Dual Notice of Intent to Adopt with or without a Hearing with copies of the rules drafts and SONAR to visitors at the Board's office. The Board averages 225 walk in applicants and licensees a month.
- Mail the Dual Notice of Intent to Adopt, the SONAR, and the rules drafts; or email the Dual Notice of Intent to Adopt with links to the rules drafts and SONAR to:
    - the Salon and Spa Professional Association, and the Beauty Certified Education Association, (professional associations for Minnesota licensed practitioners);
    - Aging Services of Minnesota;
    - Care Providers of Minnesota;
    - Minnesota Board of Nursing Home Administrators;
    - Minneapolis Community Relations Access & Outreach Specialist, Mariano Perez Espinoza, who chairs a committee of Latino owned cosmetology salons in Minneapolis;
    - Minnesota Department of Labor and Industry, OSHA Compliance;
    - Minnesota Department of Labor, Construction Codes and Licensing, Plan Review
    - Minnesota Department of Higher Education;
    - Minnesota Fire Marshal;
    - State Fire Marshal Association; and
    - Minnesota League of Cities.

- The Additional Notice Plan also includes giving notice required by statute. We will email the Dual Notice of Intent to Adopt with links to the SONAR and the rules drafts to everyone who has registered to be on the Board's rulemaking mailing list under Minnesota Statutes, section 14.14, subdivision 1 a. We will also give notice to the Legislature per Minnesota Statutes, section 14.116.

- The Additional Notice Plan does not include notifying the Commissioner of Agriculture because the rules do not affect farming operations per Minnesota Statutes, section 14.111.

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

8. CONSULTATION WITH MMB ON LOCAL GOVERNMENT IMPACT

As required by Minnesota Statutes, section 14.131, the Board will consult with Minnesota Management and Budget (MMB). We 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.

9. DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION

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

10. COST OF COMPLYING FOR SMALL BUSINESS OR CITY

Agency Determination of Cost

As required by Minnesota Statutes, section 14.127, the Board has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed $25,000 for any small business or small city. The Board has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed $25,000 for any small business or small city.

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.

The Board made the determination that cost of complying with the proposed rules in the first year for a small business will not exceed $25,000 based on the probable costs of complying with the proposed rules, as described in the Regulatory Analysis sections of this SONAR. The Board asked Judith Garcia, the owner of Yvonne Elizabeth Center for Skin Renewal, a salon licensed by the Board, to estimate the cost of complying with the proposed rules during the first year. Ms. Garcia was asked because she is both a small business owner impacted by the rules and one of the few licensees who is very familiar with these extensive proposed new rules, rules amendments and rules appeals. Ms. Garcia stated "After reviewing the proposed rules and looking over the possible costs of compliance for the first year, I do not believe costs would meet or exceed $25,000 for a salon. As the owner of a board licensed salon I anticipate a very minimal cost to none at all for my business".

11. LIST OF WITNESSES

In the event that a hearing is necessary, the Board anticipates the following witnesses will testify in support of the need for and reasonableness of the rules:

1. Mary Finnegan is a licensed esthetician, a licensed instructor, and serves as the Chair of the Board of Cosmetologist Examiners.
2. Susan Brinkhaus is the executive director of the Salon and Spa Professional Association.
3. Judith Garcia is a licensed nail technician, a licensed esthetician salon manager, a licensed instructor, and owner of a licensed salon.
4. Leslie J. Roste, Blue Brands Co is a nationally recognized expert in infection control related to the provision of cosmetology services.
5. Gina Stauss (BCE staff) is the Executive Director.
6. Catrina Mairose (BCE staff) is the Licensing Division Manager.
7. Rebecca Gaspard (BCE staff), Rules Analyst, is the project rule coordinator and author.

12. RULE-BY-RULE ANALYSIS

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

Introduction:

Italics are used to identify any rule proposed for repeal. Parts of rules proposed for repeal are discussed in sequence with the proposed rules. Many parts of current rule are proposed for repeal simply because the extensive reorganization and amendments made it simpler to repeal an entire rule part and replace it with a new rule part. Since repealed parts may address the same subject as a proposed new rule part, the Board determined that the rule changes would be easier to consider when the repealed rule parts were discussed in proximity to the proposed rule parts replacing the repealed part.

Chapter 2105 Title: The chapter is retitled from "Cosmetology; Salons" to "Cosmetology; Individuals and Salons" to more accurately describe the contents.

2105.0010 Definitions:

Unnecessary definitions are proposed to be repealed as the terms no longer appear in the proposed rules changes. Some definitions are amended to bring the definition up to date, or to eliminate confusion in the application of the defined term, and new definitions are proposed to clarify terms used in the proposed rules amendments.

"Advertising" The definition for advertising is updated to reasonably include all forms of electronic media advertising. This change is needed and reasonable because of technological developments in media advertising, and because the types of media used to advertise has changed since the definition was placed into rule.

"Clean" is a term used throughout the rules, and is amended here to make clear that an item is not clean when debris such as hair, nail dust, skin matter, etc. is present. The effectiveness of a disinfectant is decreased when used on an item with soil or debris present. The definition is also amended to allow items to be cleaned with soap and water, or a cleaning agent, and then rinsed. A cleaning agent is added to the definition in recognition of the numerous products used in the cosmetology industry which are designed to clean industry specific tools, such as brush cleaners, flat iron cleaners, blade washes, and commercial surface cleaners.

"Communicable disease" This definition is repealed because the term is no longer used in the rules, and therefore is no longer applicable.

"Disinfect" is reasonably defined to ensure that this term, which is the basis for infection control in salons, is clear and readily understood. In the past, the rules have used an incorrect term, "sanitize" which has been replaced by the correct terminology of "disinfect".

"Disinfectant" is reasonably defined to differentiate between various cleaning products, and those antimicrobial pesticides that meet the Environmental Protection Agency (EPA) criteria for use in hospitals and other health care settings. To be registered with the EPA as a hospital level disinfectant, the disinfectant must meet effectiveness tests established by the Association of Official Analytical Chemists (AOAC) against three target organisms (Salmonella choleraesuis for effectiveness against gram-negative bacteria; Staphylococcus aureus for effectiveness against gram-positive bacteria; and Pseudomonas aeruginosa for effectiveness against anosocomial pathogen). Such disinfectants, also known as registered antimicrobial pesticides, are for use in a public health setting and eliminate viruses, funguses, and bacteria.

Because various cleaning products (which are not disinfectants under the proposed definition) tout germ-killing or disinfectant properties, licensees have confused such products with an effective hospital-level disinfectant. All disinfectants which are acceptable carry an EPA registration, and generally state on the label that the disinfectant is approved for a health care setting, hospital setting, or medical setting.

This definition has an impact on a current rule proposed for repeal (*2105.0380, Item M*) which requires a disinfectant to be a tuberculocidal agent, in contrast to the proposed definition which does not include that requirement. According to the CDC, tuberculosis (TB) is spread by through the air, and can be contracted when a person breathes in contaminated air, but cannot be transmitted by sharing or touching items from a TB infected individual.

However, a disinfectant that is effective against tuberculosis has a broad-spectrum capability against mycobacterium, meaning that it could inactivate a broader spectrum of pathogens including HIV.

Tuberculocidal disinfectants contain carcinogenic ingredients, especially of concern when the disinfectant becomes airborne when the disinfectant is dispensed with an aerosol sprayer to clean clippers and other tools. In addition, the harshness of the tuberculocidal disinfectant ruins plastics and metals over time, which may lead to compliance issues as licensees may not use the harsh disinfectant to avoid ruining expensive shears and other tools. Because of this, and because the EPA has determined that surface disinfectants for use in a hospital setting do not need to meet a tuberculocidal standard, the proposed definition of disinfectant does not include any reference to tuberculocidal effectiveness. This proposed change will allow licensees to use less harsh and less expensive disinfectant products, but will still adequately protect the health and safety of the public receiving cosmetology services.

"Dispensary" is reasonably defined because the term is used in the chapter, and the definition will reduce confusion among applicants for salon licensure. The proposed definition is consistent with the proposed amendments in part 2105.0360, Subp.5a. regarding a dispensary.

"Documentation" This definition is repealed because the definition is no longer necessary. Where the term "documentation" appears in the proposed rules, language is included to identify the necessary items and a generic definition is no longer applicable.

"Evidence" This definition is repealed because the definition is no longer necessary. Where the term "evidence" appears in the proposed rules, language is included to identify the necessary items and a generic definition is no longer applicable.

"Hazardous" is reasonably defined with reference to definitions under the Minnesota Department of Labor and Industry related to the Minnesota OSHA requirements. Salons licensed by the Board are subject to DOLI requirements, including the state administration of federal OSHA regulations.

"Homebound" is reasonably defined to clarify which individuals may be served by licensees with a Homebound Service Permit, which provides for licensed services outside of a licensed salon and in the residence of a homebound individual.

"Licensed services" is amended to clarify that the work of estheticians and nail technicians is included in the practice of cosmetology. Language citing various wig services as examples of licensed practice is removed from the definition and placed in a new rule section on the scope of practice (part 2105.0105, Subpart 1) because wig services are not part of a reasonable definition of licensed services.

"Non-medical chemical peel" is reasonably defined to exclude prescription grade skin exfoliation acids which require advanced training and potentially physician oversight under the Minnesota Medical Practices Act.

"Non-medical Microdermabrasion" is reasonably defined here to limit the amount of skin that is removed to the stratum corneum (the first of five levels of the epidermis) which is a cosmetic level of microdermabrasion. This specification is appropriate as both cosmetic and medical microdermabrasion equipment exist, and esthetic training is based on a cosmetic grade of equipment. The definition excludes medical grade equipment which requires advanced training and potentially requires physician oversight under the Minnesota Medical Practices Act.

"Nursing home" is reasonably defined to eliminate confusion that has arisen with the development of senior housing campuses, which often have multiple buildings or wings of buildings which include different types of housing ranging from totally independent living, to transitional care, to skilled nursing care, and various hybrid arrangements. The definition is necessary to clarify what sort of facility is exempt from salon licensure requirements.

"Operator" is a term used throughout the rules, and makes a distinction between the basic license for cosmetologists, estheticians, and nail technicians; and the manager level license for cosmetologist salon managers, esthetician salon managers, and nail technician salon managers. It is reasonably defined to prevent confusion, and by itself does not impose any additional requirement or burden.

"Physical location" is a clarifying definition, and necessary to eliminate the need to interpret the rules regarding salon licensure. It is not unusual for one business to operate two or more salons in large shopping malls, leading to the question of whether one salon license could be used for multiple locations. It is necessary to ensure that each separate salon, even if owned and operated by the same entity, meets the rule and statutory requirements for salon licensure and operation.

"Porous material" is a term used in proposed rules on infection control, and is reasonably defined to provide clarity in determining which implements and tools are limited to single use. The definition does not impose any new or additional requirements on licensees.

"Special event" is reasonably defined to clarify that there must be an event at which the cosmetology services are being provided, as opposed to the provision of cosmetology services being the sole "event". The Board initiated legislation to create a special event permit (Minnesota Statutes, section 155A.275) in 2009, intending to provide for limited on-site cosmetology services at weddings, fairs, and other non-licensed, temporary locations. Confusion has arisen among licensees who applied for and received a special event permit and believed the permit allowed the repeated provision of licensed services on their front porch, or in an unlicensed salon. The Board's intent in proposing the legislation was not to allow a special event permit to substitute for a salon license. The definition is needed and reasonable, removes the potential confusion among the public and licensees, and does not impose any new restrictions on licensees, who have always been limited to providing licensed services in licensed location except as provided otherwise in Minnesota Statutes, chapter 155A.

"Staff" This definition is proposed for repeal because the definition is no longer accurate. Where the word staff appears in the proposed rule drafts, the word is used in conjunction with a clarifying adjective, as in the case of "salon staff" or "board staff".

"Suite-style salons" is a term used in proposed rules, and is reasonably defined to distinguish between salons and suite-style salons, as some proposed rule requirements distinguish between the two types of salon formats.

"Unregulated service" is amended to update and simplify the language and to clarify services which are not regulated by the Board. The definition adds body art, body painting, henna tattoos, eyebrow embroidery, eyebrow microblading, and permanent makeup to services that are not regulated by the Board. Body art is

defined by Minnesota Statutes, section 46B.01, Subd. 4. to include body adornment using tattooing and body piercing, and is regulated by the Minnesota Department of Health (MDH). Body painting includes face painting and other temporary painting of the skin. Henna tattoos, also known as mehndi, is a staining of the skin with henna plant dyes in traditional designs, and represents a cultural tradition practiced mainly in India and Pakistan. In Minnesota, face painting and henna tattoos are often offered at festivals, fairs, weddings, children's events, and other celebratory events, and do not represent the practice of cosmetology.

Permanent makeup is a form of tattooing and is regulated as body art by MDH, and is included in the list of unregulated services to eliminate any confusion related to the Board's regulation of makeup services.

Eyebrow embroidery and eyebrow microblading are also regulated as body art by MDH as both involve placing pigment beneath the skin, and are included in the list of unregulated services to eliminate any confusion related to the Board's regulation of makeup services

The proposed amendment also clarifies that tanning includes both spray tanning and tanning by UV radiation.

The proposed amendment adds Botox and other injectables as services not regulated by the Board. It is reasonable to exclude services which are not on the surface of the body as the statutory definition of cosmetology, Minnesota Statutes, section 155A.23, Subd 2. specifically refers to services on the surface of the body.

A cosmetic service, body wrapping, is removed from the list of unregulated services and included the list of examples of esthetic services in part 2105.0105, Subpart 2, Item D. In 1982, the Department of Commerce which then had regulatory authority over the practice of cosmetology, adopted amended cosmetology rules (then 4 MCAR 10.100) which included body wrapping in the definition of unregulated services. The Board has been unable to ascertain the rationale for listing body wrapping as unregulated.

The proposed rule amendment to remove body wrapping from the definition of unregulated services is consistent with the protection of the health and safety of the public. A body wrap is a surface treatment utilizing products or equipment to enhance and maintain the texture, contour, integrity and health of the skin and body. Body wrapping is an esthetic service which has long been part of the esthetic curriculums in required training. It is a recognized spa treatment used primarily to exfoliate the skin.

An untrained person can harm a client when using incorrect methods, and when using active ingredients. Licensees are trained to perform an intake evaluation to assess each client, guarding against contraindications for each treatment, and to ensure the provision of safe body wrapping treatments. When an untrained person wraps the body too tightly, compressing body tissues, the capillary blood flow to the tissues can be slowed or stopped, which can force body fluids inwards, surrounding the internal organs and posing serious health risks. Some body wrapping methods have associated health risks, and can dehydrate the body. Severe dehydration can result in hypovolemic shock, which if not treated, can cause death in minutes. Seaweed based wraps which may have a high iodine content, may represent a health risk if the client has an allergic reaction.

Because body wraps can represent a threat to the health and safety of the client when provided without the proper training and background in the theory of body systems, and because body wraps meet the statutory definition of a cosmetology service, body wraps are removed from the list of unregulated services in the proposed amendment. By including body wraps in regulated services, body wraps performed in a licensed salon are also subject to proper infection control requirements.

The amended definition provides an exemption for the regulation of body wraps, and that is when a body wrap is performed by a massage therapist. Massage therapy training often includes body wrapping, and many massage therapists perform body wrapping services. Currently, there is no state agency that regulates massage

therapists, and it is not the Board's intention to address or attempt to regulate services provided by massage therapists.

"Work area" is a term used in proposed rules regarding salon licensure requirements, and codifies current application of certain licensure requirements for salons. The primary requirement related to work area in these proposed rules (see part 2105.0360 Subp.6) is that a handwashing sink must be located in each work area. This definition is needed and reasonable to distinguish between spaces in a salon which are subject to the requirements of work areas, and spaces in a salon which are not subject to that requirement.

The Board considered many variations on salon spaces to arrive at the proposed definition, to ensure that the definition could be applied easily by applicants for salon licensure to a variety of floor plans for salons, and to ensure that the definition was not unreasonably broad.

***2105.0100 Unregulated Services*:** This section is proposed for repeal, as the need and reasonableness of the requirement for signage listing unregulated services offered at the salon could not be supported. The current rule requires a salon to list any service that is not regulated by the State of Minnesota. The Board is not necessarily aware of all of the 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 is not able to answer questions from the public or licensees as to whether the Board regulates various personal services. This is because the Board has been advised that it must limit answers to such questions to 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. It is unreasonable for the Board to fail to answer a question as to whether the Board regulates a specific service, and to then cite the salon for failing to list that service on an unregulated service sign. The Board declared this rule provision obsolete at the October, 2015 Board meeting.

2105.0105 Scope: This proposed rule attempts to provide as much clarity as possible regarding which services are regulated by the Board. Minnesota Statutes, section 155A.23 Subd.3, states that "Cosmetology is the practice of personal services, for compensation, for the cosmetic care of the hair, nails, and skin. These services include cleaning, conditioning, shaping, reinforcing, coloring, and enhancing the body surface in the areas of the head, scalp, face, arms, hands, legs, feet, and trunk of the body, except where these services are performed by a barber …." In addition, certain personal services are identified in statute or rule as exempt from the Board's regulation.

The Board regularly receives questions regarding various services and whether a license is required to perform those services. The Board is not able to answer questions as to whether any specific service is subject to the Board's regulatory authority because to do so could require interpretation of the statutory definition, could constitute giving legal advice, and could potentially constitute unpromulgated rulemaking. The Board is currently limited to providing the statutory definition of cosmetology and suggesting that the questioner seek legal advice from an attorney to interpret the statute. Those who have contacted the Board with questions about the regulation of a service find this response unsatisfactory, and it begs the question of how the Board can regulate a service if it cannot state whether a cosmetology, esthetic, or nail technician license is required to perform that service.

The majority of questions received by the Board regarding whether a cosmetic service is regulated are related to the proliferation in recent years of personal services such as microdermabrasion, chemical peels, microneedling, microblading, sugaring, dermapen, mineral makeup, Brazilian waxing, body contouring, ultrasonic cavitation, cellulite removal, injectable skin fillers such as Botox or Xeomin, skin serums, platelet-rich-plasma (PRP) therapies, anti-oxidant skin treatments, laser hair removal, laser skin treatments, dermal fillers, dermaplaning, dermablading, and photo facials using LED (light-emitting diode) or IPL (intense-pulsed light) technologies. While all of these are "cosmetic" in nature, that is, representing an attempt to

beautify or enhance the appearance of an individual, some may require advanced training, medical training or supervision, medical prescriptions, or are invasive in nature. Minnesota and other states have seen a tremendous upsurge of "med-spa salons" where purely cosmetic services are combined with cosmetic medical services, increasing the number and frequency of questions received regarding whether a specific service is regulated.

The proposed rule on the scope of practice seeks to eliminate some of the confusion among licensees and the public regarding the proliferation of anti-aging esthetic and cosmetic services as well as medical services of a cosmetic nature, and to provide clarification about basic cosmetology, esthiology and nail technology services at the same time.

2105.0105 Subpart 1. Cosmetology: This proposed rule clarifies that esthetic services and nail services are included in the practice of cosmetology. This is reasonable and necessary because the word "cosmetology" is sometimes used in the industry to refer to hair only services, and sometimes is used to include hair, skin, and nail services. While this amendment provides greater transparency, it does not impose any new requirements or restrictions on cosmetologists.

> **Item A:** This proposed rule lists the different cosmetology processes applied to hair, and clarifies that this includes eyebrows and eyelashes.
>
> **Item B:** This proposed rule specifies that wig services are regulated when performed while the wig is on a person. Wigs were previously listed as a licensed service under the definition of licensed services in part 2105.0010 Subpart 11, but were removed from the definition and relocated to this new rule section on scope. This change does not represent a new requirement.
>
> **Item C:** This proposed rule identifies a common service in shampooing.
>
> **Item D:** This proposed rule is the subject of frequent questions from licensees regarding whether a cosmetologist may use a razor when cutting hair, or removing hair around the ears and the nape of the neck. It is reasonable and necessary to clarify the issue in rule. This does not add any new requirement to licensees, and because the use of razors is addressed in cosmetology curriculums, there is no anticipated impact on schools.
>
> **Item E:** This proposed rule clarifies that cosmetology includes other personal services for the cosmetic care of the hair, head, and scalp. It is reasonable and necessary to provide the clarification to ensure that the rules are not misinterpreted to mean that the practice of cosmetology is limited to the services listed in items A through D.

2105.0105 Subpart 2. Esthetics: This proposed rule clarifies the scope of esthetic practice for the dual purposes of (1) addressing contemporary esthetic services enabled by technological advances in equipment and products which were unknown in the early 1980's when the bulk of the current rules were promulgated, and (2) beginning to delineate esthetic services and those medical services which are cosmetic in nature. A reasonable and needed restriction is created by indicating that esthetic services are non-invasive, that is, limited to the stratum corneum layer of the skin. The stratum corneum is the outmost of 5 layers of epidermis. Some cosmetic services involve deeper layers of the epidermis, but would require advanced training in order to protect the health and safety of the client. Such services might fall under the scope of practice of an Advanced Practice Esthetician as provided for in statutory changes made to Minnesota Statutes, Chapter 155A during the 2015 legislative session, and are not addressed by this rule-making activity.

> **Item A:** This proposed rule provides a general description of the esthetic services related to cosmetic skin care, and lists the body surfaces where such treatments may be provided. This item does not add

new restrictions and does not increase the recognized scope of skin care as included in the approved esthetic curriculums used by licensed schools.

Item B: This proposed rule provides a general description of cosmetic care of the skin typical of esthetic services. Cosmetic services related to eyebrows and eyelashes generate confusion because the industry sometimes considers "hair" to be the province of cosmetologists, and "face" and "makeup" the province of estheticians. Eyebrows and eyelashes combine "hair" and "face" and "makeup" leading to confusion over whether only cosmetologists may provide services related to eyebrows and eyelashes, or whether such services also fall into the scope of practice of an esthetician. The proposed rule regarding the scope of esthetician practices is reasonable and needed to provide clarification for licensees and the public, and to assist the Board in administering the rules and regulating the practice.

Item C: This proposed rule addresses hair removal services, and specifies which methods of hair removal fall into an esthetic scope of practice. There are other forms of hair removal which require training not provided in the esthetic curriculum, or which may involve medical practices, which are excluded by default as the delivery method would be different. The proposed rule is reasonable, and does not add new restrictions or burdens on licensees, and will assist the Board in administering the rules and regulating the practice.

Item D: This proposed rule lists a wide variety of esthetic practices for the purposes of being able to better define the scope of esthetic practice and provide greater transparency regarding services regulated by the Board. The services listed here are part of typical esthetic curriculums and do not add new burdens on licensees, and will assist the Board in administering the rules and regulating the practice. A proposed change is the inclusion of body wrapping as a regulated service as is discussed in the rule-by-rule analysis of the definition of "unregulated" on page 16.

Item E: This proposed rule clarifies that esthiology includes other personal services for the cosmetic care of the skin. It is reasonable and necessary to provide the clarification to ensure that the rules are not misinterpreted to mean that the practice of esthiology is limited to the services named in items A through D.

2105.0105 Subpart 3. Nail technician services: This proposed rule identifies manicure and pedicure services routinely provided by nail technicians. While this amendment provides greater transparency for both licensees and the public, it does not impose any new requirements or restrictions on nail technicians.

Item A: This proposed rule provides a general description of nail services. This item does not add new restrictions and does not increase the recognized scope of nail care as included in the approved nail technology curriculum used by licensed schools.

Item B: This proposed rule clarifies that attaching and removing nails or nail enhancements is part of the practice of nail technology.

Item C: This proposed rule clarifies that the cleansing, massaging, paraffin treatments, and provision of cosmetic care of the skin on hands and feet are part of a nail technician's practice, as historically, nail technicians work to beautify the hands and feet, including the skin.

Item D: This proposed rule clarifies that callus removal through the use of callus removal products, sanding, buffing, and filing calluses is part of a nail technician's licensed practice.

Item E: This proposed rule clarifies that massaging the hands and feet as part of a nail service is part of a nail technician's licensed practice.

Item F: This proposed rule clarifies that nail technology includes other personal services for the cosmetic care of the hands, feet, and nails. It is reasonable and necessary to provide the clarification to ensure that the rules are not misinterpreted to mean that the practice of nail technology is limited to the services named in items A through E. This rule also clarifies that waxing, eyelash or eyebrow enhancements are not part of a nail technician's practice because this is an area of frequent confusion where many nail salons and nail technicians are offering these common esthetic services without the required esthetic licensure for the salon and the practitioner.

2105.0110 Advertising: The proposed rule amendment changes the scope of the rule. The current rule language states that the provisions of the rules pertain to "…all advertising relating to the education, licensing, or practice of cosmetology." The amendment removes "education" and "licensing" to limit the application to advertising the practice of cosmetology because the amended language in these rule parts do not address education or licensing.

The proposed rules in this part will aid the Board carrying out the Board's statutory responsibilities. This rule part is focused on providing an efficient means for determining whether or not practitioners advertising, particularly on social media, are licensed and are offering licensed services in a licensed location. The requirements in Items A through D provide a method, without being unduly burdensome, to link the advertised services with a license by providing the licensed name of the individual or salon. Complaints filed with the Board alleging unlicensed practitioners are advertising regulated services, or licensed practitioners are illegally offering regulated services in an unlicensed location would require fewer Board resources to investigate because of the proposed provisions. The provisions requiring the use of a licensed name also would enable the public to identify a practitioner when needed.

Item A: This item contains both a provision proposed for repeal and a proposed amendment. The rule repeals a provision prohibiting misleading or inaccurate advertising related to licensed services and policies because it is difficult to enforce and could involve the Board in matters over which it has no regulatory authority. For example, if there was a dispute about the advertised cost of a service, based on allegedly misleading advertising, the Board could be asked to enforce the rule but the consumer transaction is outside the Board's authority.

The proposed amendment prohibits the advertising or offering of licensed services from an unlicensed person or business. This is a needed and reasonable requirement, and allows better use of Board resources in regulating cosmetology. Unlicensed practitioners, or licensees offering services in an unlicensed location, often use social media to advertise, and the proposed rule would provide an efficient basis for addressing such unlicensed practice. The amendment does not pose a new requirement or burden for the public or licensees, because licensure is an existing requirement in rule and statute.

Current Item B proposed for repeal: This item is proposed for repeal because it is unnecessary, and because proposed rule changes (part 2105.0115, Subd 3) are likely to lead towards a ranked or graded result of inspections. It is not in the Board's interest, nor the interests of the public's health and safety to unintentionally prohibit a salon reference in advertising to a positive ranking resulting from high compliance with licensing and infection control requirements.

Current Item C, renumbered as Item B: The proposed rule simplifies the language relating to a requirement to use the licensed salon name in the advertisement, and removes a current unnecessary requirement that salon advertisements also list the type of license held by the salon. The Board considered requiring salons to list the license number in any advertising to assist in establishing the

licensed status of the salon, but the Request for Comments generated objections to that possible requirement based on potential difficulties in advertising, primarily because of the limited space or limited number of characters in Web based advertising. Given the various methods of advertising, the Board determined that is not needed or reasonable to require the use of the space or characters necessary to identify the type of salon license held or to list the license number. To do so could impose an undue burden on the salon. Instead, the name of the salon may be used to identify the license status. The public may use the Board's online license lookup to determine whether a salon is licensed, and the Board naturally has access to licensing records to establish the license status of any particular salon.

The proposed amendment does add a requirement that any advertising which lists salon staff by name must use at least the first name as shown on the individual's license. Salons who have advertised the services of unlicensed individuals have subsequently argued that the advertised name was an assumed name, and referred to a practitioner licensed under a different name. Establishing that such salons are using unlicensed practitioners requires substantially more board resources than would likely be necessary in most cases if the proposed rule is adopted.

The Board considered requiring that salon advertisements include the full name of each individual as shown on the license when the advertisement referenced salon staff names, but found that some individuals were concerned about posting full names on the internet. The Board determined that the interest in determining the license status of the salon or of any individuals included in the advertising could also be ascertained by the salon's name, or by the salon verifying the full name and licensure of the individual listed by first name. Therefore, a requirement for the license number or the full name of staff members was found to be an unreasonable requirement.

Item C: This proposed rule requires that individual licensees advertising their services must list their first and last name as shown on the license when advertising licensed services. This requirement is needed and reasonable because of the proliferation of social media advertising used by individuals, both licensed and unlicensed, offering regulated services in both licensed and unlicensed locations. Without this requirement, it is substantially more difficult to establish whether or not the individual advertising is a licensed practitioner. The provision will aid in the effective regulation of licensed practice, and is not an unreasonable requirement. Because individual practitioners are very unlikely, due to the associated cost, to use the commercial Web-based Google pop-up type advertising with the space and character limitations that schools and large salons might use, this requirement does not create the a burden as it would for larger businesses such as salons or schools.

***Current Item D*:** This rule is proposed for repeal as it is not necessary or reasonable to prohibit a salon from advertising unregulated services if the advertisement mentions Board licensure. Because the Board may not be able to answer a salon's question about whether a particular service is regulated by the Board, it is unreasonable to hold the salon responsible for defining what services are regulated and what services are unregulated. This difficulty is discussed in detail under the rule-by rule analysis of proposed rule 2105.0105. The Board declared this rule provision to be obsolete at the October, 2015 Board meeting.

Item D: This proposed rule addresses advertising by a self-employed practitioner who leases space in a salon, or leases space in a suite-style salon. These individuals may operate under varying forms of business organization, such as a sole proprietor, a limited partnership, or a corporation. The business name used by these individuals will not be on record with the Board because the individuals do not hold a salon license, and therefore can't be connected to the individual's license status. The proposed rule requires these individuals to either use their first and last name as shown on the license in the advertisement as required under proposed item C, or to use the licensed name of the salon under which they are operating when using their business name in the advertisement. This ensures that any

advertising for licensed and regulated services includes a licensed name – either the individual's licensed name, or the salon's licensed name as required in Item B. This is both needed and reasonable to allow for the Board's regulation of the practice of cosmetology and to ensure that the public can identify a responsible party if necessary.

2105.0115 Inspections: This part replaces current rule part *2105.0120* which is proposed for repeal because the proposed reorganization is extensive. The new rule part on inspections is reorganized to make it simpler for licensees to find requirements and easier for the Board to administer.

Inspections of salons are fundamental to the protection of the health and safety of the public, through ensuring that licensing, operating, and infection control requirements are met. The rules in 2105.0115, as amended or proposed, or as transferred and renumbered from the former *2105.0120*, address *when* inspections occur, *what* the outcome of inspections will be, *who* is responsible for correcting violations, and *what* is required of the licensee and the Board.

2105.0115 Subpart 1. Protocol: A current rule provision of *2105.0120, Subpart 3*, proposed for repeal and which establishes that the Board may inspection salons when the Board deems it necessary is moved to this section and remains a reasonable and necessary requirement which does not unnecessarily burden the license nor incur any cost with compliance. The amendment adds "permit holder" to the current rule to include permit holder inspections when licensees use special event permits or homebound service permits to provide licensed services outside of a licensed salon. Permit holder inspections are necessary to protect the health and safety of permit holder clients, and are especially necessary in non-salon environments where infection control procedures may be more difficult to practice.

There are approximately 5,500 licensed salons in Minnesota spread out through more than 86,000 square miles and 87 counties. Approximately 60% of salons are located outside of the seven county metro area. A Board inspector may travel up to 6 hours to reach a salon in order to conduct an inspection. The distance an inspector must travel to a salon and the proximity of nearby salons are factors in the Board's practice of conducting most inspections by geographic areas, that is, county by county or zip code by zip code.

Items A through D make transparent the current requirements for cooperation with Board inspections, and establish clear expectations for licensees and the Board when salons are inspected. These amendments are needed and reasonable, as discussed in each part.

Item A: This proposed new rule clarifies that salons may not delay inspections when a Board inspector appears at a salon. Salons, licensees, and employees of salons may wish to delay an inspection for a variety of reasons, including uncertainty as to whether a licensee or salon employee should "allow" an inspection when a salon owner or designated licensed salon manager isn't present; a hope that the inspector might return at a later time or wait until a manager or owner is present to accompany the inspector; delays to allow evidence of violations to be removed; or for other reasons.

It is important that inspectors begin inspection at a salon on arrival for practical reasons and to provide the most accurate assessment of the compliance of salon and practitioners. An inspector might average 750 inspections a year, and a mere five minute delay waiting for an owner or manager to be available could potentially result in more than 60 annual hours of work time spent on waiting to begin an inspection. By commencing inspections immediately on arrival after providing identification, the inspector limits opportunities for a salon or practitioner to hide evidence of non-compliance and makes best use of state resources (the inspector's time). It is not uncommon for inspectors arriving at a salon to observe salon practitioners removing prohibited items such as credo blades and used porous implements, cleaning work areas, or even to see apparently unlicensed persons fleeing salon premises in the middle of a cosmetology service to a client.

The Board considered proposing language that licensees must allow inspections "without delay and at reasonable times" but concluded that such language was too vague. The Board also considered clarifying the proposed language "at all times" by adding a qualifier "during business hours" but "business hours" is also a nebulous term. Many salons, particularly salons in homes, and salons in rural areas, have erratic business hours, or may consider business hours to be only those times when there is a scheduled appointment with a client. Other persons might interpret "business hours" to be "banker's hours", although salons often operate in the evening or on weekends. For these reasons, the proposed rules simply states that inspections may occur at any time. Inspectors plan the arrival time to coincide with the anticipated business hours of the salon. There is no negative consequence for the salon if the salon is not open for business, or the home salon owner is not at home when the inspector arrives. Salons open on weekday evenings, and on weekends, may be inspected at those times even when those hours may be outside the typical working hours of board inspectors. It should be noted that the Board practice is to be considerate of the business needs of salons and licensees, and to minimize any disruption to clients during inspections.

This rule provision may potentially reduce board costs per inspection by an increase in the efficiency of inspectors, but will not impact the overall expenditures of the Board. There are no associated costs for licensees, other than the increased likelihood of inspection penalties when the opportunity to hide or correct violations is lost.

Item B: This proposed new rule pertains to salons that are traditionally difficult to inspect because of limited operating hours, locations in remote areas of Minnesota, or because home salon owners frequently fail to answer the door unless there is an expected appointment for a cosmetology service with a client. The requirement here for cooperation in setting an appointment for inspection is needed and reasonable, and does not place a substantial burden on the licensee because inspections generally occur at intervals of a year or more, assuming there are no outstanding complaints or a history of serious violations. Consequently, it is possible that some licensees might be asked once every 12 to 24 months to set an appointment for an inspection. There is no cost generally associated with this requirement, although it is possible some licensees who are employed in other businesses may need to use personal leave time if they are otherwise unavailable during both day and early evening hours.

Item C: This proposed new rule necessarily addresses a common misconception among some salons and salon designated managers that the salon has no right to access space leased to individual practitioners, often known in the industry as "booth renters" or "independent contractors". Because the individual practitioners are operating under the salon license and the salon and the designated licensed salon manager are responsible for the practitioner's compliance, the leased space within the salon must be accessible to the salon and manager, and is included in any inspection by the Board. This is a needed and reasonable requirement, imposes no additional cost to the salon, and allows proper inspection of spaces where licensed services are provided.

Item D: This proposed new rule clarifies that all licensees and all employees of a salon are required to cooperate with an inspection, as implied by Minnesota Statutes, section 155A.25, subdivision 1a which includes inspection penalties for the failure to cooperate. This rule is needed and reasonable, and by itself, does not impose any additional burdens or requirements on licensees and has no associated cost.

Item E: This proposed new rule places a requirement on the Board for the protection of licensees. This codifies a current practice of inspectors to produce an identification badge with photo id when beginning an inspection. It is placed into rule by this amendment after safety concerns were expressed by a home salon owner during the Request for Comments stage of this rulemaking activity, and after a person fraudulently representing themselves as a Board inspector collected cash from a

licensed salon. While placing the requirement into rule does not change current Board practice, it puts licensees on notice that photo identification should be offered when an inspector approaches a salon. Because inspectors are already furnished with photo identification badges, this rule does not pose any new or additional costs to the Board.

2105.0115 Subpart 2. Violations and Orders to Comply: This proposed rule identifies responsibilities of the salon, the designated licensed salon manager, and the Board when violations of MN Statutes, section 155A or Minnesota Rules, Chapter 2105 are found during an inspection.

Item A: The proposed new rule no longer requires written reports to the Board on corrections to violations for every inspection as is currently required under *2105.0120, Subpart 1, Item A* (proposed for repeal). The proposed rule continues and clarifies the expectation in the repealed rule that the licensee will take immediate action to bring the salon and practitioners into compliance within ten business days. Immediate action is specified because the previous rule, which stated that violations must be corrected within ten business days, was interpreted by licensees as permission to allow violations such as unlicensed practitioners or lack of disinfectant to continue for the ten days. The addition of "immediate action" clarifies that any violation which can be immediately corrected must be corrected, but acknowledges that some corrections might not be instantaneous by providing the 10 day period to complete compliance actions. This rule has no costs associated with it for either licensees or the Board.

Item B: The proposed new rule codifies a current practice that has existed for decades. Traditionally, an Order to Comply (OTC) is issued when licensing or infection control violations are found on inspection. The orders require a written affirmative statement of the actions the licensee has taken to resolve the violations.

Current rule *2105.0120 Subpart 1, Item A* (proposed for repeal) requires a written response to every violation cited by the Board. The proposed new rule requires written reporting to the Board only when an Order to Comply is issued. The Board will generally issue an OTC when cited violations include matters more immediately related to the health and safety of the public such as infection control violations or licensing violations. If an OTC is issued, all violations cited on inspection are included in the Order. The proposed rule provides guidance to the salon and the designated licensed salon manager regarding how to respond to an OTC. The amended rule is needed and reasonable, and reduces the current burden on salons by reducing the need for a written response to the Board every time a violation is cited on inspection. This item does not impose new requirements on licensees, and therefore there are no new costs associated with an OTC. If a licensee is not in compliance with a rule requirement, correction of the violation may potentially include some costs to the salon. Costs may be associated with equipment repairs, building repairs, obtaining disinfectants, renewing licenses, and other corrections. Costs associated with compliance with any new rule requirements are discussed under each new rule part.

2105.0115 Subpart. 3. Posting of Inspection Results: The proposed Subpart 3 addresses the posting requirements of inspection results which were previously found in *2105.0120 Subpart 5* (proposed for repeal). *Subpart 5* required salons to post signage indicating that the salon had been inspected and the inspection report was available for review on request.

The Board's inspection reports are evolving to provide greater detail and information to licensees and the public regarding any violations cited. Each inspection will result in a two part document, with the first part being an inspection result document that provides an overall indication of the inspection results. The second part will be a more detailed document that will list each specific violation and related information to assist the salon and the designated licensed salon manager in understanding and correcting the violations. Instead of posting a sign as required by current rule *2105.0120 Subp. 5* (proposed for repeal), the proposed rule requires

the posting of the inspection result document. Instead of making the report available on request, the proposed rule requires that the detailed inspection report be visibly available to the public in the reception area of each salon. This could be something as simple as placing the report with the magazines customarily provided in the waiting area of a salon, or placing the report near a cash register, instead of filing the report somewhere in the salon. The proposed rule makes both a summary inspection result and the detailed inspection report readily available and much more accessible to the public by not requiring a person to ask to see the inspection report. The rule change does not create an additional burden on the salon, does not add any cost to the salon, and is both needed and reasonable.

2105.0115 Subpart 4. Inspection Penalties and Discipline: This proposed subpart replaces the current rule in *2105.0120 Subpart 1, Item B*, which is proposed for repeal for reasons of better organization.

> **Item A.** This proposed amendment addresses confusion among some licensees regarding the possible outcome of violations cited during an inspection by clarifying that licensees cited for violations on an inspection may be subject to specific inspection penalties listed in statute and the general disciplinary provisions of the statute. Each rule or statute violation is subject to general disciplinary actions under Minnesota Statutes, section 155A. 33. In addition, Minnesota Statutes, section 155A.25. Subd. 1a (b) lists eight violations that have a specific inspection penalty out of the many rule and statutory requirements reviewed during an inspection. If any of the eight listed penalty violations are cited, the applicable penalties may apply. If other violations are cited, the general disciplinary provisions of the statute may apply. Practically, this means that if a salon has one or more violations for which there is an associated penalty, and also has significant other violations such as critical infection control violations, all violations will be addressed at one time through a complaint and disciplinary process to avoid a piecemeal process which may be confusing to licensees. This allows the Board to consider the overall compliance of the salon at once, and also ensures that licensees are not subjected to first an inspection penalty and then later subjected to penalties related to violations for which there is no specific penalty specified in statute. The proposed rule is needed and reasonable, creates transparency, and does not create any new restriction or burden on licensees.
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> **Item B**: This proposed rule clarifies the application of inspection penalties, because in some cases, the statutory language of Minnesota Statutes, section 155A.25. Subd. 1a (b) does not clearly establish the party subject to the inspection penalty. Under current rule (*2105.0190 Subpart 5*) and under proposed rules (2105.0390), each salon and designated licensed salon manager are responsible for ensuring that the salon and all practitioners in the salon are in compliance with statute and rule requirements. Under current and proposed rules, (2105.0190 Subpart 1), each individual licensee is responsible for the licensee's own compliance with statute and rule. The proposed rule lists the inspection penalties identified in Minnesota Statutes, section 155A.25. Subd.1a (b) that might be assessed to a salon, to the salon's designated licensed salon manager, and to an individual licensee practicing at the salon. This rule provides transparency and allows licensees to reasonably predict whether an inspection penalty might be applied.

2105.0115 Subpart 5: Application of Inspection Penalties: This proposed rule establishes a limit to the total amount of inspection penalties that might be assessed to a salon, to a designated licensed salon manager, or to an individual practitioner. Because the penalties are based on each violation, a licensee could potentially have multiple violations adding up to an unanticipated and perhaps unfair amount. The penalties could easily exceed the amount of a civil penalty that might have otherwise been imposed by the Board if the violations had been addressed through a complaint and disciplinary process instead of through applied inspection penalties.

2105.0120 Inspections: This rule part is proposed for repeal as the extensive proposed amendments warrant replacement with a new rule part, 2105.0115. The discussion of the subparts below notes which provisions are simply moved to a new rule part and renumbered, and which provisions are repealed.

2105.0120 Subpart 1 Violations:

> ***Item A:*** The requirement to provide a written response for every cited violation is proposed for repeal because it is unnecessary to always require a written response to violations cited on inspection. For example, many of the technical violations, such as not having a first aid kit, or not having the correct number of wastebaskets do not warrant a requirement for the salon to respond in writing, and do not warrant the time spent by the Board tracking whether a response has been received. This rule is replaced by 2105.0115, Subpart 2, and discussed in that section above.
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> ***Item B:*** The provisions of this item are related to the inspection penalties provided by statute, and the provisions are amended and addressed in the new rule part 2105.0115, Subp. 4.

2105.0120 Subpart 2. Business hours and location: These rule provisions are proposed for repeal as the requirement that salons inform the Board of the salon's operating hours, or if open by appointment only, designate a half day each month for inspection, is not a needed or reasonable requirement. The Board does not use this information because it is not easily accessible to inspectors in the field. The rule provision that country shop owners provide a detailed map with driving directions is also proposed for repeal. The advent of GPS navigation systems make it unnecessary for country salons to provide location directions. For these reasons, these rule provisions are not included in the new renumbered part on inspections.

2105.0120 Subpart 3. Inspection Requirements: This rule is renumbered as Subpart 1 of 2105.0120 because of the reorganization of the rules related to Board inspections of licensed salons and permit holders.

2105.0120 Subpart 4. Results: This rule is proposed for repeal as part of the reorganization of the rules on inspection, and is replaced by the updated provisions in 2105.0115 Subp.3.

2105.0120 Subpart 5. Report availability notice: This rule is proposed for repeal as part of the reorganization of the rules on inspection, and is replaced by the updated provisions in 2105.0115 Subp.3.

2105.0130 Exam Administration: This rule part is proposed for repeal as it is no longer relevant. Tests required for licensure are conducted by testing vendors, and the Board has not been directly involved with test administration for some years. The provisions of Subp.4 regarding how long a test score is valid are addressed in each instance in proposed rules where a test is required. This rule was declared obsolete by the Board in the 2010 Annual Report on Obsolete, Unnecessary, or Duplicative Rules, as required by Minnesota Statutes, section 14.05, Subdivision 5.

2105.0140 Applicants for Individual License: This rule part is proposed for repeal as the reorganization of the current rules has resulted in one rule part (2105.0145) replacing three rule parts (*2105.0140, 2105.0150, and 2105.0160*). This extensive reorganization is intended to make the rules simpler, easier to follow, and easier to administer.

2105.0145 Applicants for Individual Licenses: The proposed rule section replaces *2105.0140, 2105.0150; and 2105.0160*. This extensive reorganization is intended to make the rules simpler, easier to follow, and easier to administer.

2105.0145 Subpart 1. Cosmetologists, nail technicians and estheticians: This part explains the requirements for licensure for those applicants who have completed training but have never been licensed in the United States. The proposed amendments do not add any new additional requirements for licensure, but do expand on the ways that an applicant can meet the current requirements.

Item A: This proposed rule simply codifies the current practice of requiring applicants to complete an application form, and is a needed and necessary requirement which does not provide any new cost burden. The use of an application form standardizes the presentation of the applicant's credentials for more efficient application review and processing by the Board.

Item B: This proposed rule clarifies an existing requirement in *2105.0140, Item A* (proposed for repeal for reasons of better organization) for evidence of completion of a high school or a general educational development certificate by listing the ways an applicant can establish that the requirement has been met, adding two additional means of establish a high school education. These are the acceptance of a high school transcript which shows graduation, and any method of establishing a high school equivalency under the CFR, Title 34, section 600.2.

Item C: This proposed rule lists the tests required of all new applicants under current rule in *2105.0140, Item B* (proposed for repeal for reasons of better organization): a theory exam, a practical exam, and a laws and rules exam, all of which are administered by a testing vendor under contract with the Board.

Item D: This proposed rule specifies the school documents required to establish that the applicant has met the training requirements, and replaces *2105.0150* (proposed for repeal for reasons of better organization). The training requirements have been long established, and the Board is not proposing any adjustment to the hours or any significant changes to the curriculum in this rule docket. The rule addresses four different groups of applicants who have not been licensed in the United States:

(1) graduates of Minnesota licensed cosmetology schools;
(2) graduates of out-of-state schools meeting the Minnesota requirements;
(3) students who did not graduate, and graduates of out-of-state schools which do not meet Minnesota requirements; and
(4) applicants whose training occurred in another country.

Item D. (1): This proposed rule addresses graduates of Minnesota licensed cosmetology schools, and identifies the existing training requirements for cosmetologists, estheticians, and nail technicians, contained in current rule *2105.0150* (proposed for repeal for reasons of better organization).

Current rule *2105.0150* includes a requirement that the training must have been completed within three years of the application for licensure. The proposed rule extends the time period to five years instead of only three. This change is proposed for several reasons.

First, there is no evidence that a person who completed training more than three years ago has effectively lost all of the knowledge and skills gained from the training. The remedy under current rule for an applicant whose training was completed more than three years earlier is contained in current rule in *2110.0690* (proposed for repeal) and is an unnecessary requirement that if the training is three years old or more, the applicant must either take a reactivation course or complete the required training, whichever is greater. Although there is no "reactivation" course in current law or rule, the Board assumes the rule refers to a "refresher" course as addressed in current rule *2105.0210 Subpart 3* (proposed for repeal). Refresher courses are not a reasonable alternative to repeating training because of the cost and time commitment, and because a less burdensome means exists of ensuring that applicants are qualified for licensure as discussed in the rule by rule analysis of proposed rule 2105.0187 on skills courses.

Since the initial training hours of 1,550 hours for a cosmetologist, 600 hours for an esthetician, and 350 hours for a nail technician are clearly greater than the refresher course hours, the provision of *2110.0690* (proposed for repeal) requires an applicant to entirely retake their

training if they fail to become licensed within that three year period after completing the training. It is neither necessary nor reasonable to require a graduate to completely retake training if they do not obtain a license within three years, given that it is not established that there is no retention of knowledge and skills, and given that training costs might be fifteen thousand dollars or more for a cosmetologist, and represent a significant commitment of time.

Secondly, some graduates, for a variety of reasons, do not apply for or do not complete the process of applying for an application within the three year period. Many of these individuals approach the Board for a waiver of current rule, based on the financial hardship of repeating the cost of tuition and supporting oneself and perhaps a family while returning to school. The majority of individuals who request waivers approach the Board four to five years after graduating and cite personal tragedies, medical issues, or the birth of a child as reasons the application process was not completed within the three year timeline. In general, the Board has approved these waivers, as current rule requires the applicant to test and pass the theory, practical, and laws and rules exams within a year of application (proposed rule 2105.0145, Subpart 1, Item C). The tests represent a relatively recent evaluation of the applicant's knowledge, and ensure the applicant is minimally qualified.

In the absence of any compelling evidence to the contrary, the Board determined that extending the period of time to become licensed after graduation from three years to five years does not represent a threat to the health and safety of the public.

This proposed rule also addresses the circumstance in which an applicant has completed the training more than five years earlier. The Board considered various ways that an applicant could demonstrate retention of the skills from a training course completed more than five years earlier, and determined that the applicant's skills could be verified through the retaking and of the same skills test required of students completing training in the schools. Students are required to pass a practical skills certification, in which the student demonstrates required techniques as established in the board-approved skills test. The proposed rule contains a provision that when the training was completed more than five years prior, the applicant must also complete retake the skills test by completing a skills course which includes the skills test and any remedial training necessary to pass the test.. Skills courses are discussed in detail in proposed rule 2105.0187 and 2110.0545 and consist of the applicant retaking the practical skills certification test at the school level – essentially re-demonstrating a minimum competency at applied skills.

The proposed rule amendments in this part reduce potential costs to applicants, provide more flexibility, and still meet the objective of protecting the health and safety of the public through the regulation of licenses providing personal cosmetic services.

Item D (2): The two subparts in this item discuss requirements for applicants who graduated from out-of-state training programs.

> **Item D (2)(a):** This proposed rule addresses applicants who graduated from an out-of-state school which meets the Minnesota requirements. The proposed rule requires the same documentation of training as required of graduates of Minnesota licensed cosmetology schools, and includes the same provision requiring a skills course for applicants whose training was completed more than five years prior to the application as required for Minnesota graduates in Item D (1).
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> **Item D (2)(b):** This proposed rule provides the requirements for applicants whose training at a licensed out-of-state school was not equivalent to the approved curriculum in Minnesota licensed schools. The rule requires such applicants to apply to a Minnesota licensed

cosmetology school as a transfer student, where deficiencies in the training can be identified and remedial training provided to complete the required hours and curriculum. This requirement parallels the current rule requirement in *2105.0150* which is proposed for repeal for reasons of better organization. The obligations of a licensed school regarding transfer students are addressed in proposed rule 2110.0705.

Item D (3): This proposed rule addresses all other applicants who completed training in out-of-state schools. This rule part applies to:

- applicants who attended an out-of-state program but did not complete the school program;
- applicants from out-of-state schools who completed the number of hours required for Minnesota but left school before completing the school's program; and
- graduates of unlicensed out-of-state schools.

The proposed rule requires these applicants to apply to a Minnesota cosmetology school as a transfer student (see school provisions of proposed rule on transfer students in 2110.0705). The school will assess the applicant's completed training and skills, provide any additional training necessary to meet the training requirements, and administer a skills test (see proposed rule 2105.0187 for discussion on the skills test).

It is necessary and reasonable to require out-of-state students who may have completed the required number of hours but who did not complete the program in their state to be evaluated. This is because applicants must satisfy *both* the number of hours of training and the curriculum requirements. For example, North Dakota cosmetology schools have a curriculum based on 1,800 hours. North Dakota students who are planning to become licensed in Minnesota may leave the North Dakota program once the student has acquired the 1,550 hours required by Minnesota. However, because these students may have missed a portion of the curriculum required of Minnesota applicants, it is reasonable and necessary to evaluate the training that was completed to ensure that the requirements were met. This proposed rule parallels a current rule *(2105.0150, Item B)* which is proposed for repeal and repeated here for reasons of better organization.

It is necessary and reasonable to require graduates of unlicensed schools from other states to undergo an assessment to determine whether the student possesses the required background in theory and in practical skills, by undergoing an evaluation at a Minnesota licensed school. At least one state which does not license its cosmetology schools is a state nationally recognized as associated with nail technology diploma mills. Such diploma mills are often associated questionable training, or sell credentials without training, and sometimes are associated with issues of human trafficking, as are nail salons. The issue of unlicensed cosmetology schools in other states is not addressed in current rule, and it is reasonable to provide both a mechanism where graduates of such schools can be evaluated and a path to potential licensure in Minnesota while protecting the health and safety of the public by ensuring that such applicants have the proper theoretical and skill knowledge. This is particularly true as state licensing regulations regarding schools in general, and cosmetology schools specifically, have an ever changing regulatory landscape.

Item D (4): This proposed rule requires applicants whose training was completed in another country and who have never been licensed in the United States to comply with provisions of 2105.0183, Subpart 3. Other countries may or may not require licensure of practitioners, and may or may not have formal training programs meeting state curriculum and experience requirements. It is reasonable to provide a mechanism in rule for such applicants to become licensed in Minnesota while meeting the Board's regulatory objective of protecting the health and

safety of the public by ensuring minimal competency of licensees (see rule-by-rule analysis of 2105.0183, Subp.3 above for further discussion).

Item E: The proposed rule refers to the existing requirement for fee payments as required under statute.

2105.0145 Subpart 2. Salon Managers: The proposed rule replaces part *2105.0160* which is repealed as part of the reorganization of the rules. It repeats the existing requirements of part *2105.0160* for a salon manager applicant, and moves a requirement related to school managers to a new subpart for school managers (2105.0145 Subpart 3).

Item A: This proposed rule simply codifies the current practice of requiring applicants to complete an application form, and is a needed and necessary requirement. The use of an application form standardizes the presentation of the applicant's credentials for more efficient application review and processing.

Item B: This rule part requires the applicant to hold an underlying practitioner license, which is consistent with current rule and Minnesota Statutes, section 155A.23, Subd. 8.

Item C: This rule part requires 2,700 hours of work experience as a practitioner, consistent with current rule. It is reasonable to require salon managers to have minimal real-life experience in a salon practicing required infection control and compliance with this chapter before assuming the responsibilities of a salon manager license.

Item D: This rule part identifies the required tests for a salon manager license, consistent with current rule, and as provided for in Minnesota Statutes, section 155A.27 Subd. 4. The test is not cost prohibitive ($30 under the current testing vendor contract), and is part of current requirements. It is needed and reasonable to require an applicant to demonstrate knowledge of the laws and rules related to salon supervision and licensing.

Item E: The proposed rule refers to the existing requirement for fee payments as required under statute.

2105.0145 Subpart 3. School Managers: This proposed rule replaces the provisions for a school manager which were contained in repealed part *2105.0160* and repeated in this new rule section for reasons of better organization. School manager requirements are moved to this new separate rule part for clarity, and no changes are proposed in the requirements for a school manager license.

Item A: This proposed rule simply codifies the current practice of requiring applicants to complete an application form, and is a needed and necessary requirement. The use of an application form standardizes the presentation of the applicant's credentials for more efficient application review and processing.

Item B: This rule part requires the school manager to hold an underlying salon manager license, which is consistent with current rule and Minnesota Statutes, section 155A.23, Subd. 16.

Item C: This rule part identifies the required tests for a salon manager license, consistent with current rule, and as provided for in Minnesota Statutes, section 155A.27, Subd. 4. The test is not cost prohibitive ($30 under the current testing vendor contract), and is part of current requirements. It is needed and reasonable to require an applicant to demonstrate knowledge of the laws and rules related to school and school clinic supervision and licensing.

Item D: The proposed rule refers to the existing requirement for fee payments as required under statute.

2105.0145 Subpart 4. Instructors: This proposed rule replaces *2110.0140, Subpart 1* which is repealed for reasons of better organization and moved to this chapter to place requirements for instructors in the same rule chapter as other individual licenses.

Item A: This proposed rule simply codifies the current practice of requiring applicants to complete an application form, and is a needed and necessary requirement. The use of an application form standardizes the presentation of the applicant's credentials for more efficient application review and processing.

Item B: This proposed rule repeats a provision in current rule *2110.0140, Subpart 1, Item C* (proposed for repeal) moved to this section for reasons of better organization, which requires the applicant to be currently licensed as a cosmetologist, esthetician, or nail technician. It is reasonable and necessary for an instructor to hold the knowledge and skills, as demonstrated by licensure as a practitioner, to provide the cosmetology services to be taught by the instructor. This requirement is consistent with Minnesota Statutes, section 155A.23, Subd. 11.

Item C: The proposed rule increases the minimum work experience as a licensee from 1,400 hours (a little more than half a year of full time work experience) under current rule to 2,700 hours (approximately a year and a half of full time work experience). Based on complaints from salons about new licensees, from inspectors about misinformation related to infection control attributed to instructors and schools by new licensees, and from students complaining about the experience level of their instructors, the Board determined that 1,400 hours is insufficient to allow a licensee to gain broad experience in the licensee's field, and considered increasing the work experience requirement to 6,000 hours (approximately three years of full time work experience).

Instructors teach not only theory in a classroom setting, but also teach students how to perform the various services. If the experience required is too low, the applicant will not likely have sufficient experience with the multiple variables that can be encountered with different clients presenting different issues and problems in each type of service provided.

Significant support for an increase in work experience was expressed during the Request for Comments period, but some licensees and schools felt that 6,000 hours were too many to require. Schools indicated a concern that licensees who have practiced for three years generally have built a client base and would be unlikely to be interested in returning to school as an instructor as the instructor wages are not competitive with licensed practice. Some schools have reported difficulty in finding instructors under the current requirements.

There is no national standard for minimum experience requirements for cosmetology instructors, and the minimum requirements vary widely. Generally, states with low work experience requirements have educational requirements of 500 hours to 1,000 hours, and states with lower educational training requirements have higher work experience requirements of up to 8 years.

Feedback from licensees during the town halls suggested that many licensees support an increase to 2,700 hours of work experience for instructors, which is also the experience level required for applicants for manager licenses.

Based on consideration of the input received, the Board has reduced the proposed experience requirement from 6,000 hours to 2,700 hours for an instructor license. This requirement, representing approximately 16 months of full time experience as a practitioner, is needed and

reasonable, and is consistent with Minnesota Statutes, section 155A.27 Subdivision 2, which indicates that qualifications for licensing should include experiential prerequisites.

Item D: This proposed rule requires the completion of a board approved instructor course as is required in current rule (*2110.0140, Subpart 1, Item B)* proposed for repeal. The rule clarifies the subject of the course by adding the words "on teaching methodology" and also removes the reference to the length of the course as 38 hours. There is no national standard for cosmetology instructor requirements; however, the majority of states require training far in excess of a 38 hour course, and many states require courses in excess of 500 hours. Board approval of the instructor course will be based on review of the curriculum on teaching methodology in order to lay the proper foundation for effective instruction.

Item E: This proposed rule requires the passing of an instructor exam as is required in current rule (*2110.0140, Subpart 1)* proposed for repeal and moved here for reasons of better organization. The instructor exam consists of three parts; general theory, a practical exam, and a laws and rules test related to schools. Under the testing vendor contracts, these components are separated out into three tests. To remove any confusion, the proposed rule lists each of the three components, but this does not represent an increase in the testing requirement. Requiring the instructor tests is consistent with Minnesota Statutes, section 155A.27 Subdivision 4, establishing the competency of the applicant to provide the services.

2105.0150 *Cosmetologists, Nail Technicians, and Estheticians:* This rule part is proposed for repeal as the reorganization of the current rules has resulted in one rule part (2105.0145) replacing three rule parts (*2105.0140, 2105.0150, and 2105.0160*).

2105.0160 Managers: This rule part is proposed for repeal as the reorganization of the current rules has resulted in one rule part (2105.0145) replacing three rule parts (*2105.0140, 2105.0150, and 2105.0160*). The requirements in this rule part are moved to 2105.0145.

2105.0180 Endorsement or Transfer of Licenses from other states or countries: This existing rule is proposed for repeal and replaced by 2105.0183 because of the extensive reorganization and amendments. Changes from existing rule are discussed in the new proposed rule part, 2105.0183.

2105.0183 Transfer of Licenses from other states or countries: This proposed rule replaces *2105.0180*.

2105.0183 Subpart 1. Applicants with required training who are licensed in another state: The proposed rule establishes the requirements for applicants licensed in other states who completed the same number of hours and curriculum as required in Minnesota licensed cosmetology schools.

Item A: This proposed rule requires a completed application form as part of the application process. The use of an application form standardizes the presentation of the applicant's credentials for more efficient application review and processing.

Item B: This proposed rule replaces the current requirements in current rule *2105.0180 Item C* (proposed for repeal for reasons of better organization), which requires a certified statement from the licensing body where the applicant is licensed. The proposed rule clarifies that requirement by identifying the specific information sought regarding the individual's licensure qualifications and history from each state where the applicant has held a license. The requirement is consistent with Minnesota Statutes, section 155A.27 Subd.10. This information is necessary to determine whether the person meets the requirement for licensure in Minnesota, and will likely establish that the applicant has met some of the testing requirements for the license. Most recently, some states have stopped providing direct certification to the board of the training and disciplinary history of

licensees. In these situations, the proposed rule provides that the applicant must provide a license copy and complete a supplemental verification form to provide the missing information.

Item C: This proposed rule replaces the current requirements in rule *2105.0180, Item D* (proposed for repeal for reasons of better organization). When the applicant's out-of-state license is expired, the current rule requires completion of a refresher course of 155 hours for a cosmetologist, 60 hours for an esthetician, and 35 hours for a nail technician. The proposed rule replaces the refresher course with a skills course. The skills course is discussed in detail in proposed rule 2105.0187, including a discussion on the reasons a skills course is less burdensome than a refresher course. Applicants may also choose to meet the requirements of their state to renew their expired license, in which case this rule item would not apply because the applicant would hold a current license.

Item D: This proposed rule applies the same requirement for a high school diploma or equivalent as is required for all applicants for licensure as a cosmetologist, esthetician, or nail technician. The only change is to add the acceptance of recognized equivalents of a high school diploma, which provides more flexibility for applicants. The basic requirement of a diploma does not represent a change in requirements.

Item E, Item F, and Item G: These proposed rules list the three tests required of all applicants for licensure as a cosmetologist, esthetician, or nail technician, and indicate that if the certification letter(s) from the state(s) in which the applicant has been previously licensed verify that a testing requirement has already been met, the applicant is not required to retest. Item G requires the applicant to pass the Minnesota laws and rules exam to ensure all licensees are cognizant of Minnesota regulations.

Item H: The proposed rule states the existing requirement for fee payments as required under statute, and is not a new requirement.

2105.0183 Subpart 2. Applicants with less than the required training who are licensed in another state: This proposed rule contains identical requirements as listed under Subpart 1, except for a provision in Item B which addresses the applicant's lack of some of the required training. All other items in this subpart are identical to Subpart 1.

Item A: This proposed rule requires a completed application form as part of the application process. The use of an application form standardizes the presentation of the applicant's credentials for more efficient application review and processing.

Item B: This proposed rule provides that the applicant must take additional training to meet the required training hours for each type of license, or may, as provided under Minnesota Statutes, section 155A.27, Subdivision 10 (b), substitute three years of a current active license in another state or country for the missing training hours.

Item C: This proposed rule replaces the current requirements in current rule *2105.0180 Item C* (proposed for repeal), which requires a certified statement from the licensing body where the applicant is licensed. The proposed rule clarifies that requirement by identifying the specific information sought regarding the individual's licensure qualifications and history from each state where the applicant has held a license. The requirement is consistent with Minnesota Statutes, section 155A.27 Subd.10. This information is necessary to determine whether the person meets the requirement for licensure in Minnesota, and will likely establish that the applicant has met some of the testing requirements for the license. Most recently, some states have stopped providing direct certification to the board of the training and disciplinary history of licensees. In these situations, the

proposed rule provides that the applicant must provide a license copy and complete a supplemental verification form to provide the missing information.

Item D: This proposed rule replaces the current requirements in *2105.0180, Item D*. (proposed for repeal). When the applicant's out-of-state license is expired, the current rule requires completion of a refresher course, including a certification of skills of 155 hours for a cosmetologist, 60 hours for an esthetician, and 35 hours for a nail technician. The proposed rule replaces the refresher course with a skills course. The skills course is discussed in detail in the rule-by-rule analysis of proposed rule 2105.0187, including a discussion on the reasons a skills course is less burdensome than a refresher course.

Item E: This proposed rule applies the same requirement for a high school diploma or equivalent as is required for the applicants under 2105.0145 Subpart 1, Item B, and does not represent a change from current requirements.

Item F, Item G, and Item H: These proposed rules list the three tests required of all applicants who have never been licensed under 2105.0145, Subpart C., and indicate that if the certification letter(s) from the state(s) in which the applicant has been previously licensed verify that a testing requirement has already been met, the applicant is not required to retest. Item H requires the applicant to pass the Minnesota laws and rules exam to ensure all licensees are cognizant of Minnesota regulations.

Item I: The proposed rule states the existing requirement for fee payments as required under statute, and is not a new requirement.

2105.0183 Subpart 3. Applicants with training or experience in another country who have not been licensed in another state: This proposed rule replaces *2105.0180, Subp. 2* which is proposed for repeal for reasons of better organization. *2105.0180, Subp. 2* addresses applicants who have worked as a cosmetologist, esthetician, or nail technician in other countries, but does not address applicants who are unlicensed and have less than 1,800 hours of work experience. The proposed rule addresses all three of these situations, and provides a pathway for licensure of persons who have practiced cosmetology in countries where licensure and licensed schools do not exist.

Item A: This proposed rule requires the applicant to apply under proposed rule 2110.0705 as a transfer student to a Minnesota licensed cosmetology school for an evaluation of the applicant's training and experience. As indicated in proposed rule 2110.0705, this would include a skills test. The end result of the evaluation and completion of any necessary remedial training ensures that the applicant has the necessary training and skill levels, with the school issuing a course completion certificate. A discussion of the evaluation of the applicant is addressed in the rule analysis of 2110.0705. This represents a change from current rule, where by default, such applicants can not be licensed unless they first start over as a new cosmetology school student.

Item B: This proposed rule requires the applicant to provide necessary and basic information on a form provided by the Board. It is reasonable to request this information in a standard format to facilitate review by the Board. The item also lists all the documents, tests, and fee payments required of every applicant for initial licensure, and the need and reasonableness of these requirements has been previously discussed in this document .

2105.0183 Subpart 4. Applicants with an instructor license from another state:
This proposed rule identifies the requirements for transferring a current instructor license from another state. Under current rules, an instructor license cannot be transferred, and the applicant must complete the training, experience requirements, and testing requirements as if an instructor license was never held.

It is reasonable to consider an applicant's experience and training as a licensed instructor in another state, and the current rule unreasonably restricts licensed instructors from other states becoming licensed in Minnesota. Under the proposed rule, applicants who wish to transfer an instructor license from another state must meet the same minimum requirements for an instructor license as described in proposed rule 2105.0145, and as discussed in the itemized requirements below.

Item A: This proposed rule requires the applicant to provide necessary and basic information on a form provided by the Board. It is reasonable to request this information in a standard format to facilitate review by the Board.

Item B: This proposed rule requires the applicant to hold a current Minnesota cosmetologist, esthetician, nail technician, or salon manager license. Applicants from other states may transfer their underlying license easily (see proposed rule 2105.0183, Subp 1), and this provision is required of all applicants for an instructor license, as discussed in the rule-by-rule analysis of proposed rule 2105.0145, Sub. 4. It is reasonable and necessary for an instructor to hold the knowledge and skills to provide the cosmetology services to be taught by the instructor.

Item C: This proposed rule mirrors the requirement for 2,700 hours of work experience in the three years prior to application, but also allows work experience as an instructor to count towards the work experience requirement. By allowing the out-of-state applicant to apply work experience as an instructor to the work experience requirement, experienced instructors who may have been teaching full time for the past three years would not be required to start over as an operator or manager and work in a salon to gain the 2,700 hours of work experience. The proposed rule does not unreasonably restrict a person's ability to become licensed as an instructor in Minnesota but still ensures that minimum qualifications are met.

Item D: This proposed rule requires a certified statement from the licensing body where the applicant is licensed. The proposed rule identifies the specific information sought regarding the individual's licensure qualifications and history from each state where the applicant has held an instructor license. This information is necessary to determine whether the person meets the requirement for licensure in Minnesota, and may establish that the applicant has met the training and some of the testing requirements for the license. Most recently, some states have stopped providing direct certification to the board of the training and disciplinary history of licensees. In these situations, the proposed rule provides that the applicant must provide a license copy and complete a supplemental verification form to provide the missing information.

Item E: This proposed rule requires completion of a board approved instructor course, and provides that if the certification of licensure establishes that the applicant completed comparable instructor training, the training does not have to be re-taken.

Item F, Item G, and Item H: These proposed rules list the three tests required of all applicants for an instructor license, and indicate that if the certification letter(s) from the state(s) in which the applicant has been previously licensed verify that a testing requirement has already been met, the applicant is not required to retest. Item H requires the applicant to pass the Minnesota laws and rules exam to ensure all licensees are cognizant of Minnesota regulations.

Item I: The proposed rule states the existing requirement for fee payments as required under statute.

2105.0183 Subpart 5. Foreign language documents: This proposed rule requires all non-English documents submitted as part of an application for license to be translated and evaluated by a board approved credentialing agency. The requirement is reasonable and necessary to enable the Board to evaluate the

credentials and to ensure minimum qualifications are applied to all applicants. The Board does not possess the expertise in various educational and training systems in other countries or the language skills to appropriately assess documents from other countries. One possible credentialing agency is AEQUO International, which cited a cost of $125 for all the documents (high school, postsecondary, cosmetology schools, etc) that are submitted for each applicant. AEQUO currently evaluates documents for eight other state cosmetology boards. The costs of the evaluation or credentialing of the documents is considerably less than repeating the training, and given that the applicant could not otherwise establish minimum qualifications, is a reasonable cost.

2105.0184 Military Temporary License: This proposed rule incorporates the provisions of Minnesota Statutes, section 197.4452 which requires licensing boards to issue temporary licenses for military personnel and in some cases, military spouses.

Minnesota Statutes, section 197.4552 (2) provides that applicants for military temporary licenses must submit "…a current criminal background study without a criminal conviction that is determined by the Board to adversely affect the applicant's ability to become licensed." Criminal convictions are not a factor in eligibility for any cosmetology license issued by the Board, and a criminal background study is not required of any applicant. The intent of the statute providing for military temporary licenses was not to create additional barriers for licensure for members of the military and their spouses, and requiring a criminal background study would add an additional and unnecessary requirement for the applicant. Therefore, no criminal background study is required of applicants for a military temporary cosmetology license.

2105.0184 Subpart 1. Application and issuance: Because there are various types of cosmetic licenses issued in the United States that are not issued in Minnesota, this proposed rule identifies the types of licenses issued in Minnesota that could also be issued as military temporary licenses (MT). It also establishes that the issued MT is valid for 12 months. Minnesota Statutes, section 197.4552, Subdivision 2 (b), (2) provides that the licensing Board may determine the length of time a temporary license is valid. The Board determined that a twelve month period would provide more than adequate time for a temporary license holder to complete any necessary additional training, to obtain credentialing records, and to pass any required tests needed to become fully licensed. For that reason, a MT license is limited to a period of twelve months.

Item A: This proposed rule requires the applicant to provide necessary and basic information on a form provided by the Board. It is reasonable to request this information in a standard format to facilitate review by the Board.

Item B: This proposed rule requires the provision of documentation that would verify the applicant's eligibility for the military temporary license, consistent with Minnesota Statutes, section 197.4552.

Item C: This proposed rule incorporates a provision of Minnesota Statutes, section 197.4552, Subd. 2 requiring documentation of a current license without a history of discipline.

Item D: The proposed rule states the existing requirement for fee payments as required under statute.

2105.0184 Subpart 2. Ineligible for Renewal: This proposed rule clarifies that the military temporary license is not eligible for renewal and states that if the license expires, the individual must stop practice until a regular license is issued. The temporary nature of military temporary licenses enables these individuals to begin working while establishing their credentials for licensing in Minnesota, and as discussed above, the twelve month temporary license offers sufficient time to meet Minnesota licensing requirements. In addition,

the Board has no authority under Minnesota Statutes, section 197.4552 to offer renewal of military temporary licenses.

2105.0185 Continuing Education (CE) Providers: This current rule is repealed and replaced by 2105.0186 because of the extensive proposed amendments resulting from the changes in the most recent legislative session (2105 Session Law, Chapter 77, Article 2, Section 45) now incorporated into Minnesota Statutes, section 155A.271.

2105.0186 Continuing Education (CE) Providers: This rule part, replacing part *2105.0185,* addresses the legislative changes on CEs for practitioners resulting from the changes in the most recent legislative session (2105 Session Law, Chapter 77, Article 2, Section 45) now incorporated into Minnesota Statutes, section 155A.271. This proposed rule part includes the provider requirements for CEs required for instructors and school managers, as well as general proposed rule requirements related to CE providers.

2105.0186 Subpart 1. Providers of Core CE courses: Legislation in 2015 added a second four hour CE education requirement for practitioners to the existing four hour CE requirement. To avoid confusion, the Board identifies the original four hour CE requirement in Minnesota Statutes, section 155A.271, Subd. 1(a) as "Core CEs", and identifies the new four hour CE requirement in Minnesota Statutes, section 155A.271, Subd. 1 (b) as "Professional Practice CEs". This proposed rule subpart addresses the requirements for providers of Core CE courses.

Item A: This proposed rule simply identifies core CE course subjects and breakdown of hours, as established in statute (Minnesota Statutes, section 155A.271).

Item B: This proposed rule identifies the parties that may offer Core CEs if authorized by the Board, consistent with Minnesota Statutes, section 155A.271.

Item C: This proposed rule addresses how a professional association gains Board recognition, and how long the recognition is valid. The proposed rule provides that Board recognition of a professional association is valid for one calendar year, consistent with the period of time that Board authorization of a Core course provider is valid under Minnesota Statutes, section 155A.271, Subd. 2 (b). Because the professional association will need to re-apply for Board authorization each year, it is reasonable to extend Board recognition to the same term for consistency and the ease of both the provider and the Board in complying with the time frames.

Item D: This proposed rule identifies the requirements and methods for application by a CE provider for authorization of the Core CEs. It is consistent with Minnesota Statutes, section 155A.271.

Item E: This proposed rule states the Board authorization of a Core CE is valid for one calendar year, expiring on December 31. This is consistent with Minnesota Statutes, section 155A.271 Subd 2. (b).

Item F: This proposed rule requires the Board to publish a list of approved Core CE courses on the Board's web site, and is a needed and reasonable requirement to allow licensees to determine which CEs are approved by the Board. The cost of maintaining such a list is negligible, and offset by the cost of answering inquiries from licensees seeking to determine where such courses are offered and whether the courses have been approved by the Board.

2105.0186 Subpart 2. Providers of Professional Practice CE Courses: This proposed rule part addresses the requirements for the providers of the new 4 hour CE requirement (professional practice CEs) for operators and managers renewing a license on or after August 1, 2017.

Item A: This proposed rule states the course topic options as defined by Minnesota Statutes, section 155A.271.

Item B: This proposed rule identifies the potential providers of a Professional Practice CE, which are limited by Minnesota Statutes, section 155A.271 to salons, professional associations, and cosmetology schools.

Item B (1): This proposed rule addresses the requirements for salons that wish to offer the Professional Practice CEs. The requirements are consistent with Minnesota Statutes, section 155A.271, which limits salons to offering the courses as in-person courses.

Item B (2): This proposed rule addresses the requirements for cosmetology schools and professional associations that wish to offer the Professional Practice CEs and is consistent with Minnesota Statutes, section 155A.271.

Item B (3): This proposed rule addresses how a professional association gains Board recognition, and how long the recognition is valid. The proposed rule provides that Board recognition of a professional association is valid for one calendar year, consistent with the period of time that Board authorization of a Professional Practice course provider is valid under Minnesota Statutes, section 155A.271, Subd. 2 (b). Because the professional association will need to re-apply for Board authorization each year, it is reasonable to extend Board recognition to the same term as differing expiration dates may be confusing and more difficult for the provider to track.

Item C: This proposed rule establishes the term of Board authorization for each Professional Practice CE as one calendar year with an expiration date of December 31, consistent with Minnesota Statutes, section 155A.271 Subd 2. (b).

Item D: This proposed rule requires the Board to publish a list of authorized Professional Practice CEs on the Board website, and is a needed and reasonable requirement to allow licensees to determine which CEs are approved by the Board. The cost of maintaining such a list is negligible, and offset by the cost of answering inquiries from licensees seeking to determine where such courses are offered and whether the courses have been approved by the Board.

2105.0186 Subpart 3. Providers of Instructor CE courses:

Item A: This proposed rule identifies who may offer an instructor CE course, and clarifies that the course may be offered either online or in person. The list of potential providers is deliberately broad to avoid unnecessarily excluding potential providers. It is necessary and reasonable to identify potential providers because of the varied requirements in statute for who may provide the practitioner Core CEs and Professional Practice CEs leads to the question of who may provide an instructor CE course. This proposed rule does not represent a change in current practice.

Item B: This proposed rule requires providers seeking Board approval of an instructor CE course to provide necessary and basic information on a form provided by the Board. It is reasonable to request this information in a standard format to facilitate review by the Board. The proposed rule also requires the submission of the lesson plan or syllabus, course objectives, and the qualifications of the presenters and course developers, as is required for CE providers of CEs for practitioners in 2105.0186 Subparts1 and 2. The proposed rule also requires the payment of approval fees required by statute.

Item C: This proposed rule clarifies that approval of a CE course is valid for one calendar year, which is consistent with the annual instructor continuing education provider approval fee in Minnesota Statutes, section155A.25, subdivision 1(d). Because CE course providers sometimes provide both the CEs for practitioners and the CEs for instructors or school managers, keeping the approval period the same for each type of CE course is consistent and will likely be easier for providers to track.

Item D: This proposed rule requires the Board to publish a list of approved Instructor CEs on the Board website and is a needed and reasonable requirement to allow licensees to determine which CEs are approved by the Board. The cost of maintaining such a list is negligible, and offset by the cost of answering inquiries from licensees seeking to determine where such courses are offered and whether the courses have been approved by the Board.

Item E: This proposed rule clarifies that post-secondary institutions offering courses used by instructors to meet the instructor CE renewal requirement are not subject to the CE provider requirements. Proposed rule 2105.0200 Subpart 2a, Item B allows instructors to take courses for CE credit that are offered by the Minnesota State Colleges and Universities (MNSCU), the University of Minnesota and private post-secondary intuitions licensed by the Minnesota Office of Higher Education.

These schools, if not licensed by the Board, are exempted from the preapproval requirements for providers of instructor CEs as the schools may not have the flexibility to comply with the Board's course provider requirements for approval, including reporting requirements and provider approval fees. These schools are also unlikely to devote the resources to meeting the needs of cosmetology instructors by applying for Board approval because Board-licensed instructors likely represent an insignificant percentage of students at the schools. It is highly unlikely that the schools would be able or willing to meet the course provider approval requirements of submitting course materials and paying an approval fee. By exempting post-secondary colleges and schools from the requirement for Board approval, the Board removes a barrier which unnecessarily prevents instructors from benefiting from postsecondary classes on teaching methods.

2105.0186 Subpart 4. Providers of School Manager CE courses: This proposed rule clarifies that there are no requirements for providers of school manager CE courses, and that such providers are not subject to board approval. The CE provider approval fees in Minnesota Statutes, section 155A.25, subdivision 1(D)(10) and (11) do not apply to school manager CE providers.

2105.0186 Subpart 5. CE course hours: This proposed rule addresses administrative details about CE hours, explains what an hour must consist of, explains the basis for determining the number of CE hours in an online course, and requires the Board to approve CEs in full hour increments. It is reasonable and necessary to clarify what is or isn't included in a CE course "hour", and it is reasonable and necessary to anticipate questions about how to determine how many CE course hours are represented in an online course. The proposed rule requiring approval of CEs in hour increments is a practical requirement to avoid fractions of credit hours for the ease of both licensees and the Board, and is based on questions and issues that have arisen since the implementation of the first four hour CE requirement for license renewal of practitioners in August, 2014. The Board does not anticipate any costs to the Board, the licensee, or the CE provider based on this proposed rule.

2105.0186 Subpart 6. Records requirements for CE course providers: This proposed rule addresses the requirement in Minnesota Statutes 155A.271, subdivision 3 that course providers retain documentation of all licensees who have completed a course by clarifying what must be documented. The information that must be documented as listed in this proposed rule is readily available to the course provider, and does not create a significant burden or cost to the course provider. Such information may be necessary in the event a licensee's

renewal is audited, and must be sufficient to establish whether or not a specific individual attended the CE course. The proposed rule exempts Minnesota State Colleges and Universities (MNSCU) and University of Minnesota providers because the transcript systems already in place provide adequate records containing this information, and can be easily obtained by the licensee attending the course.

2105.0186 Subpart 7. Audit provisions for CE courses and providers: This proposed rule is consistent with Minnesota Statutes 155A.271, Subd. 4 which requires the Board to conduct random audits of the CEs required in statute. The proposed rule also provides for audits of instructor CE courses to ensure that CE courses meet the requirements of proposed rule or existing statute. The proposed rule makes transparent the potential outcomes of an audit. It is reasonable and necessary to enable the Board to conduct audits based on the number of complaints from attendees of CE courses regarding potentially fraudulent courses offering credits without required attendance, and other complaints. Minnesota Statute, section 155A.24 provides that the board has the power and duties necessary for the administration of the provisions of the chapter, and audits are part of the responsibility of ensuring that statutory and rule requirements are met. The proposed rule also contains a practical provision to clarify that if the Board choses to audit a course, the Board staff may attend the course without cost.

The proposed rule also addresses the potential outcome of a course audit, providing transparency to course providers and those that file complaints regarding provision of CE courses.

2105.0187 Skill Courses:
Skill courses are designed to assess the practical skill level of applicants, and serve nearly the same purpose as the refresher courses which are described in the discussion of part *2105.0600*, proposed for repeal. Refresher courses are required in current rules when:

- transferring an expired license from another state (*2105.0180, Subp.2D);*
- there is insufficient work experience to renew a license *(2105.0200, Subp.2A(1));*
- renewing a school manager license without work experience *(2105.0200, Subp.2C);* and
- activating an inactive license after a certain period of time *(2105.0210, Subp.2 and Subp.3).*

Skill courses are required in limited circumstances in conjunction with testing on theory and practice in proposed rules when:

- a student does not become licensed within five years of completing training (proposed rules 2105.0145, Subp.1D(1) and D(2));
- an out-of-state applicant has an expired out-of-state license (proposed rule 2105.0183, Subp.1C and Subp.2B) ; and
- an applicant from a foreign country has not been trained or licensed in the United States and applies as a transfer student for evaluation (proposed rules parts 2110.0705, Subp.2 and 2105.0183, Subp.3).

While a refresher course meets some of the same objectives as a skills course, the Board determined that a skills course was more appropriate than a refresher course. The Board considered that the number of hours required for refresher courses is perhaps exorbitant, and the required hours are not needed or reasonable. The length and cost of the refresher course are unnecessary deterrents to licensing in Minnesota, with costs of the 155 hour refresher course running from $900 to $3,150, averaging $1,621 for the course.

The proposed rule provides for a skills course to assess an applicant's skills via a certification of skills, referred to in the proposed rules as a skills course as described in proposed rule 2105.0187.

The Certification of Skills Taskforce, appointed by the Board in 2014, completed an update of the skills certification standard in 2015 (implementation date in 2016). The skills certification standard is the administration of the "state boards", that is, the practical skill test all students in cosmetology, esthiology, and nail technology programs are required to pass to graduate or complete their program. This practical skill test

is also the "Skills Course" referred to in proposed rule, with the addition of any remedial training necessary when a portion of the skills test has been failed.

Taskforce members tested the skills certification standard by administering the skills test to students, and estimated that it takes an average of 8 hours for the skills certification to be completed. The 8 hours represents a 95% decrease in the time from a refresher course required for a cosmetologist, an 85% reduction in time for an esthetician, and a 78% reduction in time for a nail technician. Note that a licensee who failed the skills test would require additional training and retesting, but it is anticipated that most persons would have retained sufficient skills to pass the test, requiring only 8 hours of time instead of the 155 hours for a cosmetologist.

It is expected that the cost of the skills test would be substantially reduced reflecting the reduced time. It is difficult to predict the costs from potential providers because the skills course does not exist at this time. Costs are also difficult to estimate because while all participants would take the skills test, not all participants would pass each section. It is not known how many participants would need remedial training. The Board asked a potential provider who participated in the Certification of Skills Taskforce and who currently offers the refresher courses to estimate the costs of the skills course. This provider is unique in her familiarity with the skills test and in her role as a provider of refresher courses. She indicated that she would charge an estimated $300 for a skills test for a cosmetologist, $75 dollars for an esthetician, and $100 dollars for a nail technician. She estimated she would provide a four hour class for each section failed, and would charge an estimated $100 for each section, which would include the cost of the re-test. Other providers of refresher courses, at the time of this SONAR development, were not familiar with the new skills certification standards as training for administering the skills test was first offered in mid-December, 2015, and the new skills test will not be required until February, 2016.

Item A: This proposed rule limits the skills course to in-person courses, because the skills course requires the student to demonstrate a minimal level of knowledge and skill in performing specific services related to the license being sought. A provider must be in very close proximity to the demonstrated service in order to assess whether the standards of the skill test have been met.

Item A (1): This proposed part clarifies when a licensed cosmetology school offers the Skills course, the school is not required to seek provider approval. This is because the school already administers the skills test, and already has the necessary equipment.

Item A (2): This proposed rule clarifies that if the provider is not a licensed school, board approval as identified in Item D is required.

Item B: This proposed item describes a specific sequence of administering the skills test, and then providing any remedial training and skill testing if necessary. It is reasonable to require that the skills test be administered to the student first so that the only training provided is based on the need of the student, and so that unnecessary costs of time and money are not incurred by the student.

Item C: This proposed rule establishes that the skills test must be administered by an instructor licensed in the area of skill being tested. The skills test is based on the training curriculum for each type of license, and licensed instructors have the knowledge base to assess the testing results and to provide the remedial training based on current curriculums. Components of the skills test are currently routinely administered by licensed instructors as part of the school curriculum for cosmetologists, estheticians, and nail technicians. For this reason, the Board finds that individuals who are not licensed instructors are not qualified to administer the skills test and the remedial training.

Item D: This proposed rule requires Board approval of any skills course not provided by a cosmetology school, and establishes the requirements for approval of the skills course. Because cosmetology school already administer a skills test as part of the training provided, schools have the materials, curriculum, equipment, and experience in skills courses. Providers other than schools must reasonably demonstrate access to the materials, curriculum, and equipment necessary for an adequate skills course which must be taught by a licensed instructor who has completed the board training on administering the skills test.

Item E: This proposed rule clarifies that Board approval of the course provider expires December 31, which is the same expiration date as CE provider approvals. Since it is very likely that non-school providers of the skills test will also be a provider of CE courses, it makes sense to keep the same time period for the ease of administration and for the providers.

Item F: This proposed rule requires course providers to maintain records of attendees for a period of five years. Five years represents the time period during which an application might be audited by the Board. The proposed records retention is not an unreasonable burden for the provider.

Item G: This proposed rule establishes audit provisions for the skills course, and identifies possible outcomes of non-compliance. It is reasonable to establish a mechanism by which the Board may ascertain whether a skills course provider meets requirements, especially in light of complaints by attendees of the former refresher courses that providers were falsifying records of attendance, that courses consisted of viewing unrelated videos or hand-copying text books, and that courses did not provide the desired outcome. Minnesota Statutes, section 155A.24, provides that the board has the power and duties necessary for the administration of the provisions of the chapter, and audits are part of the responsibility of ensuring that statutory and rule requirements are met.

2105.0190 Maintaining an Individual License:

2105.0190 Subpart 1. Compliance with applicable law: This proposed amendment adds to the existing general provision that licensees must comply with statute and rule by highlighting the licensee's responsibility to ensure that the licensee is practicing in a licensed school or salon. It is reasonable to clarify this in rule because of the numerous instances of licensees who assumed that the salon where they worked was licensed when there was no valid license. Providing services in an unlicensed salon in violation of Minnesota Statutes, section 155A.29, Subdivision 1.

2105.0190 Subpart 2. Change of name: This proposed amendment separates the current rule provision related to change of name and change of address into two rule parts, and moves the current rule requirements for address changes to a new Subpart 2a. The rule is also amended to require legal documentation of the name change. This is a needed and reasonable requirement to protect the integrity of the license. The proposed amendment also clarifies that licenses are invalid 31 days after a legal name change. This is a needed and reasonable provision because establishing the identity of a practitioner at a salon is necessary to determine whether a person is properly licensed, and when the license is not in the legal name of the practitioner it is difficult to ascertain the license status.

2105.0190 Subpart 2a. Address change: This proposed rule moves address change requirements from the current Subpart 2 to this new subpart. The proposed rule reasonably requires licensees to maintain a current address on file with the Board, and adds a provision that licensees may choose to add an email address. It is reasonable to ensure that the Board can communicate with licensees regarding any issues with the license, changes in board operations, licensing requirements, and changes in law and rule. Address changes can easily be made through the board's online license record system, and there is no cost associated with the change for the practitioner.

2105.0190 Subpart 3. Renewal: This proposed amendment updates the language and removes a requirement that the licensee must renew the license prior to the expiration date. This is because under current rule and proposed rule, licensees may renew licenses after the expiration date. The proposed rule does not change the requirement that a person must hold a current license in order to practice cosmetology.

2105.0190 Subpart 4. Display of license: The proposed amendment regarding display of license removes confusion over what constitutes proper posting of a license, and as part of the reorganization of the chapter, includes provisions formerly contained in *2105.0380, Item BB*. The posting of licenses is needed and reasonable to allow the public to determine the license status of the practitioner, and to correctly identify practitioners if necessary for a complaint. The amended rule also clarifies that the license must be posted at each salon where the practitioner provides regulated services.

> **Item A:** This proposed rule repeats a current rule requirement (repealed *2105.0380 Item BB*) that the license or the licensee's name must be posted at each work station. This is needed to allow the public and Board inspectors to identify individuals providing service at any particular work station. In the industry, it is not uncommon for licensees to use a different first name when there are two or more practitioners in the salon with the same first name. It is also not uncommon for a practitioner to use more than one work station at a salon, because there are often different work stations for different types of services. In addition, a busy practitioner may use multiple workstations to optimize time spent servicing clients, rather than waiting for a color to set, or nails to dry. This means that a client who wants to file a complaint may not otherwise be able to identify the practitioner, and an inspector may not be able to establish which practitioner is responsible for violations at a workstation.
>
> The rule attempts to provide some flexibility by allowing practitioners to wear nametags or post business cards with their licensed name instead of posting their name or license at each workstation.
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> **Item B:** This proposed rule requires a license to be posted at the reception area of the salon if the license is not posted at the workstation, and is part of the provisions of a current rule requirement (repealed *2105.0380 Item BB*) moved here for reasons of better organization. An inspector or customer can use the practitioner's name as shown on a name tag or as posted at the station under Item A to check the license status by reviewing the posted licenses at the reception area.
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> **Item C:** This proposed rule prohibits the use of copies of licenses. This is needed and reasonable because of the ease in forging or altering copies of licenses. Licenses are printed on security stationary which displays the word "void" on any photocopy of a license. The proposed rule also provides some flexibility in allowing the temporary use of a printout from the Board website showing that a license has been issued. This is needed and reasonable because a licensee may wish to work after a license is issued but before a printed license is received in the mail. In addition, this provides a reasonable but temporary method to avoid potential inspection penalties which otherwise might apply to the salon, the designated licensed salon manager and the individual when a license is not properly posted because it has not yet been printed, mailed, and received by the licensee.
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> **Item D:** This proposed rule specifies that the posted license must not be blocked from view, and is a needed and reasonable requirement. Licenses which can't be seen, or which are covered with photographs tucked into the frame, or which are not viewable for some other reason defeat the purpose of posting licenses, which is to assure the public that the person is licensed and to aid Board inspectors in assessing compliance with statute and rule.

2105.0190 Subpart 5. Additional requirements: This rule part is proposed for repeal because the provisions of the rule that the manager and salon must ensure that salon personnel and salon are in

compliance are moved as part of the reorganization of the rules to other sections: parts 2105.0305, Item B; 2105.0322 Subpart 3; and 2105.0390, Item A.

2105.0200 License Renewal for Individuals: This proposed rule amendment updates and reorganizes the current rule part. Changes in current requirements for renewal of licenses are discussed below in the subparts where the changes are occurred

2105.0200 Subpart 1. Application for renewal of license: The proposed rule amendment simplifies language, makes obvious certain provisions in statute and rule that have been misunderstood by licensees, and notes that licenses expired three years or more must be renewed under a different rule provision.

> **Item A:** This proposed rule codifies the current practice of returning renewal applications that are incomplete with an explanation of what is missing. Because the Board processes an average of 230 paper (not online) renewal applications a month, it is not possible to hold or suspend applications while waiting for corrections or completion. To do so would require additional staff resources to ensure that missing items were matched up with applications, and to monitor applications on hold. Applications are returned to the applicant with notice of the incomplete or missing items.
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> **Item B:** This proposed rule clarifies when a late fee is due, and addresses confusion among licensees who may believe that submitting an incomplete application is equivalent to meeting renewal requirements before the expiration date.
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> **Item C:** This proposed rule addresses the confusion among some licensees who believe that mailing in a renewal application means a license has been renewed. The rule clarifies that if a license has not been issued by the expiration date, and the licensee is working unlicensed, inspection penalties as discussed in the rule-by-rule analysis of 2105.0115 Subpart 4 may apply as well as disciplinary provisions of the statute.

2105.0200 Subpart 2. Continuing Education (CE) requirements for practitioners: The title of this rule subpart is amended to better reflect the subject. The proposed rule amendments update the requirements, and reorganize the rule part to better address the requirements for each license type. The introductory statement in the proposed rule is amended to refer to the continuing education requirements for renewal that were added in statute in 2014 and in 2015, and the language is simplified.

> **Item A:** This proposed rule relates to renewals of cosmetologists, estheticians, nail technicians and salon managers who are renewing before August 1, 2017. It eliminates the renewal requirement for work experience, and replaces it with the requirements for Core CE credits that were introduced in legislation in 2014 (Minnesota Statutes, section 155A.271) and in 2015 (Minnesota Session Laws 2015, Chapter 77, Article 2, Section 45). The Board determined that continuing to require a certain number of work experience hours, or substituting a refresher course for missing work experience, was no longer needed or reasonable given the new requirement for four CE hours focused on the laws and rules, health, safety, and sanitation. The CE requirement, effective July 2014, will keep licensees up to date on changes in regulations, and issues that may impact health and safety.
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> **Item B:** This proposed rule relates to renewals of cosmetologists, estheticians, nail technicians and salon manager licenses on or after August 1, 2017. The proposed rule includes the Core CE credits and adds Professional Practice CE credits resulting from the 2015 legislative changes.
>
> **Item C:** This proposed rule clarifies that CE credits are valid for just one renewal period but can be applied to multiple licenses held by the practitioner. This is consistent with the statutory provisions of Minnesota Statutes, section 155A.271 regarding CEs.

2105.0200 Subpart 2a. CE and other renewal requirements for instructors: This proposed rule replaces the former *2105.0200 Subpart 2, Item B* as the propose rule codifies Board practice regarding instructor CEs, and clarifies in rule various issues that have arisen in the past and were not addressed in existing rule.

Item A: This proposed rule amendment redistributes the 45 hours of Board-approved CEs for instructor renewal in current rule *2105.0200 Subpart 2, Item B*. The 15 hours of CEs on teaching methodology is increased to 30, and the 15 hours of CEs on what used to be referred to as "analysis and use of professional clinical products" is simplified as "clinical practice". It is reasonable to increase the focus on teaching methodology for an instructor license, and continuing to allocate some of the CE credit to clinical practice will assist instructors in keeping up to date with new techniques and procedures.

Because the proposed rule amendments are likely to be adopted in mid-license cycle for some instructors, a provision is made to allow instructors renewing before August 1, 2017 to renew with any combination of board-approved instructor CE's. This is to ensure that an instructor who completed CE's early in the license cycle under the current rule is not disadvantaged by the change in the distribution of CE's credits.

Item B: This proposed rule enables instructors to take courses for CE credit that are offered by the Minnesota State Colleges and Universities (MNSCU), the University of Minnesota and private post-secondary intuitions licensed by the Minnesota Office of Higher Education, and that are not pre-approved by the Board. It is in the Board's interests to enable instructors to benefit from some of the advanced practice courses offered by the licensed cosmetology schools that are part of the MNSCU system, and to benefit from the many course offerings on teaching methodology that are offered by MNSCU schools or the University of Minnesota.

This rule item also requires the instructor to retain an official transcript and a course syllabus or catalog course description. In the event that the instructor's renewal application is audited by the Board, the transcript and description will be necessary to establish that the renewal requirements were met.

The proposed rule also explains how many CE credits are attributed to a post-secondary course or lab course. It is reasonable to clarify in rule how the number of credits is determined to provide transparency and so licensees may more easily track the number of CE's being earned.

Item C: This proposed rule addresses a frequent question of whether instructors who teach approved instructor CE courses can claim CE credit on the instructor license renewal for the courses taught. The Board determined, in consultation with licensed instructors, that the time required to develop and prepare a CE course, or present a CE course, was more than equivalent to the time needed to complete the course as an attendee. The proposed rule limits the instructor to claiming CE credit for a course presented by the instructor to one time, as repeatedly teaching the course does not represent new learning for the instructor. It is reasonable and necessary to codify any application of CE credits earned from courses taught in the interests of fairness and transparency.

Item D: This proposed rule addresses the question of whether instructors who teach approved Core and Professional Practice CE courses may claim CE credit for teaching the course on the instructor's renewal of the underlying operator or manager license. The Board determined, in consultation with licensed instructors, that the time required to develop and prepare a CE course was more than equivalent of the time needed to complete the course as an attendee. The proposed rule limits the instructor renewing an underlying license to claiming CE credit on the course presented by the instructor to one time, as repeatedly teaching the course does not represent new learning for the

instructor. It is reasonable and necessary to codify any application of CE credits earned from courses taught in the interests of fairness and transparency.

Item E: This proposed rule limits the total number of CE credits claimed for teaching courses to fifteen credits each renewal period. This means that the instructor, even though teaching a number of different CE courses, will still need to attend other CE courses taught by other instructors, gaining the knowledge from that course as well as the benefit of exposure to other teaching styles and techniques which may be demonstrated by the presenter of the course.

Item F: This proposed rule makes obvious that CEs used for one license renewal period can't also be used to renew for a second license cycle. This question comes up when an instructor renews the license after the expiration date, and completes the required CEs during the next license cycle. For example, an instructor's license expires in July 2017 and is not renewed. In August, the instructor completes the CE requirements and renews the license, which will expire in July 2020. The CEs used to renew the license in 2017 are within three years of renewing the license in 2020, meet the requirements in Item A for licensure renewal in 2020, and without this proposed rule, the same CEs could be used to renew the instructor's license in 2020.

It is reasonable to require the CEs for each license cycle, to improve and update the instructor's knowledge and skills. To allow the same CEs to be used for the second license cycle undermines those benefits, and provides an incentive to late renew so as to escape the per license cycle CE requirement. Without the rule clarification, it would appear that the same CEs met the requirement for the next license cycle and the same CEs could be applied to the future license renewal.

Item G: This proposed rule restates *2105.0200 Item B* (repealed) which requires an instructor to maintain a current underlying license. The rule is moved here as part of the reorganization of the chapter, and the rule is consistent with Minnesota Statutes, section 155A.23, Subdivision 11.

Item H: This rule clarifies that a CE course which has been approved both as a professional practice CE and as an instructor CE may be applied to both the instructor renewal and the underlying renewal CE requirements. The instructor's license requires the completion of 45 board approved instructor CEs every three years. The renewal of the underlying license as an operator or salon manager requires 4 Core CEs, which increases in August, 2017 with the addition of 4 Professional Practice CEs. Because some of the subject matter options for the Professional Practice CEs overlap with the subject matter options for Instructor CEs, it is possible that one course of 4 CEs could be applied to both the Professional Practice CE requirement, and to 4 of the 15 CEs required for the renewal of an instructor license. It is reasonable and necessary to clarify in rule whether or not the same course may be applied to both license renewals. The instructor CE requirements are long standing, and the operator and manager CE requirements are only recently applicable. Here, the Board finds no compelling reason to prevent the instructor from applying one course to both license renewal requirements.

2105.0200 Subpart 2B. CE and other renewal requirements for school managers:

Item A: In this rule overhaul, the Board has proposed discontinuing work experience requirements for renewal of licenses held by individuals (cosmetologists, estheticians, nail technicians, and salon managers) in light of the recent legislative changes in 2014 and in 2015 instituting CE requirements for these practitioners. This proposed rule also discontinues the work experience requirement for school managers and creates a CE renewal requirement of four hours of CEs on business practices. A CE requirement for school managers is consistent with the elimination of work experience license renewal requirements in favor of educational requirements. A new CE requirement does create a

new cost for school managers. Because of the wide variety of potential course providers, costs could range from free to several thousands of dollars for an American Management Association class. However, internet searches yielded multiple classes available in the $75 to $120 range on topics related to business management. Century College, a MNSCU school, offers an online class on "Using Social Media in Business" for $105. National Seminars Training offers online classes on "Introduction to Business Analysis", "Ethics", and "Managing Time and Priorities" for prices ranging from $75 to $99 dollars.

Alternatively, as provided in Item D below, the school manager could choose a business management topic for the CEs used to renew the underlying salon manager license (see proposed rule 2105.0200, subpart 2, Item B) and apply those CEs to both the salon manager renewal requirement and the school manager renewal requirement. This would avoid any additional cost associated with the proposed school manager CE requirement.

Item B: This proposed rule repeats an existing rule requirement, *2105.0200, Subpart 2, Item C.* proposed for repeal and moved to this section. The rule requires that school managers hold a current practitioner license as a prerequisite to renewing the school manager license. Maintaining the underlying license provides an integral connection to the industry, which can be especially important in maintaining awareness of renewal requirements of the underlying license. The proposed rule is consistent with Minnesota Statutes, section 155A.23, Subd. 17

Item C: This proposed rule establishes that the school manager CEs are valid for only one renewal, consistent with the CE requirements for other license renewals. It is reasonable to provide in rule guidance for both the Board and licensees so that all requirements are transparent.

Item D: This proposed rule clarifies that a professional practice CE course on business management may be applied by a school manager to the renewal of both the underlying salon manager license and the school manager license as mentioned in the discussion of costs in Item A above. If the school manager chooses a professional practice CE course on a topic other than business management, the CE would not apply to the school manager requirement of 4 CEs on business management. This provides maximum flexibility for the school manager, and still meets the objective of increasing the knowledge and skill of the school manager. It is reasonable and necessary to clarify in rule whether or not the same course may be applied to both the salon manager and the school manager license renewal requirements.

2105.0200 Subpart 3. Fee: This proposed rule amendment simplifies the wording, and removes a confusing existing provision that the fee must be paid before the license expires, since a fee applies whenever a license is renewed and even if the license is renewed after the expiration date.

2105.0200 Subpart 4 Inactive License: This rule part is proposed for repeal, and replaced by a new rule part, 2105.0205.

2105.0200 Subpart 5. Audit of renewal: This proposed rule specifically authorizes the Board to audit renewal submissions. The Board is in the process of moving most license renewals from a paper process to online renewal. Paper renewals previously required submission of paperwork documenting compliance with renewal requirements. Online renewals sometimes require the licensee to only attest to meeting a requirement, and an audit process is used to both ascertain and encourage compliance. The Board is specifically directed to conduct audits of CE requirements for operator and manager licenses in Minnesota Statutes, section 155A.271, subdivision 4. The provisions of Minnesota Statutes, section 155A.24, Subdivision 1 states that the Board has the power and authority necessary for the administration of the provisions of the chapter. For these reasons, the Board believes that auditing license renewal applications in

lieu of requiring paper documentation proof for each renewal application is a reasonable and necessary step for the efficient administration of the statute and rules.

Item A: This proposed rule makes transparent the possible outcome of an audit that establishes non-compliance with a renewal requirement, by noting that the licensee may be subject to discipline. This is consistent with disciplinary provisions of Minnesota Statutes, section 155A.33.

Item B: This proposed rule includes current rule provisions of *2104.0200 Subpart 2* (proposed for repeal and moved here for reasons of better organization) which require retention of CE documentation for four years for practitioners, consistent with Minnesota Statutes, section 155A.271, subdivision 3. The amended rule extends the requirement to instructors and school managers, who are also required to complete CE credits for renewal of a license. Although CE providers are required to retain documentation of individuals who have completed CE requirements, the Board anticipates that such documentation could be potentially irretrievable if the provider ceases operation. In addition, some CE providers are not subject to the Board's authority and may or may not maintain records and documentation. Requiring the licensee to maintain documentation for the period of time in which an audit is possible is not a significant burden on the licensee, and reasonably ensures the proper documentation would be available in the event of an audit. The proposed rule also establishes a time period in which the licensee must provide CE documentation if requested by the Board.

Item C: This proposed rule provides transparency about the process of an audit, explains what the licensee must do, explains what the Board must do, and explains that a license renewal must be rescinded if the CE requirements can't be verified. The proposed rule also explains that the consequences of a rescinded renewal are possible discipline, an inability to practice until the license is renewed, and explains what the licensee must do to gain a renewed licensed in those circumstances.

2105.0205 Retired License: The rule on inactive licenses (*2105.0200 Subpart 4*) is proposed for repeal and replaced by this new rule part which renames "inactive" licenses as "retired" licenses. The term "inactive" has created confusion among licensees regarding whether a license was expired, active, or inactive expired, and whether expired and inactive are the same status. It is anticipated that some licensees will object to the term "retired", perhaps because of an association with age. The Board was unable to identify a more appropriate term, but is willing to entertain suggestions for an alternate term which will also reduce confusion.

Traditionally, an inactive license was maintained by licensees who wanted to maintain a licensed status even though no longer practicing. Many licensees who, for various reasons, could not meet the work experience requirements to renew a license, would renew as inactive, particularly when they could not afford the time and cost of the 40 hour refresher courses which could substitute for the work experience.

An inactive license status, or a retired license status, does not allow for licensed practice, is not required by the Board, and is a totally voluntary license. The Board believes there are three possible motivations for maintaining such a license, which must be renewed and is subject to renewal fees. These three possible motivations are: (1) pride of licensure; (2) ability to purchase professional products from cosmetology wholesalers who require purchasers to hold a license; and (3) the potential benefit of avoiding retesting as a renewal requirement if activating the license. The overall number of inactive licenses holders is small, with 4,953 inactive licenses as of March 1, 2016. Only 5% of approximately 18,000 operators and 11% of approximately 16,000 managers hold inactive licenses.

Item A: This proposed rule codifies the long-standing practice of maintaining the three year license cycle, and identifies the renewal requirement of paying the renewal fees.

Item B: This proposed rule provides direction about what process must be followed if a person with a retired license wishes to return to licensed practice, and requires compliance with the renewal requirements as if no retired license had been issued. This proposed rule replaces the current rule about renewing an inactive license (*2105.0210 Subpart 2*). Previously, a benefit of an inactive license was that a person could avoid retesting when renewing the license. The proposed rule eliminates that benefit in the interests of ensuring that all licensees meet the same renewal requirements. If the renewal requirements are needed and reasonable, then the renewal requirements must be equally appropriate for persons who hold a retired license but wish to obtain an active license.

The Board does not have any data on how many persons who have paid for an inactive license have done so in order to avoid retesting if the person ever wanted to return to practice. Colloquially, most persons inquiring about inactive licenses have referred to their desire to be able to continue to purchase product as a licensee. The Board has no jurisdiction over any qualifications a wholesaler imposes on its clients, but anticipates that wholesalers, who have a business reason to continue to sell products to licensees, will likely accept retired licenses.

It is possible that the proposed rule would result in reduced revenue from renewal fees if licensees stopped renewing retired licenses because such a license no longer allows the licensee to avoid testing if becoming relicensed, or if wholesalers choose not honor retired licenses. All revenue collected by the Board is directed to the state's general fund. However, the Board does not anticipate a significant change in the total number of license renewals because proposed rule changes make it easier to renew a license by eliminate the work experience requirement. This likely will allow individuals to simply renew the license instead of moving to a retired license.

2105.0210 Procedure for activating a lapsed or inactive license: This rule part is proposed for repeal. The provisions related to lapsed licenses and inactive licenses are separated and each moved to a new rule part for reasons of better organization and clarity. Renewal requirements for lapsed licenses are moved to part 2105.0215, and provisions for renewing an inactive license, now referred to as a retired license, are moved to part 2105.0205.

2105.0215 Procedure for renewing an expired license: This proposed rule part organizes the requirements for renewing expired licenses by the length of time the license has been expired.

The Board considered many possibilities in determining what renewal requirements were both needed and reasonable. After considerable debate, the Board determined that licensees renewing expired license could be grouped in two categories – those whose license was expired less than three years, and those whose license had been expired three years or more. The need and reasonableness for the proposed renewal requirements are discussed within each subgroup.

2105.0215 Subpart 1. Practitioner licenses expired less than 3 years: This proposed rule applies to all individual licenses (operator, manager, instructor, and school manager) expired less than three years. Three years is a license cycle, and a sufficient length of time to provide some flexibility for licensees while limiting the time to a period in which the practice lapse is unlikely to jeopardize the health and safety of the public.

Item A: This proposed rule clarifies that the applicant must meet the renewal requirements as if the license was not expired.

Item B: This proposed rule refers to the existing requirement for fee payments as required under statute.

2105.0215 Subpart 2. Operator and salon manager licenses expired 3 years or more: This proposed rule applies only to operators and salon managers, who must meet the renewal requirements, and pay the application fees. Renewal of expired instructor and school manager licenses is addressed in later rule parts.

The proposed rule removes a provision in current rule (part *2105.0210, Subpart 1*) which prevents managers from renewing a license expired three years or more and requires such managers to apply for a new operator license. The Board determined that it is not reasonable or necessary to require the manager to start over as a new operator, because the benefits still exist of the practice experience used to originally qualify for the manager's license, and because the skills and knowledge are re-affirmed through retesting.

It is also unnecessary to require a manager with an expired license to re-obtain the experience by working an additional 2,700 hours as an operator as is required in current rule. This requirement creates an unnecessary hardship. Individuals who wish to open or re-open a salon and need their manager's license to do so would be forced to employ a salon manager instead. Individuals who wish work independently in a salon where the licensee is required to lease space may need their manager's license as the Board anticipates some salons will continue to require a manager's license as a condition of leasing space even when the requirement is removed in rule (see the discussion on proposed for repeal rule part *2105.0400 Subp.6).*

Item A: The proposed rule requires the practitioner to complete the CE requirements, consistent with Minnesota Statutes, section 155A.271.

Item B and Item C: The proposed rule replaces refresher courses with the written practical test, and the laws and rules test. The Board determined that the current requirement for refresher courses (a 155 hour refresher course for cosmetologists, a 60 hour refresher course for estheticians, and a 35 hour refresher course for nail technicians) is not needed or reasonable, given that the laws and rules test and the practical skills test can objectively establish required knowledge of the laws and rules and skills competency at a substantially smaller investment of time and money. The length and cost of the refresher course are an unnecessary deterrent to re-establishing licensing in Minnesota, with costs of the 155 hour refresher course running from $900 to $3,150, averaging $1,621 for the course. Persons seeking to return to the profession are often forced to take unpaid time off from work to attend the courses, creating an additional financial burden. In contrast, the two tests (under the current testing vendor contract) cost a total of $55 and are available multiple days a week at 9 locations in Minnesota.

In addition, current refresher courses vary according to the provider in actual content, efficacy, and quality, and are less objective than the written tests. For these reasons, refresher courses required in current rule are replaced by verifying the license's qualifications through testing.

Item D: This proposed rule refers to the existing requirement for fee payments as required under statute.

2105.0215 Subpart 3. Instructor licenses expired 3 years or more: This proposed rule eliminates a current rule provision in *2105.0210 Subpart 1* which requires instructors whose license has expired three years or more to apply as a new applicant, retaking the instructor course and regaining the required work experience, as well as completing all testing requirements for new instructors. Because the Board determined that the need and reasonableness of requiring instructors to retake the instructor course and to regain the work experience hours could not be established, those requirements are not included in proposed rule. The current requirement of retesting is maintained in this proposed rule in Item B.

The proposed rule also clarifies that a new license cycle will be initiated with the application.

Item A: This proposed rule requires instructors to hold a current underlying license, consistent with Minnesota Statutes, section 155A.23, Subd. 11.

Item B: This proposed rule requires instructors renewing a license expired more than three years to retest on the instructor theory, the instructor practical, and the instructor laws and rules test. . The testing requirements are reasonable, and ensure that the returning instructor possesses the needed theoretical knowledge to instruct, is familiar with the current laws and rules, and that the instructor's teaching skills meet minimum competency.

Item C: This proposed rule refers to the existing requirement for fee payments as required under statute.

2105.0215 Subpart 4. School manager licenses expired 3 years or more: This proposed rule eliminates a current rule provision in *2105.0210 Subpart 1* that requires reapplying as a new applicant after gaining with new work experience. The Board determined that the four hours of school manager CEs, and retesting the school manager exam are sufficient to establish that the licensee is qualified as a school manager and that regaining 2,700 hours of work experience would not substantially benefit the school manager or the school, its instructors or students.

The proposed rule also clarifies that a new license cycle will be initiated with the application.

Item A: This proposed rule requires school managers to hold a current underlying license, consistent with Minnesota Statutes, section 155A.23, Subd. 16.

Item B: This proposed rule requires the school manager to complete the 4 hour school manager CEs renewal requirements as stated in part 2105.0200, Subpart 2b.

Item C: This proposed rule requires school managers renewing a license expired more than three years to retest on the school manager test. The testing requirements are reasonable, and ensure that the returning school manager is familiar with the current laws and rules.

Item C: This proposed rule refers to the existing requirement for fee payments as required under statute.

2105.0220 Reinstatement after revocation or suspension: This proposed rule amendment updates the language in a rule that addresses those licensees whose license was suspended or revoked. It details the method by which the licensee may become relicensed, and adds a provision for handling license suspension or revocation by outside agencies such as Minnesota Department of Revenue or Minnesota counties involved in child support collections.

The proposed rule amendment removes a current rule requirement that the licensee must meet the requirements for initial licensure, which would include repeating training, testing, and any experience requirements for the initial license. Unless indicated in the suspension or revocation order, it is not necessary to requalify for the initial license because the requirements proposed in 2105.0215 for renewing an expired license are established to ensure the competency of any individual, and are sufficient to ensure the safety and protection of the public receiving services. Requiring an individual to repeat initial training would serve as an unnecessary deterrent to becoming relicensed, and cannot be justified in every situation. If an individual's competency was questioned as part of the decision to suspend or revoke the license, the Board could require any additional training deemed appropriate in the suspension or revocation order.

Item A: This proposed rule amendment explains that the rule provision applies to licenses revoked or suspended by the Board, as there are also license suspensions by other state agencies, which are addressed in Item B.

Item A (1): This proposed rule requires application on a form, which is reasonable because the use of an application form standardizes the presentation of the applicant's credentials for more efficient application review and processing. The requirement exists in the current rule (2105.0220, Item B), and is moved for reasons of better organization to Item A.

Item A (2): This proposed rule amendment replaces the current rule (2105.0220, Item A) moved here for reasons of better organization. The current wording is vague, stating that the applicant must provide documentation for the correction or elimination of the grounds for revocation. The proposed rule amendment requires the applicant to meet any requirements for regaining licensure identified in the revocation or suspension order. This wording eliminates any potential confusion over what might be considered correction or elimination of the grounds for revocation. The proposed rule also clarifies that the licensee must meet the renewal requirements for renewing a license that expired on the date of revocation or suspension. This is because the amount of time that may have elapsed before a suspended or revoked licensee applies for reinstatement is unknown. It is reasonable to require such an individual to meet the same requirements for renewal as any licensee whose license has been expired for the same amount of time.

Item A (3): This proposed rule replaces the current Item C, and requires the individual to pay the fees required of a new applicant in the statute. The current rule does not explain which fees in statute are applicable to this situation. It is reasonable to require the fees for a new applicant as the review of the application , the requirements for reinstatement, and the determination of which license renewal requirements are applicable are not routine, and are likely equivalent if not more complex than the routine requirements for renewing a license under normal circumstances.

Item B: This proposed rule addresses those licensees whose license has been revoked or suspended on order of the Minnesota Department of Revenue (generally for delinquent taxes) or by a Minnesota county (generally for delinquent child support). It clarifies that the agency generating the revocation or suspension must lift the revocation or suspension in writing to the Board, and explains how to determine if the license must be renewed in addition to meeting the reinstatement requirements. The rule makes transparent the process for reinstatement in these cases, and codifies the Board's practice in the absence of any rule governing the reinstatement of such licenses.

Item C: This rule, which requires payments of fees required in statute, is proposed for repeal. Application fees for licensees whose licenses were suspended or revoked by the Board are addressed in Item A(3). Licensees whose license was suspended or revoked by another state agency or a Minnesota county are not required to pay a specific fee. Generally, reinstatement is based on written notification from the originating agency, and does not require review of any special criteria. No fee is applicable if the license cycle has not been completed at the time the licensee is eligible for reinstatement. If the license has expired during the period of suspension, the licensee pays a renewal fee as part of the normal renewal of the expired license.

Item D: This rule, which requires salons to meet the requirements of a new salon applicant, is proposed for repeal. The provisions of Item A require the salon applicant to meet the conditions for reinstatement addressed in the revocation and suspension order. If the salon's license expired during the period of suspension or revocation, the salon will need to meet the requirements of a new salon applicant if the license was expired more than 6 months (see proposed rule 2105.0330, Supb.7(C)). It is unnecessary to arbitrarily require all salons with a revoked or suspended license to reapply for a

new license. In situations where the qualifications of the salon for licensure are in doubt, such a requirement could be included in the suspension or revocation order.

Item E: This rule is proposed for repeal and requires individual licensees to meet requirements of current 2105.0140, 2105.0200 Subp.2, or 2105.0210, Subp.3. is outdated as a result of the proposed rules amendments rules repeals. Requirements for individuals are addressed in Item A and Item B of this rule part.

Item F: This rule is proposed for repeal and requires that two years must pass before the licensee may apply for reinstatement. The Board has determined that if training, experience, retesting, or a waiting period is appropriate for the licensee, that requirement will be identified in the revocation or suspension order, and is otherwise unnecessary. This means that any requirements for reinstatement will be based on the circumstances and identified in the suspension or revocation order, instead of universally and arbitrarily applied to all revoked or suspended applicants.

2105.0230 Transfer of License Prohibited: This rule amendment simply updates the current rule, and specifies that the prohibited transfer is to another person, removing confusion as to whether the rule prohibits the transfer of Minnesota cosmetology licenses to other states. The rule change does not impose any new requirements.

2105.0300 Scope of Rules: This rule part is proposed for repeal. The rule attempted to explain which rule parts applied to which types of licenses. It is no longer accurate and therefore unnecessary.

2105.0305 Designated Licensed Salon Manager: This proposed new rule brings all the requirements for a Designated Licensed Salon Manager (DLSM) into one rule section, and includes both current requirements, revised requirements and new requirements. The role of the DLSM has been the subject of much confusion in the past years, and the prescriptive nature of this rule part is an attempt to remove the confusion.

Item A: This proposed rule clarifies that the salon must appoint the DLSM in writing, by stating that the DLSM must be registered with the Board on forms supplied by the Board. The use of a form standardizes the presentation of the information for more efficient review and processing. When a DLSM is registered with the Board, the salon is issued an updated salon license which shows the name of the DLSM on the salon license.

Item B: This proposed rule requires the DLSM to acknowledge the responsibilities of the position on a Board supplied form. The Board requires specific forms instead of accepting any form of written communication from the salon because sometimes salons have listed salon managers as the DLSM without the manager's knowledge. The required form both provides for a signature of the DLSM and acknowledgement of the various responsibilities of the DLSM, as well as an acknowledgement of the potential financial penalties and disciplinary provisions that could be imposed on the DLSM should the responsibilities identified in rule or statute not be met.

Item C: This rule requirement is removed from *2105.0390 Item B,* and relocated here for reasons of better organization. The proposed rule adds a provision that a DLSM can't be concurrently responsible for two or more salons *unless* the salons are not open at the same time. Each salon must have a DLSM as required in Minnesota Statutes, section 155A.29, Subd 2 (2). In rural areas, a salon manager may be the DLSM of their own salon, which is open a few days a week, and may also want to operate a salon and serve as the DLSM in a nursing home, or a salon in a resort, or a salon in a nearby town. There may not be other salon managers in the area able to serve as the DLSM in one of the salons, or the salon business might be so small that it could not support two licensees. The Board determined that if the salons were not open for business at the same time, there is no

legitimate reason to prohibit a salon manager from serving as the required DLSM in more than one salon. In the example of the rural areas above, without this exception the rules could unreasonably restrict a licensee from being able to work in multiple locations which can be important when business in one location does not support a full time operation.

The original rule in *2105.0390* contained a provision allowing salons under the same ownership and located in the same assisted living facility to share a DLSM. The proposed rule removes this provision, replacing it with the proposed provision that a DLSM may be shared if the salons are not open concurrently. This would still allow salons under the same ownership in the same assisted living facility to share a DLSM if the salons were not open concurrently.

Item D: This proposed rule addresses the situation when a DLSM in a complaint denies responsibility for the salon involved because the DLSM claims not to be the DLSM any longer. The proposed rule requires a DLSM to notify the Board if the DLSM is no longer serving as the DLSM, and clarifies that the DLSM retains compliance responsibility for the salon and practitioners in the salon unless the DLSM or salon has otherwise notified the Board.

Item E: This proposed rule clarifies a common misunderstanding among licensees that a DLSM must be present at all times in a salon. Some licensees mistakenly believe an operator may not work in a salon unless a DLSM is present. The proposed rule indicates that the DLSM is responsible for the salon even if not present, but is not required to be present at all times. Salons may operate for extended hours, and many operate for more than 40 hours a week. A requirement that the DLSM be present at all times is not reasonable or achievable, and is unnecessary as the salon and DLSM may establish policies and procedures to ensure compliance with statute and rule requirements regardless of the DLSM's presence.

2105.0310 Salon Licensure Application: This rule part is renamed to better identify the subject matter.

2105.0310 Subpart 1. All Salon Licenses: This proposed rule amendment updates the rule citations applicable to salon licensure, and adds a provision that each physical location requires a separate salon license. The proposed rule eliminates any confusion as to whether two separate salons located at the same address (in a mall for example) can share one salon license. It also prohibits a portion of space inside a salon from being licensed as a separate salon. This prohibition is reasonable and necessary, as responsibility for compliance with statute and rule could be unnecessarily compromised with any shared space.

2105.0310 Subpart 1a. Types of salon licenses: This proposed rule simply clarifies that the types of services offered in a salon are based on the type of salon license. It also clarifies that the Board may issue a cosmetology salon license, a nail salon license, and an esthetician salon license, and that a salon may hold both a nail salon and an esthetician salon license (cosmetology salons may offer hair services, esthetician services and nail technician services, so a cosmetology salon needs only one salon license). This replaces a confusing rule proposed for repeal (*2105.0400 Subpart 3)* which states that esthetician services must not be offered in a nail salon, and vice versa. The Board believes the intent of that rule was not to prohibit a salon from offering both nail and esthetician services if proper licenses were held, but was instead intended to indicate that only nail services can be offered in a nail salon, and only esthetician services can be offered in an esthetician salon. The Board issues both nail salon licenses and esthetician salon licenses to businesses which meet the licensing requirements. There are approximately 115 out of 5,500 salons that currently hold both a nail salon license and an esthetician salon license.

2105.0310 Subpart 2. Application: This proposed rule amendment simplifies the language and updates application requirements as discussed below. In general, the application requirements are necessary and

reasonable, and provide routine information to establish ownership of the business, general contact information and compliance with various statutory requirements of salon licensure.

Item A: This proposed rule amendment clarifies that the application must include both the salon name and the legal name of the salon, the names of the owners, and the physical location of the salon. The rule also makes provision for the limited places in Minnesota where mail delivery does not take place at the physical address of the salon, and where an alternative address must be used. These are reasonable requirements necessary to establish licensure and to provide for administration of the rules.

Item B: This proposed rule moves part of the current rule item A regarding ownership information to its own part here and also adds email addresses to the list of information requested about the owners of the salon. Email addresses are used by the Board for general notifications as well as specific communication, as a faster alternative to postal mail.

Item C: Current rule Item B is re-lettered here as Item C. This proposed rule updates the list of required signatures from various types of owners of various business structures, and adds a provision allowing for an authorized signatory of a corporation to sign applications to make application easier for corporations.

Item C: This item is proposed for repeal as the planned business hours of the salon applicant are unnecessary information, and are likely to be outdated when the hours may change in the future.

Item D: This item is proposed for repeal as the provisions are updated and moved to Item I.

Item D: This proposed rule asks for documentation of a properly filed Certificate of Assumed Name filed with the Secretary of State in compliance with Minnesota Statutes, section 333.01 Subdivision 1. The filing of the certificate protects the consumer by establishing the legal identity of the owner of the business.

Item E: This proposed rule asks for documentation of compliance with Minnesota Statute 333 regarding with business registration with the Secretary of State, and is used to establish ownership and responsibility.

Item F: This proposed rule requires the social security number or state tax identification number for the salon business. Minnesota Statutes, section 270c.72 Subd.4 requires the Board to collect the social security numbers and business tax identification numbers on all applicants and licensees.

Item G: This proposed rule establishes the applicant's compliance with the professional liability insurance required under Minnesota Statutes, section 155A.29, Subd.2 (4).

Item H: This proposed rule establishes the applicant's compliance with the workers compensation insurance required under the Minnesota Workers Compensation Act and required by Minnesota Statutes, section 155A.29, Subd 2(3).

Item I: This proposed rule asks the salon owners to attest to the salon compliance with applicable building codes, the Minnesota State Fire Code, and applicable OSHA requirements.

The Board previously required a written signature on the salon application from local building officials attesting to the salon's compliance. However, some cities are becoming unwilling to sign off on the applications because if no building permit was issued, the city has no recent knowledge of the building status. Cities may not have available, qualified building inspectors who can ascertain

whether the building is currently in compliance with building codes, and compliance requirements may change over time.

While some salons are owned by large corporations who are likely aware of the multiple requirements for business facilities, many salons are owned by sole proprietors and are the equivalent of a small business.

By including these provisions regarding building codes, fire code, and OSHA requirements in the application, business owners are alerted to these essential requirements. Salon owners otherwise unfamiliar with business regulations may attempt to install plumbing for sinks and pedicure tubs without an awareness of the need for building permits, and may also plan to provide for the salon's multiple electrical appliances by similarly making changes to the electrical service without using licensed electricians. By including this provision in the application, the Board does not create new responsibilities or burdens for the salon but alerts the salon owner to existing requirements which are related to the health and safety of the public. The rule is consistent with Minnesota Statutes, section 155A.29. Subd.2(1).

Item J: This proposed rule amendment simplifies the current requirement for a floor plan, and provides a clear identification of what the required areas, facilities, and equipment that must be shown on the floor plan. It eliminates the requirement that the floor plan be on a certain paper size, since some salons utilize architects and wish to submit large building plans, while others hand-draw the floor plan. The size of the paper on which the floor plan is submitted is not a critical component necessary to achieve the regulatory objectives of the rule.

Item K: This proposed rule requires the notarized signature of the salon's DLSM, as is necessary to prevent salons from simply listing the name and license number of any salon manager without the salon manager's knowledge. This is a reasonable requirement because the Board has experience with salons listing salon managers as the DLSM without the DLSM's knowledge. A salon manager is required for salon licensure in Minnesota Statutes 155A.29, Subd 2 (2).

2105.0320 Maintaining a Salon License: This rule part is proposed for repeal because the provisions of this part are moved to a new rule part, 2105.0322 for reasons of better organization and clarity.

2105.0322 Maintaining a Salon License: This proposed rule part replaces *2105.0320* and *2105.0350* for reasons of better organization.

2105.0322 Subpart 1. Scope: This is a simple housekeeping provision indicating that this rule section applies to all salons.

2105.0322 Subpart 2. Unlicensed Persons: This proposed rule exists in *2105.03350 Subpart 3* which is proposed for repeal, and simply states that salons may not allow unlicensed individuals to provide regulated services in the salon. The proposed rule adds a new provision that the salon is prohibited from allowing unlicensed persons to provide free cosmetology services, as some salons have recently defended unlicensed persons at the salon by claiming the individuals provide services without charge, and therefore are not engaged in the practice of cosmetology. The statutory definition of cosmetology (Minnesota Statutes, section 155A.23, Subd 3) includes a provision that the services must be offered for compensation. It is reasonable, in the face of such unlikely claims, to simply prohibit free services from being offered by unlicensed persons in a licensed salon. The provision will protect the health and safety of the public and allow more efficient regulation of cosmetology by the Board.

2105.0322 Subpart 3. Compliance: The proposed rule repeats an existing rule proposed for repeal for reasons of better organization (*2105.0320, Item A*) requiring compliance with applicable provisions of statute and rule.

2105.0322 Subpart 4. Maintain Insurance: This proposed rule part addresses the professional liability insurance requirements and workers compensation requirements of Minnesota Statutes, section 155A.29, Subd.2 for the salon and salon employees. The proposed rule simply states the salon must continue to provide workers compensation insurance coverage if required, and that the salon must also ensure that liability insurance is in effect for all practitioners in the salon, whether the insurance is provided by the salon or by any individual leasing space in the salon and practicing under the salon license. Because practitioners leasing space in a salon are operating under the salon's license, it is reasonable to require the salon to ensure that such services provided by the practitioner are covered by the required liability insurance.

2105.0322 Subpart 5. Salon Premises: This proposed rule part is retitled and restates the provisions of repealed *2105.0350 Subp.1*, confirming that all cosmetology services must be provided in a licensed salon, unless otherwise noted in the chapter. These rule provisions are relocated in this rule section for reasons of better organization, and continue to be both reasonable and necessary to ensure adequate protection of the health and safety of the public.

2105.0322 Subpart 6. Change of Location: This proposed rule replaces *2105.0350 Subp.4,* which is proposed for repeal as part of the reorganization of the rules chapter. The proposed rule retains the 60 day timeline for the salon owner to apply for a new license and become licensed. It is reasonable to require a new salon application because, among other items, the physical requirements of a salon addressed in part 2105.0360 must be verified by review of the floor plan in the new salon, ownership information may need to be updated, registration with the Secretary of State updated, and insurance requirements met at the new location.

2105.0322 Subpart 7. Change of name: This proposed rule requires salons to submit a salon name change form with legal documentation of the name change. The use of a name change form standardizes the presentation of the information for more efficient review and processing. The proposed rule also requires submission of other documents required by state law to be filed or updated with the secretary of state because of the name change, and requires updated certificates of insurance showing the salon's new name. These requirements are reasonable and needed, and ensure that minimal salon licensing requirements established in rule (2105.0310) are still in effect with the changed name.

2105.0322 Subpart 8. Change of Owner: This proposed rule replaces *2105.0350 Subp.4*, which is proposed for repeal as part of the reorganization of the rules chapter. The proposed rule retains the 60 day timeline for the salon owner to apply for a new license and become licensed. A new license application is required to ensure that licensing requirements, including identification of the owner(s), insurance requirements, and business registration requirements are met.

2105.0322 Subpart 9. Change of business structure: This proposed rule requires salons to submit a salon business structure change form with legal documentation of the business structure change and other documents required by state law to be filed or updated with the secretary of state because of the change, and updated certificates of insurance showing the salon's new name. The use of a change form standardizes the presentation of the information for more efficient review and processing. These requirements enable the Board to determine whether ownership has changed, and that minimal licensing requirements established in rule are still in effect with the changed business structure.

2105.0322 Subpart 10. Change of designated licensed salon manager: This proposed rule provides a timeframe (10 days) in which the salon must notify the Board of the departure of a DLSM, and provides 60 days to register a new DLSM with the Board. A DLSM, as required by Minnesota Statutes, section 155A.29

Subd 2 (2), is an important compliance element because salon owners are not required to carry practitioner licenses and may not have the licensure background in infection control practices. A DLSM has the training and experience to guide the salon in compliance with infection control practices and licensing issues. It is reasonable to require salons temporarily not in compliance with the requirement for a DLSM to notify the Board to ensure ongoing communication and a timely resolution of any compliance issues.

2105.0330 Salon license renewal:

2105.0330 Subpart 1 Requirements: This rule is amended to correctly cite the applicable subparts which changed with the proposed rule amendments.

2105.0330 Subpart 2 Salon license expiration: This subpart is retitled to better reflect the topic. The proposed rule amendment removes a sentence regarding expired licenses which is moved to Subp.7 for reasons of better organization. The rule reasonably provides clarity regarding when licenses expire, and continues to alert licensees to the fact that the licensee is responsible for renewing the license even if renewal notifications from the Board were not received. The other amendments to this subpart are minor edits to simplify the language and to clarify that both the salon owner and the DLSM are responsible for the salon license renewal, and do not constitute new requirements.

2105.0330 Subpart 3. Fee: The proposed amendments to this part represent minor editing to simplify the language, and remove the requirement to pay the fee before the expiration of the current license, since the fee is required regardless of whether the license has expired.

2105.0330 Subpart 4. Identity of owner: The proposed amendments to this part represent minor editing to simplify the language. Requiring the owner's name, address and phone number is not a new requirement, and allows the salon file to be updated if necessary.

2105.0330 Subpart 5. Designated licensed salon manager (DLSM): This proposed rule codifies an existing practice to ask the salon to provide the name, license number and license expiration date of the salon's DLSM.

2105.0330 Subpart 6. Professional liability and workers compensation insurance: This proposed rule codifies an existing practice to ask the salon to provide current policy numbers to verify that the policies are insurance policies are current, consistent with Minnesota Statutes, section 155A.29, Subd 2.

2105.0330 Subpart 7. Failure to renew before salon license expiration date:

> **Item A:** This proposed rule explains that incomplete renewal applications are returned to the applicant, and clarifies that late fees are applied if the resubmitted renewal application is received after the expiration date of the license. Clarifying when late fees apply provides transparency. The rule provision is reasonable, since a salon may not return the completed renewal application on a timely basis.
>
> **Item B:** This proposed rule includes a provision from the repealed *2105.0340* rule that salons with expired licenses are delinquent, and clarifies that the delinquency relates to the lack of an issued license. This clarification is necessary as some licensees erroneously believe that a salon license has been renewed as long as a renewal application has been submitted or is in the mail. Additional clarification is provided in this proposed rule by stating that inspection penalties and disciplinary provisions may apply if the license has not been renewed by the expiration date.
>
> **Item C:** This proposed rule extends the grace period for renewing expired salon licenses. Current rule *2105.0340 Subd.2* (proposed for repeal) states that if a salon license has expired more than 30

days, the salon must reapply for a new license. Here, the proposed rule allows an expired salon license to be renewed for up to six months past the expiration date before a new salon license application is required. The extended grace period is reasonable and provides some flexibility for salons without jeopardizing the health and safety of the public.

2105.0340 Delinquent Salon Licenses: This rule part is proposed for repeal and the provisions were moved to the rule part on renewing salon licenses (2105.0330).

2105.0350 Salon Requirements: This rule part is proposed for repeal and the provisions were moved to other rule parts. Subpart 1and Subpart 2 provisions stating that licensed services must be provided in a licensed salon were moved to 2105.0322, Subp.5. The provisions of Subpart 3 relating to unlicensed persons were moved to 2105.0322, Subp.2. The provisions of Subpart 4 and 5 relating to changes in ownership, location, and salon name were moved to 2105.0322, Subparts 6, 7, and 8.

2105.0360 Salon physical requirements: The title of this subpart is clarified by adding "salon" so that it is apparent at a glance that the requirements relate to salons.

2105.0360 Subpart 1. Display of salon name: This proposed rule requires the salon to display the salon name at the entrance, and residential salons to display the name at the driveway. While the majority of salons located in commercial spaces meet this requirement, in very small towns and at many residential salons, as many as 50% of the salons do not currently display the salon name, making it difficult for inspectors to locate the salon.

The cost of signage can vary tremendously, but simple signage, in the form of vinyl letters applied to windows, or printed signs, can be obtained for minimal costs. It is difficult to estimate the cost of the vinyl letters since the cost is generally per letter. To estimate potential costs of compliance, the Board chose FedEx Office, a popular business with locations throughout Minnesota that has online purchasing available. Using the sample name "Family Hair Care Salon" in 4 inch letters, a sign would cost $38.00 plus tax and optional delivery fees. Alternatively, printed posters from FedEx Office run about $40.00 for an 18"x 24" sign. Because letters and signs can be purchased online from FedEx Office and potentially other vendors as well, this means it would cost most salons, depending on the length of the business name, less than $50.00 to comply with the requirement. The Board believes this cost is reasonable and not prohibitive. The rule does not require a professionally printed sign, and a salon could comply with the rule by handwriting a sign, or printing a sign from a computer. Computers are located for public use at most libraries with minor charges of a dollar or two per page.

The Board anticipates that some salons located in residences may be subject to ordinances prohibiting or limiting signage, or may be subject to covenants restricting signage. In such situations, the proposed rule provides that the salon must simply maintain current (no more than 3 years old) documentation from an official or party responsible for enforcing the restriction. Because ordinances and restrictions may change over time, the Board determined that the owner should update the restriction documentation once every license cycle (a license cycle is 3 years).

The rule is reasonable, increases the efficiency of inspectors searching for salons, and provides a measure of safety by reducing the times an inspector attempting to locate a home salon mistakenly approaches a private residence in rural and secluded areas that is not a licensed home salon.

2105.0360 Subpart 1a Space: Current rule subpart 1 is renumbered subpart 1a. A current rule provision (*2105.0310 Subp.2, Item D*) requiring compliance with applicable building codes and fire codes is moved to this part for reasons of better organization.

Item A and Item B: These items, proposed for repeal, establish minimum space requirements. The Board determined that that there were no compelling reasons for requiring minimum square footage, and that how much space is allotted to each practitioner is a business decision, better related to the business needs and the specific services provided by the business. Various cosmetology services may require differing spaces based on the equipment that may be used in the service and a one-size fits all approach does not serve the interests of protecting the health and safety of the public and may place unreasonable restrictions on licensees.

Item C: This rule provision regarding access to the supply area is proposed for repeal and moved to the new rule section on dispensaries in Subpart 5a.

2105.0360 Subpart 2 Entrance and Exit: This rule is proposed for repeal, as the Board found no compelling reason to highlight required compliance with building codes and ordinances on entrances and exits, when rule already requires compliance overall.

2105.0360 Subpart 3. Walls and ceilings: This proposed rule amendment adds items located on the ceilings (fans, lights, and vents) to the language requiring walls and ceilings to be clean and free from dust because a common citation on inspections is excessive dust on those items. The word "clean" is deleted and replaced by the more specific "free from dust and dirt" to provide greater clarity.

2105.0360 Subpart 4. Floors: This proposed rule amendment addresses a presumption in the current rule that all salons provide hair services, as the current rule states that floors should be free of hair and other debris at all times. The proposed rule adds nails, skin, wax, and liquids to "hair" as items which should not be found on the floor. The current rule allows commercial grade carpet in the salon. Salon inspectors cannot easily distinguish between commercial grade carpet and residential grade. Carpets, regardless of grade, retain hair, skin debris, wax, and other matter and represent infection control challenges. The proposed rule prohibits carpet from the service area of salons licensed after January 1, 2017. An easily washable floor surface allows for better infection control by allowing for better removal of body debris (hair, skin, nails, and fluids).

2105.0360 Subpart 5. Electricity: This subpart is retitled to better describe the subject of the rule's provisions. The provision requiring direct lighting to work areas is repealed as unnecessary. The Board has not cited salons for failure to provide direct lighting because no salon has failed to provide adequate lighting, as it would be difficult if not impossible to provide cosmetology services without adequate lighting.

The Board considered a rule provision that would allow inspectors to require a fire safety inspection when potential fire hazards were observed. The Board sought input from various fire suppression professionals including the State Fire Marshal and the Fire Marshals Association of Minnesota, and discovered that in many areas of Minnesota, there is no fire official responsible for inspections. The Board determined, based on the experience of Board inspectors, that a prevalent salon fire hazard is the overloading of electrical circuits and extension cords. Although current rule requires salons to comply with the state fire code, it is not realistic to expect salon owners to become familiar with the fire code and how it applies to their business. Instead, the proposed rule adds three requirements (Items A, B, and C) contained in the State Fire Code which are related to common issues found in salons (overloading outlets, power strips, and extension cords) because of the number of electrical appliances used in cosmetology services.

This proposed rule amendment repeals the provision of the current rule that there must be at least one electrical outlet in each work station because that provision alone does not address issues of multiple extension cords, etc.

2105.0360 Subpart 5a. Dispensary: This proposed rule requires that each salon have a space in which chemicals may be mixed and stored, and tools and implements may be cleaned and disinfected. The purposes of the requirement for a dispensary is to ensure that each salon has adequate space with a sink and running water for the safe mixing and disposal of color and other chemical solutions, and so that it is possible for salon practitioners to comply with the infection control requirements.

Item A: This proposed rule requires the dispensary area to have a sink, which is part of current rule in *2105.0370, Subp.6*, and is relocated in this subpart for reasons of better organization. Cleaning and disinfection protocols, as addressed in part 2105.0375 require access to water and a sink so that items may be washed with soap and water and rinsed, and space in which to allow items to soak in disinfectant for ten minutes.

The rule also requires single service towels, soap, and a work space. The proposed rule states that a shampoo bowl may not be used as a dispensary sink unless it is a one practitioner salon. This is because disinfectants are microbial pesticides, and represent a safety risk to both the practitioner and the client. Where there is only one practitioner, as in a home salon or small salon, the practitioner will be aware of the presence of pesticide residue in the shampoo bowl and can take appropriate steps to protect a client from contact with the pesticide. In a salon with multiple practitioners, each practitioner may not be aware of whether there has been pesticide in the shampoo bowl, and whether the bowl has been rinsed sufficiently to remove any residue so that it doesn't come in contact with the client's skin or splash into the client's eyes. Eye contact with disinfectants can cause burns, and, in the worst case scenario, cause blindness.

The rule also contains a provision that the dispensary must not be located in a restroom, so that both the safety of the restroom users is protected, and so that the dispensary space is available at all times so as not to delay or interfere with infection control requirements. In addition, general principles of sanitation prohibit attempting to disinfect instruments in a bathroom location.

Item B: This proposed rule expands on two current rules proposed for repeal: *2105.0360 Subpart 1, Item C* requires the supply area to be inaccessible to the public and *2105.0370 Item F* requires supplies containing caustic or harmful substances to be kept inaccessible by clients. The provisions are relocated to this subpart for reasons of better organization. The proposed rule continues to require that hazardous substances are inaccessible to the public, but acknowledges that during the disinfection process, and during the preparation of hair coloring, acid-based skin peels, and other cosmetic substances, clients are likely to be present. Because of this, the proposed rule requires a salon employee or a licensee to be present when a hazardous substance is accessible to the public. This is a reasonable precaution related to protecting the health and safety of the public.

2105.0360 Subpart 6: Sinks in work areas: This proposed rule is retitled to better reflect the subject matter. Provisions requiring toilet facilities are moved to Subp.6a.

Item A: This item rewords the current rule provision of this subpart which requires running water in the work area by saying that each work area must have at least one handwashing sink. Handwashing is a basic part of infection control, and both current rule *2105.0380, Item Q* (proposed for repeal) and proposed rule 2105.0375 Subp.2 require handwashing. It is reasonable to make it possible for licensees to comply with handwashing rules by ensuring that a handwashing facility is readily available. Because this is not a new requirement, there is no new cost for compliance with this proposed rule amendment.

Item B: This proposed rule amendment 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. This is a requirement in current rule (*2105.0360 Subp.6*) moved to this part.

Item C: This proposed rule continues a long standing practice at the Board to allow the use of a shampoo bowl as a hand sink. While a separate hand sink is preferable, it is not needed and reasonable to require the additional plumbing installation and additional space needed for a separate hand sink. The proposed rule does require that when a shampoo bowl is serving as a hand sink, it must have the soap, towels, and waste receptacle necessary for handwashing.

The proposed rule specifically disallows the use of a pedicure sink as a hand sink. This is because of the fungal and bacterial infections associated with pedicures, and the likelihood that the faucets of the pedicure tubs are contaminated, and could lead to transmission of infections.

2105.0360 Subpart 6a. Restrooms:

Item A: This proposed rule amendment includes the provisions of the current rule in Subp.6, which is moved to this subpart, and which requires a restroom in the salon or in an adjacent common area.

Item B: This proposed rule amendment includes the provisions of the current rule in Subp.6, moved to this subpart which requires each restroom to be equipped with a sink with running water, a toilet, soap, towels, and a waste receptacle.

Item C: This proposed rule addresses a common violation found on inspection where hazardous items are accessible in restrooms, particularly those in salons located in residences. It requires that any hazardous items not be accessible, as is required in general terms in current rule *2105.0370, Item F* which is proposed for repeal and moved to this part.

Item D: The proposed rule amendment requires the restroom to be maintained in a clean condition, which is related to the health and safety of the public.

2105.0360 Subpart 7. Ventilation: This proposed rule amendment retains the current rule provisions that ventilation must comply with building codes, but adds a provision that the ventilation must comply with state and federal OSHA requirements. State and federal OSHA regulations are relevant to the workplace hazards of inadequate ventilation, and the safety and health of practitioners and the public. This is a needed and reasonable rule addition, as licensees are at increased risks for respiratory and skin disorders, based on occupational studies.

2105.0360 Subpart 8. Furniture and fixtures: For reasons of better organization, many of the requirements in current rule 2105.0370 Fixtures, Furniture, and Equipment are moved to this subsection.

Item A: This proposed rule is moved from 2105.0370, and requires that furniture and fixtures have a washable covering, and be clean and in good repair. Good infection control practices require the cleaning and periodic disinfection of furniture and equipment.

Item B: This proposed rule requires a clean waste receptacle for each work area which is emptied daily, a change from current rule (*2105.0370, Item D*) which requires that each work station have a receptacle. In some salon environments, it is not necessary or reasonable to require multiple waste receptacles in one work area. In work stations where there is more waste generated, such as at a waxing station or nail station, there may be a need for additional waste receptacles, but it may be entirely reasonable to share a waste receptacle with neighboring work stations. The proposed rule requires a minimum of one clean waste receptacle per work area, and leaves it to the business to determine whether additional waste receptacles are needed. The proposed rule reduces potential

costs to salons by eliminating a requirement for multiple and sometimes unnecessary waste receptacles.

The repealed portion of the current rule (*2105.0370, Item D*) also requires the waste receptacle be lined with a plastic bag or liner, or be washed daily. The provision in the current rule is simply that the container be clean, and leaves it to the business to determine how best to accomplish this, whether through daily washing or the use of liners.

The repealed portion of the current rule (*2105.0370, Item D*) also requires a container for soiled towels and linens, kept closed at all times and in compliance with local or state fire code. The Board consulted with the State Fire Marshal and other Fire Marshals, and determined that there were no requirements in state fire code regarding linen containers. This provision is outdated, and was not included when the rule was moved to this new subpart.

The repealed portion of the current rule (*2105.0370, Item D*) also requires at least one large covered container for disposal of garbage, lined with a liner or washed daily, kept closed, and complying with local fire codes or the state fire code. The Board consulted with the State Fire Marshal and other Fire Marshals, and determined that there were no relevant requirements in state fire code regarding interior waste receptacles. The Board determined that this provision is outdated, and did not include it when the rule was moved to this new subpart.

Item C: This proposed rule is a current rule (*2105.0370, Item H*) moved to this subpart for better organization, and requires a fire extinguisher in each salon. This is consistent with state fire code, and serves to protect the health and safety of the public. The proposed rule amendment also requires the salon to instruct employees on the location and use of the fire extinguisher, so that in the event of a fire, the extinguisher may be used.

2105.0370 Salon Operational Requirements: This proposed rule amendment is retitled to better reflect the subjects of this subpart.

Repealed or relocated provisions of current 2105.0370:

Item A: This rule is proposed for repeal and requires a workstation with chair, storage, and mirror for each licensee on duty. Nail technicians and estheticians do not need the same type of work station as a hair stylist, and it is not necessary for the Board to dictate to a salon what type of workstation would best suit any particular cosmetology service. For these reasons, this item is proposed for repeal.

Item B: This rule is proposed for repeal and requires all shampoos to be given in a shampoo bowl that has hot and cold water. It is also unnecessary for the Board to require shampoos be given with hot and cold water, as the business needs of the salon will ensure comfortable shampoos for clients. For this reasons, this item is proposed for repeal.

Item C: This rule is proposed for repeal and the provisions were moved to 2105.0360, Subdivision 8, Item A as previously discussed.

Item D: This rule is proposed for repeal and the provisions were moved to 2105.0360, Subdivision 8, Item B, as previously discussed.

Item E: This rule is proposed for repeal. The rule requires storage space for linens, and discusses how the linens must be stored. It is not necessary to put into rule that there must be storage space.

The storage requirements for towels and linens are moved to the rules on infection control (2105.0380, Subp.8) for reasons of better organization.

Item F: This rule is proposed for repeal, and also requires storage space, this time for all supplies. It is not necessary to put into rule that there must be storage space. The rule also requires labeling of caustic and harmful material which must be kept inaccessible to clients. The provisions for keeping caustic and harmful material inaccessible to clients are moved to the dispensary section (2105.0360 Subdivision 5a) for reasons of better organization.

Item G: This rule is re-lettered as Item A.

Item I: This rule is proposed for repeal. The rule requires salons to maintain a copy of the statute and rules related to the practice of cosmetology in the salon. At the time this rule was promulgated, the statute and rules were not readily accessible, and ensuring that a copy was available in the workplace ensured access to the requirements stated in statute and rule.

Today, anyone can easily access the statute and the rules by simply Googling them on a computer, laptop, tablet, or smart phone, or by visiting the Board's website, the Revisor's website, or the state legislature's website. In addition, the new CE requirements on statute and rules provide a periodic update on changes in statute or rule.

When inspected, salons are asked to produce the required copies of the statute and rules. The Board has not noted any correlation between the presence or absence of the statute and rules, and the compliance of the salon with the requirements in the statute or rules.

Because there appears to be no link between salon and practitioner compliance and the presence of the statute and rules in a salon; because licensees receive an hour CE on the statute and rules each renewal period, and because the statute and rules are readily accessible via electronic communications, the Board determined there is no longer a need to require salons to maintain a physical copy of the statute and rules in the salon.

Item A: *Item G* of the current rule is re-lettered as Item A in the proposed rule amendment, and requires a first aid kit. The proposed rule amendment specifies that the kit must meet the ANSI Z308.1-2015 standard, which is the standard OSHA refers employers to regarding contents of required first aid kits. This particular standard is for the most basic first aid kit for small businesses. The standard was recently updated in mid-2015, and the proposed rule indicates that either this standard, or the most recent version of the standard must be met. First aid kits meeting the standard can be purchased for approximately $20 on Amazon which represents an insignificant cost of implementing the rule. This is not a new cost because the requirement exists in current rule.

Item B: This proposed rule addresses the existing state and federal requirement for hazard communication standards in the workplace. The proposed rule requires the salon to have safety data sheets (SDS) available, to inform all licensees (employees and those leasing space and practicing under the salon license) of the potential health effects of hazardous products, and to inform all licensees how to protect themselves from exposure. Although these requirements may be new to the majority of salon owners, because these requirements already exist in state law (Minnesota Statutes, section 182.653), this proposed rule does not add a new burden to licensees. It should be noted that there is no state or federal OSHA requirement that salons leasing space to practitioners comply with the hazard communication standards. However, because it has been long recognized that cosmetology licensees are at increased risk for adverse health effects because of their exposures to hazards typical of cosmetology services, it is important to protect the health and safety of the public (which includes those practitioners) by meeting the hazardous communication standards.

In 2014, the legislature added CE requirements for license renewal, including three hours on health, safety and sanitation matters consistent with OSHA standards (Minnesota Statutes, section 155A.271, Subdivision 1). Anecdotally, the Board has heard from presenters and licensees attending the classes that licensees in general were unaware of the OSHA requirements regarding hazardous substances, and were unfamiliar with Safety Data Sheets (or Material Data Sheets or MDS as the sheets formerly named). The proposed rules include a new requirement (proposed 2105. 0374, Subdivision 4, Item E) that licensees use tongs or gloves when disinfecting items in the disinfectants classified as microbial pesticides. During town hall meetings held in the fall of 2014 to elicit comments on the proposed rules, the Board heard from licensees who object to the requirement to use tongs or gloves, based on a prevalent practice of using bare hands to pull items out from the pesticide solutions. These objections suggest that licensees in general are unaware of the risks of handling the pesticide solutions. In addition, it is known that cosmetologists, estheticians, and nail technicians face higher rates of birth defects, respiratory diseases, and dermatitis related to occupational exposure. Given the higher occupational risks for health issues, the feedback from the CE classes, the feedback from licensees objecting to a basic safety standard, and the fact that MN OSHA does not have the capacity to enforce compliance with hazard communication standards in the 5,500 licensed salons in Minnesota, it is reasonable and necessary to add these requirements in this rule chapter to protect the health and safety of licensees and the public receiving services.

Item C: This proposed rule requiring the salon license to be posted replaces *2105.0380 Item CC* which is proposed for repeal and moved here for reasons of better organization. The proposed rule amendment updates the rule language and specifies that the license must be posted facing the public side of the reception area. Licenses which cannot be seen defeat the purpose of posting the license, which is to assure the public that the salon is licensed.

Item D: This proposed rule simply states the salon must ensure licensees meet the license posting requirements for practitioners in part 2105.0190, Subpart 4. A similar provision exists in current rule *2105.0380, Item BB.* which is proposed for repeal and moved here for reasons of better organization.

Item E: This proposed rule includes a current rule provision in *2105.0380, Item BB* (proposed for repeal and moved to this part), which requires all licensees to have picture identification when working in a salon, and to provide that identification on the request of an inspector. Because unlicensed individuals often attempt to use the license of another individual, picture identification is one of the means an inspector may use to determine whether a person practicing in a salon is properly licensed.

Item F: This proposed rule simply lists the posting requirements in a salon regarding inspection reports and results as identified in proposed rule 2105.0115, Subp.2, which are referenced here for the convenience of the salon and the DLSM.

2105.0375 Infection Control Requirements: This proposed new rule subsection replaces much of the rule language regarding infection control currently contained in part *2105.0380,* which is proposed for repeal because of the extensive proposed amendments. The current rules on infection control are incomplete and outdated, and do not address many of the typical cosmetology, esthiology and nail technology services and the tools and implements used to provide those services. The proposed rules in this subpart have been revised to reflect current standards and are necessarily prescriptive.

Approximately 75% of the complaints investigated by the Board include allegations that infection control practices are not followed, and many complaints are filed after a client contracts a fungal or bacterial infection following a licensed service. Board inspectors have found that many licensees can't adequately explain proper infection control procedures, and lack of proper disinfection is a common violation cited on inspection. The

revision of rules to provide better guidance is one of several methods the Board is using to address inadequate infection control.

The majority of the requirements in this subpart are existing requirements in current rule. The proposed rules are more detailed than current rules, and are organized so that a licensee could look for the type of object or equipment that needs to be disinfected and find the applicable requirements in one place, instead of having to piece together various rules to arrive at the required procedures. This, by necessity, creates a very prescriptive set of rules on infection control. Where the proposed rule differs substantively from current rule, the change is discussed in the proposed rule section. Minor changes due to updating language or adding language to reflect the practice of esthiology and nail services are not discussed.

2105.0375 Subpart 1. Duties: This proposed rule clarifies that all licensees are subject to the infection control requirements, and establishes that all items on the salon premises are subject to the requirements. It has been the practice of some licensees to claim that "dirty" tools or prohibited implements are in the salon for their personal use only and therefore are not subject to the rules. The proposed rule is necessary and reasonable to eliminate the apparent subterfuge.

2105.0375 Subpart 2. Handwashing: This proposed rule expands on current rule *2105.0380 Item Q*, proposed for repeal because of the extensive reorganization. The proposed rule continues to require handwashing before providing service to clients, and is updated to allow the use of an alcohol based hand rub. Based on the recommendations of the Centers for Disease Control, the rule requires that the hand rub contain a minimum of 60% alcohol. Because the hand rub is less effective in the presence of debris, the rule clarifies that the hand rub can be used only when the hands are free of lotions, ointments, product, or visible soil. Product is a word used in the cosmetology industry to refer to any substance used to provide a cosmetology service, so it encompasses hair coloring, gels, hair spray, wax, callous remover, serums, and other substances. The proposed rule clarifies that the use of gloves or handwipes does not replace handwashing. The CDC recommends against handwipes since they may not remain moist for a long enough period to be effective. Handwashing and the use of hand rubs is a basic part of infection control practices.

2105.0375 Subpart 3. Cleaning: This proposed rule requires items to be cleaned and dried before disinfection. The presence of dirt and debris renders disinfectants less effective, and wet items may dilute the disinfectant so that the dilution is not according to the protocol approved by the EPA. The proposed rule also requires that cleaning agents must be properly labeled, with the instructions for use placed on the new container or available on the original container. This is reasonable and necessary to ensure that licensees can properly identify the content of the container and to avoid confusion with other products.

This requirement is loosely referred to in current rule *2105.0380, Items A and B*, which are proposed for repeal as part of the reorganization of the rules.

2105.0375 Subpart 4. Disinfecting:

> **Item A:** This proposed rule identifies acceptable disinfectants, and clarifies that alcohol is not acceptable. Alcohol can be an effective disinfectant when used in the proper concentration, but is highly flammable, slow acting, and evaporates quickly. Vapors formed during evaporation cause nausea and headaches, and alcohol corrodes and damages metal tools, and dulls sharp edges of shears. For these reasons, it is not appropriate for salon use where there are often large numbers of tools and implements requiring disinfection.
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> Because bleach comes in varying strengths and in various forms, the rule also clarifies that bleach products must have an EPA registration for use in a hospital setting to ensure that the product used can actually disinfect items.

Item B: This proposed rule clarifies that items must be cleaned before being disinfected, for reasons discussed previously in Subp.3.

Item C: This proposed rule requires the disinfectant to be used according to the manufacturer's directions. Disinfectants are regulated by various federal agencies. The EPA regulates disinfectants under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The EPA approves not only the disinfectant but also the labeling of the disinfectant. An EPA-registered disinfectant has the following statement on the product label: "It is a violation of federal law to use this product inconsistent with its labeling." FIFRA requires users to follow the label directions from the manufacturer. Deviating from the specified dilution, contact time, method of application, or any other condition of use is considered misuse of the product and is a violation of FIFRA.

The proposed rule also prohibits the use of disinfectant wipes and sprays unless otherwise specified in rule. In general, disinfectant wipes may be less effective because items wiped rarely remain wet – that is, in contact with the disinfectant – for the required contact time. Sprays allow the user to determine how much disinfectant is sprayed, and the amount may be insufficient to allow the disinfectant to be effective. Additionally, sprays cause the disinfectant to be airborne and increase the likelihood of any adverse reaction to the pesticide by licensees and the public. For these reasons, the proposed rules limit the use of wipes and sprays to those items, addressed in other rule parts, which can't be otherwise disinfected by submersion in a disinfectant solution.

Item D: This proposed rule requires licensees to label any disinfectant solution with the name and the strength of the disinfectant by identifying the dilution requirements. This is a safety precaution. The proposed rule also requires that the disinfectant solutions be made daily, and properly disposed of at the end of the day, or immediately if debris is present in the solution. This is a restatement of product directions, and it is reasonable and necessary to restate this in rule because of a common industry practice to make the solutions once a week even though effectiveness testing is based on a daily solution. The presence of any debris weakens the effectiveness of the disinfectant.

The proposed rule also requires both the presence of a measuring device and the use of the measuring device whenever the disinfectant must be diluted. This is to ensure that the disinfectant is properly diluted, so that an effective disinfectant solution is used on implements and tools.

Item E: This proposed rule requires all surfaces of a tool to be immersed in the disinfectant, addressing a misunderstanding of licensees regarding disinfecting tools or implements. It is not uncommon for licensees to attempt to disinfect tools by immersing only the portion of the tool that comes into contact with the client in the disinfectant, but not immersing the handle area. For example, the head of a tweezer will be in disinfectant solution, but not the part the licensee has touched, allowing for continued cross contamination.

Item F: This proposed rule requires salons to have disinfectant containers with covers. It is not possible to properly disinfect tools and implements without a container large enough to hold the tools and implements. Covers are required because the use of covers reduces the fumes and limits the exposure of licensees and consumers.

Item G: This proposed rule requires the use of tongs or gloves so that skin contact with the pesticide is prevented as is consistent with product labeling, and requires the licensee to follow all safety precautions as directed by the manufacturer.

2105.0375 Subpart 5. Blood and body fluid exposure: This proposed rule provides for the safety of the licensee and the client by requiring licensees to follow a standard procedure outlined in items A through G when an accidental cut or minor injury occurs during a service.

2105.0375 Subpart 6. Storage of items: The proposed rules in this subpart address the required storage of various disinfected items to ensure that the items remain uncontaminated.

Item A: This proposed rule details the requirements for storing disinfected items in covered containers and preventing contact with non-disinfected items, and requires the storage container to be cleaned and disinfected on a weekly basis. Storing disinfected items improperly, or in contact with items such as keys, wallets, coins, phones, etc. defeats the purpose of disinfecting the item. The rule allows flexibility by providing various ways items can be properly stored.

Item B: This proposed rule prohibits a misleading practice of storing tools or implements in autoclave packing, which implies that items have been sterilized. It allows the use of autoclave packing if a properly functioning and tested autoclave is in use at the salon, as described in proposed rule 2105.0377. Plastic bags are difficult to clean and disinfect properly, and can seal in bacteria, and for this reason are prohibited as a storage container.

Item C: This proposed rule simply requires that disinfected tools not come into contact with contaminated surfaces.

Item D: This proposed rule requires disinfected items removed from proper storage to be either placed temporarily in a container for used items waiting to be disinfected, or to be immediately disinfected, and calls for the disinfection of the storage containers weekly. This prevents the inadvertent use of a "dirty" item by requiring used tools and implements to be removed from a service area after service. When storage containers are be too large to be totally submersed, the rule provides for the use of disinfectant wipes and sprays.

2105.0375 Subpart 7: Safety and infection control practices:

Item A: This proposed rule provides that only cleaned, disinfected, and properly stored tools and implements may be used on clients, to ensure that fungal, bacterial, and viral matter are not transmitted between clients or between a client and a licensee.

Item B: This proposed rule replaces *2105.0380, Item A* which is proposed for repeal as part of the reorganization of the rules. The language of the current rule requires an adequate supply of disinfected tools, but does not discuss disinfectant and single-use supplies. The proposed rule requires that a salon have a sufficient supply on hand of disinfected tools, disinfectant, and single-use supplies so that it is possible for only disinfected tools and new single-use items to be used on clients. The proposed rule will allow for easier compliance with and enforcement of infection control practices.

For example, a nail technician in a busy nail salon who has only one nail nipper is unlikely to turn away clients, make clients wait, or lose the client to another nail technician in the salon because she must first take the nail nipper to a sink, wash the nipper with soap and water, dry it, and then take it to a disinfectant solution and wait for 10 minutes, after which time she must rinse and dry the nipper before using it on a client. This situation would most likely result in the use of a dirty implement on

the client. It is difficult if not impossible for an inspector to determine whether a tool such as a nail nipper has been properly disinfected by visually inspecting. Requiring the nail technician to have on hand several nail clippers, as well as disinfectant, makes it possible and more likely that the nail technician will comply with the infection control requirements.

The rule does not specify the actual number of tools or implements because the appropriate number would vary with the hours worked by a licensee, the number of clients to be served, and the service level of the salon.

It is reasonable to require that adequate amounts of disinfectant and single-use items are on hand at the salon because both are critical to effective infection control protocols, and because of the ongoing problem in some salons of failing to disinfect items, and of re-using single-use items which cannot be disinfected.

Item C: This proposed rule addresses potential contamination by improper handling of lotions, waxes, creams and other products. Items C(1) and C(2) explain the requirements preventing contamination of the products. Items C(3) requires containers to be wiped clean and disinfected with a disinfectant wipe at the end of each day. The requirements and prohibitions are reasonable and necessary to prevent bacteria, funguses, and viruses from being transferred to clients by using contaminated products, or by touching contaminated containers. Many cosmetic services, including waxing, skin care, manicures and pedicures cause may tiny breaks in the skin which can lead to increased risk of infection.

Item D: This proposed rule replaces *2105.0380. Item H* which is moved here for reasons of better organization, and requires the proper labeling of products transferred to other containers to protect clients from potential mistakes in using the wrong container.

Item E: This proposed rule addresses pencil cosmetics, that is, cosmetics that are in a pencil form, such as some eyeliners and eyebrow pencils. The rule requires the use of a disinfected sharpener to remove any product that might have come into contact with a client's skin, so that only uncontaminated product is used on the next client. This is not perfect disinfection, but provides reasonable steps to limit the transmission of infectious matter, and is reasonable given the lack of alternatives.

Item F: This proposed rule requires licensees to follow manufacturer's directions for product use, and specifically requires the licensee to offer to a patch test when directed by the manufacturer to perform a patch test. It is typical for manufacturers of products used to color hair, texturize hair, to exfoliate skin, and so on to include a requirement for a skin patch test to determine whether the client will have an allergic reaction to the product. A skin patch test means applying a small amount to the skin in an unobvious spot (such as under the hair at the nape of the neck) and waiting for 24 hours to see if there is any evidence of a reaction. In practice, many licensees skip this step because requiring the client to wait and return after 24 hours may cause the client to get the service elsewhere.

The Board has received complaints from clients who have suffered allergic reactions resembling chemical burns and other allergic reactions necessitating medical treatment when patch tests have not been performed. These reactions can result in severe blistering, can be very painful, are temporarily disfiguring, and in some cases can cause scarring. Clients may suddenly become allergic to products used previously without a reaction. Changes in medication may also result in allergic reactions to products used previously without any reaction. Generally, clients are unaware of the risk for such a reaction, and do not understand the possible outcomes.

The Board initially considered requiring the licensee to perform the patch test when directed by the use directions, but overwhelming opposition to this requirement as voiced during the town halls has caused the Board to reconsider. The proposed rule represents an alternative, which accomplishes the education of the client of the potential risks. The proposed rule requires licensees to inform the client of the potential risks and potential adverse reactions, and to offer a patch test, allowing the client to make an educated decision on whether to take the risk. The most common risk is an allergic reaction that resembles a burn, is painful, and would likely require the use of topical steroid ointments prescribed by a doctor.

Item G: This proposed rule prohibits the provision of a cosmetic service on an area with an open wound or sore. This is a reasonable requirement to avoid infection or contamination of the wound or sore.

Item H: This proposed rule replaces *2105.0380 Item DD* (proposed for repeal), which is outdated and in conflict with the Americans with Disabilities Act and the Minnesota Human Rights Act. The proposed rule uses language prohibiting animals in salons for reasons of infection control except as provided for in federal or state law.

Item I: This proposed rule creates a limitation on possible services by prohibiting those cosmetic services which involve live animals, for reasons of infection control. This would prohibit the use of fish that eat dead skin in pedicures, and the use of leeches in skin services, as well as any other potential use of live animals. It is not possible to disinfect live animals.

Item J: This proposed rule addresses a common unsafe practice in salons of having open food or beverage containers in the presence of disinfectants, which are regulated as pesticides. Some disinfectants are airborne, which increases the risk of contaminating food or beverages, and increases each licensee's risk of exposure to hazardous products. The rule provision also protects the health and safety of the customers present who may be offered beverages.

Item K: This proposed rule protects both licensees and clients by prohibiting smoking, eating, and drinking while providing any cosmetic service. Secondhand smoke or secondhand aerosol vapors from electronic cigarettes represent an established risk. Food and beverage contamination is possible from cosmetic products, including aerosol or spray products or disinfectants. The use of chemicals and certain appliances requires the full attention of the licensee to avoid potential injury to the client. The rule is reasonable and necessary to ensure the safety and health of the licensee and the public.

Item L: This proposed rule replaces provisions of a current rule proposed for repeal for reasons of better organization (*2105.0380 Item Z*), and updates the language. The reason for prohibiting the wearing of tools and implements in pockets, holsters or tool aprons is because the pockets, holsters, and tool aprons are not disinfected before and after each time a tool is placed in the holder. The tool can deposit skin or hair debris or other infectious matter in the holder, and can contaminate the holder, so that even a disinfected tool placed in the holder temporarily may be contaminated
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Item M: This proposed rule requires tools or implements which are dropped on the floor during service to be removed from service and not used again until properly cleaned and disinfected, and is reasonable and needed to protect the health and safety of the public.

Item N: A current rule proposed for repeal for reasons of better organization (*2105.0380, Item O*) is moved to this rule part for reasons of better organization. The requirements related to the handling of wigs are not changed, and ensure the protection of the health and safety of the public.

2105.0375 Subpart 8. Laundered items: This proposed rule incorporates provisions of a current rule proposed for repeal (*2105.0380 Items K and L*) and prescribes the methods of cleaning towels, robes, and linens, discusses alternative methods of disinfecting items which can't be laundered in a washing machine, and explains the required storage of soiled linens. In addition, the proposed rule refers licensees using steamed cloths to a relevant rule provision. Linens, under the proposed rule, must be used only once and then must be cleaned. The rule is reasonable and represents basic infection control provisions.

2105.0375 Subpart 9. Shears and Razors: This proposed rule replaces provisions of a current rule proposed for repeal (*2105.0380 Item B*). The proposed rule clarifies the handling of shears and razors, and provides these items may be wiped instead of washed with soapy water, and that a spray disinfectant or wipe may be used instead of immersing the items in disinfectant. These proposed provisions are necessary because these tools can be damaged by the normal procedure of soaking in disinfectant, and require special handling to avoid injury. Professional shears cost hundreds of dollars, and represent a substantial investment by a cosmetologist. The provisions meet the goal of ensuring that bacteria, funguses and viruses are not transmitted to other clients, while not being so burdensome as to create a barrier to compliance.

2105.0375 Subpart 10. Brushes: This proposed rule addresses a common tool in cosmetology, esthetics, and nail technology that causes confusion because brushes, in general, are not easily disinfected. Some brushes (hair and makeup brushes) have bristles made of natural animal hair which is porous. By definition, a porous item can't be successfully disinfected. Other brushes may have nylon or plastic bristles which can be disinfected, but the bristles may be attached to the brush handle by a glue or substance that dissolves when soaked. Some nylon or plastic bristles will dissolve or become gummy in the presence of a disinfectant. Most brushes are not designed to withstand the soaking in disinfectants for the required contact time, and the process of disinfecting will damage or shorten the life of most brushes. Regardless of the porous nature of some brushes, and some brush bristles, and regardless of the construction of the brush, the proposed rule requires licensees to follow the procedures for cleaning and disinfection to prevent potential transmission of bacteria, funguses and viruses. Salons may choose to use single use items, such as cosmetic sponges, or brushes made of durable materials instead of brushes that may be degraded by disinfectants.

Brushes used in solvent- based nail polishes are exempted from the requirement, because these nail polishes are hostile to microbes, and do not support microorganisms, and therefore are extremely unlikely to transfer any microbial growth to a nail.

The proposed rule partially replaces current rule *2105.0380, Item A* and *Item B*, which are proposed for repeal.

2105.0375 Subpart 11. Electrical and electronic tools: This proposed rule lists the types of electric and electronic tools that are used in various cosmetic services, and requires the cleaning and disinfection after use, including handles and cords, to prevent the transfer of bacteria, funguses, and viruses. Items A through E detail the steps in cleaning, disinfecting, and storage, and provide guidance on various parts of common tools.

2105.0375 Subpart 12: Pedicure stations: This proposed rule is based on the Environmental Protection Agency's specific recommendations for the cleaning and disinfection of pedicure foot spas to avoid the transmission of fungal and bacterial infections. Complaints related to fungal and bacterial infections stemming from pedicures are one of the most common consumer complaints received by the Board. The nature of a pedicure foot spa means that feet are immersed in a water bath to soften calluses and cuticles. When the prescribed cleaning and disinfection procedures are not followed, debris left in the filters and screens can render disinfectants less effective. When inappropriate cleaners are used or when disinfectants are not diluted according to directions, bacteria can remain, leaving the next client to soak their feet in a bacterial soup. Any nick in the nail cuticle, or any break in the skin provides entry for a fungus or bacteria.

The Board considered requiring a cleaning log to be maintained by the salon for each pedicure tub or throne, but determined that this would place an additional burden on salons and DLSMs, and would not necessarily ensure that proper cleaning and disinfection took place.

Item A: This proposed rule part provides step by step directions on proper disinfection consistent with the EPA's recommendations.

Item B: This proposed rule part discusses the use of tub liners, which are thin plastic bags which can be used to ensure that the client comes into contact only with clean water dispensed from the tap. The proposed rule provides that even when a liner is used, the tub itself must remain clean and disinfected.

Item C: This proposed rule part addresses a common defense by nail salons when an inspector finds a tub with debris in the filter or screen. It is not unusual for the salon to claim that the tub is not in use, or that it is dirty because it is not functioning. By requiring that tubs not in use, whether working or not, be maintained in a clean and disinfected condition, the health and safety of clients is protected.

2105.0375 Subpart 13. Single-use items: This proposed rule addresses a provision in Minnesota Statutes, section 155A.33 Subdivision 1 which prohibits reuse of single-use items. The proposed rule provides a comprehensive list of single-use items typically used in the industry, and replaces 2105.0380, Item D which is proposed for repeal.

Item A: This proposed rule clarifies the manner in which single-use items may be stored, which is consistent with the storage of disinfected items, that is, not exposed to contaminants. The current rule provision does not specifically address storage of single-use items, and inspections have found improper storage of single-use items which lead to contamination. This is a reasonable and needed requirement to protect the health and safety of the public, is consistent with current rule requirements regarding proper storage of tools and implements, and does not impose a significant burden on licensees. Appropriate inexpensive storage bins are readily available and generally cost only a few dollars.

Item B: Manufacturers have produced single-use nail files made with paper, sandpaper, and foam which have an absorbent foam type cushion, and have labeled them to suggest that the items can be "sanitized" or disinfected. Because such files are porous, the files cannot be safely disinfected. To eliminate the confusion created by the manufacturer's labeling, the proposed rule attempts to provide as much clarity as possible by declaring all nail files as single-use unless made of crystal, metal, or glass.

Item C: This proposed rule addresses an industry practice of using a single-use nail file to file down edges of other disposable files. The rule refers to this file as a "score file". This is necessary because disposable files can be so sharp that the client's skin can be cut. The rule provision provides a method of differentiating between a "score file" and other files which are potentially being re-used on a client in violation of the rules and statute, while providing some flexibility for salons. This is a needed, reasonable, and practical rule, making it possible for licensees and board inspectors to distinguish between a used file which must be disposed of after service and not used again, and a score file.

2105.0375 Subpart 14. Wax and Paraffin Services: This rule addresses the use of wax and paraffin in cosmetology services. Wax is used as a hair removal substance, applied directly to the skin. When the wax is removed from the skin, it tears the hair off with the wax. It can also create microscopic tears in the skin, providing a portal for entry of bacteria, funguses, and viruses. Paraffin wax treatments soften rough skin,

temporarily improve circulation, and are a soothing part of some pedicure and manicure services. Both wax and paraffin waxes are kept in warming pots so the proper viscosity can be maintained. The proposed rule requires the wax pot to be covered to guard against contamination, and that the exterior of the wax pot be cleaned daily as a basic cleaning precaution.

Item A: This proposed rule requires that wax that has been contaminated by debris or contact with skin or other non-disinfected items must be discarded. Waxes are not kept at a hot enough temperature to kill bacteria, funguses, or viruses, so dirty wax is a potential method of transmitting infections.

Item B: This proposed rule addresses a common practice where a waxing stick (a single-use wooden tongue depressor or applicator) is handled by the licensee, with one end dipped in the wax and applied to the skin, and then the other end, which has been contaminated by the licensee holding it, is dipped in the wax pot and used. Licensees may forget that the hand holding the stick, gloved or not, is also often in contact with the client's skin, and that any bacteria or other matter on the skin is then transferred to the waxing stick, contaminating the wax in the waxing pot. The rule prohibits the use of the end of the wax stick which has been held by the licensee, as a basic infection control precaution. Salons wishing to reduce the cost of a wooden applicator (average cost ranges from 1 – 3 cents) may break the sticks in half prior to use.

Item C: This proposed rule prohibits re-using an applicator (known as double dipping), which could potentially transmit bacteria or funguses, and is a basic infection control precaution.

Item D: This proposed rule requires that any surface contaminated by the used wax stick must be cleaned and disinfected, and is a basic infection control precaution

Item E: This proposed rule prohibits the use of a communal paraffin wax pot, requiring the paraffin wax to be portioned out in single use containers so that the remaining wax is not contaminated. Traditionally, paraffin wax is kept warm in a large container. Clients dip their hands or feet into the wax, so that the wax coats the hand or foot. While some licensees argue that any bacteria or fungus on the skin is covered by the wax and the remaining wax in the warmer is not contaminated, industry consensus is that waxes are not kept hot enough to kill microbial life, and contamination is the inevitable result of placing hands or feet into the wax container.

2105.0375 Subpart 15. Salon Fixtures: This proposed subpart establishes the infection control requirements applied to specific types of fixtures.

Item A: This proposed rule requires only the cleaning of surfaces where no services are performed, such as chairs in the reception area of a salon. The Board considered requiring the disinfection of such surfaces, but determined that the transmission of microbial life was no more likely from these surfaces than it would be from surfaces at a transit stop, airport lounge, restaurant booth, etc.

Item B: This proposed rule replaces *2105.0830, Item F,* moved here for reasons of better organization, and requires licensees to use a paper or cloth barrier on service fixtures, such as waxing beds or shampoo bowls to protect the client's skin from microbial material left from another client. In addition, the proposed rule requires the cleaning and disinfection of a service surface that has come in contact with a client's skin as a basic infection control precaution.

Item C: This proposed rule addresses chairs in the service area and requires that the chairs be disinfected at the end of each day as a basic infection control precaution.

Item D: This proposed rule addresses the need to clean and disinfect sinks and shampoo bowls. Handwashing is rendered useless if the person touches the faucet handle and re-contaminates their hands. Shampoo bowls are often used as handwashing sinks and present the same risks as handwashing sinks.

Item E: This proposed rule requires the daily disinfection of the work carts, trays, and other containers used to hold tools used during services, as a basic infection control precaution

Item F: This proposed rule replaces *2105.0380, Item V* which is proposed for repeal as part of the reorganization of the rules, and requires the basic step of removing hair, skin, and nail debris from floors immediately after each service. This maintains the cleanliness of the area, and is a basic safety and infection control precaution.

Item G: This proposed rule addresses towel warmers, which present a specific risk. Hot, wet towels kept at a warm temperature create perfect conditions for a bacterial soup. Because of this, the proposed rule explicitly sets out requirements for the preparation of steamed towels, the daily removal and laundering of unused steamed towels, and requirements to disinfect the towel warmer itself to ensure that steamed towels are not transmitting germs and bacteria.

2105.0377 Salon Prohibitions:

Item A: This proposed rule replaces *2105.0380, Item N* which is proposed for repeal and moved here for reasons of better organization. The rule addresses certain industry products that are considered unsafe. Formalin is a water-based solution of 37% formaldehyde, and traditionally was used as a fumigant type of disinfectant. It is regarded by OSHA as a carcinogen, and exposure to even low levels in the air can cause respiratory problems and dermatitis. Methyl methacrylate liquid monomers (MMA) are used in nail primers to help acrylic nails adhere to the natural nail, but are banned in many states because of the associated health risks including skin allergies and permanent loss of the natural nail plate. This rule does not impose any new restrictions.

Item B: This proposed rule replaces *2105.0380, Item E* which is proposed for repeal and moved here for reasons of better organization. The rule prohibits the use of credo blades, callus shavers, and other items, and is consistent with Minnesota Statutes, section 155A.355, which prohibits skin cutting equipment. Such equipment is commonly used to remove corns and calluses and is considered the practice of podiatry and is outside the scope of cosmetology.

Item C: This proposed rule prohibits the use of roll-on waxes, which have a roller device that applies wax. Because the roller is contaminated once it is used, it is not appropriate in a salon setting because of the potential transmission of microbial contaminants. A roll-on wax applicator can't be disinfected.

Item D: This proposed rule prohibits UV sterilizers and light boxes in a salon. According to OSHA, UV boxes do not disinfect tools. Light boxes are advertised as sterilizers but do not actually disinfect or sterilize solid items. Inspectors find UV sterilizers and light boxes in nail salons, where licensees often explain that the salon's tools and implements are "disinfected" using the devices. To eliminate confusion, and the possible perception of the public and some licensees that items are disinfected in these sterilizers, the devices are prohibited from salons.

Item E: This proposed rule prohibits the use of autoclave and autoclave packing of tools unless the salon demonstrates compliance with certain requirements regarding the testing and maintenance of autoclaves. Autoclaves sterilize tools by using high levels of heat and pressure, killing all forms of microbial life. Tools and implements are usually placed in a plastic bag called a sterilization pouch,

and then placed in the autoclave. Once the process is completed, the pouch appears to almost shrink-wrap the tools. The tools can then be stored in the pouch until opened for use.

The efficacy of the autoclave can be monitored by several means but the most accepted means is through the use of a spore test, which is a biological indicator that resistant microorganisms (usually Geobacillus or Bacillus species) have or have not been killed. To ensure that autoclave is functioning properly, routine spore tests are conducted by placing a spore-laden paper strip in the autoclave, processing it, and submitting the spore strip to a testing center. Based on testing of the sterilized spore strip, the testing center determines whether the autoclave is functioning properly by the presence or absence of any bacterial growth from the test strip. Failed spore tests can reflect malfunctions, but also may reflect improper cleaning before sterilizing, use of the wrong type of pouch, overloading, incorrect timing, etc.

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

The costs of complying with the monthly spore test requirement are under one hundred dollars a year in Minnesota. Autoclave tape in a sixty foot length is less than five dollars, and sterilization pouches run about five cents each. Costs for the tape and pouches would vary with the number of times tools were sterilized and the number of clients served daily. Some costs would be offset the use of less disinfectant since tools that are to be sterilized only need to be washed and cleaned before being sterilized in the autoclave. It should be noted the use of an autoclave is entirely voluntary and not required by the Board.

Item F: This proposed rule addresses the unfortunate use of hobby or dremel type drills or electric filers used as files on human nails. The torque and vibration in hobby drills is not suited for human nails, and can cause damage and injury. The proposed rule requires the use of drills manufactured specifically for human nails to protect the safety and health of clients.

Item G: This proposed rule identifies requirements regarding client supplied tools and implements. The proposed rule requires salons to first disinfect customer-supplied tools, or to use only brand new disposable supplies when provided by the customer. Nationally, infection control issues at nail salons have resulted in high profile advice to consumers to bring their own equipment to a salon so that the client can avoid the risks of improperly disinfected tools. Client supplied items usually have not been disinfected by the client, representing a risk to the licensee and possible transmission in the salon. It also presents an enforcement difficulty for the Board when a licensee defends the re-use of an item, or a clearly dirty item by alleging that the item was supplied by the client.

Item H: This proposed rule prohibits a practice of maintaining boxes of tools for the client. Typically, these tools are not disinfected, and again introduce potential transmission issues of funguses and other microbial hazards.

Item I: This proposed rule replaces *2105.0400, Subp.3* which is proposed for repeal, moved to this subpart for better organization, and reworded for better clarity. The rule clarifies that nail salons can't offer esthetician services without an esthetician salon license, and esthetician salons can't offer nail services without a nail salon license.

2105.0380 Operational Requirements for Salons: This rule part is proposed for repeal due to the extensive amendments, and is replaced primarily by proposed 2105.0375, titled "Infection Control".

Item A: This rule is proposed for repeal and is replaced by proposed rule 2105.0375, Subp.7, Item C.

Item B: This rule is proposed for repeal and is replaced in the proposed rules. It requires the cleaning and disinfection of tools and implements, and prescribes the removal of hair and debris prior to washing items. These requirements are contained in proposed rules requiring cleaning and disinfection (proposed 2105.0375 Subp.3 and Subp.4.) and the proposed rule requiring the use of disinfected tools and implements (2105.0375, Subp.7, Item A.).

Item C: This rule is proposed for repeal and is not specifically replaced in the proposed rules. It requires the weekly cleaning and disinfection of rollers, pins, clippies, hairnets and all other instruments not listed. Proposed rule requirements require cleaning and disinfection of all tools and implements (which would include the items listed in the rule part) before use on a client. See proposed 2105.0375 Subp.3; Subp.4; and 2105.0375, Subp.7, Item A.

Item D: This rule is proposed for repeal and is replaced in the proposed rules. The rule relates to the use of porous items, and is replaced by 2105.0375, Subpart 13 which addresses the use of single use items.

Item E: This rule prohibiting skin cutting equipment is proposed for repeal, and moved to 2105.0377, Item B. for reasons of better organization.

Item F: This rule related to requirements for clean linens and protective papers is proposed for repeal, and moved to 2105.0375 Subp.15, Item B. for better organization.

Item G: This rule related to requirements to properly dispense fluids, creams, and other products without contaminating the product is proposed for repeal, and moved to 2105.0375, Subp.7, Item C for better organization.

Item H: This rule requiring the labeling of all bottles and containers is proposed for repeal and moved to new rule parts. New part 2105.0375, Subp.3 requires cleaning agents transferred to new containers to be labeled. New part 2105.0375, Subp.4, Item D requires the labeling of disinfectant solutions. New part 2105.0375, Subp.7, Item D requires the labeling of products not in the original container.

Item I: This rule requiring the washing and proper storage of permanent wave rods is proposed for repeal. The rule is not specifically replaced in the proposed rules, but permanent rods would be subject to the proposed rule requirement that only cleaned disinfected tools and implements be used on clients (see proposed 2105.0375 Subp.3 and Subp.4, and 2105.0375, Subp.7, Item A.).

Item J: This rule is proposed for repeal. The portion of the rule requiring the proper storage of electrical tools is replaced by proposed rule 2105.0375, Subp.11, Item E, as part of the reorganization of the infection control rules. The portion of the rule related to the use of extension cords is addressed in proposed rule 2105.0360, Subp.5 and has been updated to reflect current fire code requirements.

Item K: This rule related to requirements for storage of linens is moved to new rule part 2105.0375, Subp.8, for reasons of better organization.

Item L: This rule related to requirements for the use and disinfection of linens is moved to 2105.0375, Subp.8, for reasons of better organization. Because the state fire marshal states there is no fire code requirement related to storing soiled linens, the provision in Item L requiring compliance with fire code is simply repealed and not repeated in the new rule part.

Item M: This rule is proposed for repeal. The portion of the rule related to requirements for storing disinfected items is contained in new rule part 2105.037, Subp.6, Item A. The portion of the rule related to requirements for storing laundered items is addressed in new rule part 2105.0375, Subp.8, for reasons of better organization. The portion of the rule related to disinfectants is addressed in new rule part 2105.0375, Subp.4. The reasoning for repealing the provision requiring the disinfectant to meet standards for a tuberulocidal agent is discussed in the rule-by-rule analysis of the definition of "disinfectant".

Item N: This rule related to the prohibited substances is proposed for repeal, and moved new rule part 2105.0377, Item A for reasons of better organization.

Item O: This rule relating to requirements for wig blocks and wigs is proposed for repeal, and moved to 2105.0375, Subp.7, Item N.

Item P: This rule requiring each licensee to be assigned to a specific work station is proposed for repeal. The Board considered retaining this rule, because it allows inspectors to identify the licensee responsible for the cleanliness of the work station, and to associate any infection control issues with the appropriate licensee. However, the rule limits the flexibility of the salon and licensees, who may share work stations, or move between different work stations. Work stations are also designed for specific services, and a cosmetologist may need to access a hair station, a nail station, a pedicure station, an esthetic station, a waxing table, etc. The board determined it is possible to achieve the desired results by a less burdensome and more flexible requirement, which is to post the license or the name of the licensee at each work station being used by the licensee. The provisions of this requirement are contained in proposed rule 2105.0190, Subp.4, Item A.

Item Q: This rule requiring handwashing is proposed for repeal, and moved to new rule part 2105.0375, Subp.2, for reasons of better organization.

Item R: This rule which establishes the licensee is responsible for the order, cleanliness, and sanitation of the licensee's work station and all equipment and materials used is proposed for repeal. Because proposed rule 2105.0190, Subp.1 requires each licensee to comply with all applicable provisions of the rules; the Board determined it was not necessary to repeat the rule.

Item S: This rule which requires licensees to use only disinfected items is proposed for repeal. Because proposed rule 2105.0375, Subp.7, Item A requires tools and implements used on clients to be cleaned, disinfected, and properly stored, the Board determined it was not necessary to repeat the rule.

Item T: This rule which requires licensees to remove all hair from the floor after each haircut is proposed for repeal, and replaced by provisions proposed in new rule, part 2015.0375, Subp.15, Item F which simply requires that hair and debris are immediately removed from the floor immediately after each service.

Item U: This rule, which requires licensees to promptly wipe up any spills on the floor, is proposed for repeal. The Board determined that the rule was unnecessary, because the Board is unaware of any instance in which a licensee failed to wipe up a spill. It is a reasonable precaution to wipe up spills so that a slippery hazard is avoided, but the rules cannot address every instance which might create a safety hazard. For example, the rules do not require that slushy snow tracked into the salon be mopped up, or that the licensee double check the temperature of the water before beginning a shampoo. For these reasons, the requirement is not repeated in the new rule sections. It should be noted that the proposed rules require that floors be maintained in a clean condition (2105.0360,

Subp.4), and a salon with floors with spilled shampoo, hair coloring, nail polish, lotions, or other products would not be in compliance with the requirement.

Item V: This rule, which requires hair be removed from the shampoo bowl immediately after each use, is proposed for repeal. The requirement is moved to a new rule part (2105.0375, Subp.15, Item D.) for reasons of better organization.

Item W: This rule, which requires licensees to be clean to wear clean clothing and shoes, is proposed for repeal. The Board determined that the rule was unnecessary, because the Board is not aware of any instance in which a license was wearing dirty clothing and dirty shoes. While wearing dirty clothing may represent a poor business practice, a licensee who follows the infection control procedures will not represent a threat to the health and safety of a customer if the clothing or shoes are dirty.

Item X: This rule requires licensees to be free of communicable diseases and parasites when performing services on clients. The rule violates the American with Disabilities Act and the Minnesota Human Rights Acts, and is proposed for repeal.

Item Y: This rule prohibits licensees from smoking, eating, or drinking while performing any service. The rule is proposed for repeal, and related provisions are found in new rule part 2105.0375, Subp.7, Item K. for reasons of better organization.

Item Z: This rule prohibits licensees from carrying tools in their pockets, and is proposed for repeal. The provisions are moved to a new rule part, 2105.0375, Subp.7, Item L for reasons of better organization.

Item AA: This rule, which prohibits service to anyone who has a communicable disease, condition, or parasites, is proposed for repeal as it is a violation of the Americans with Disabilities Act and the Minnesota Human Rights Act.

Item BB: This rule addresses various license posting and identification requirements for individuals, and is proposed for repeal as part of the reorganization of the rules. License posting requirements for individuals are contained in new rule part 2105.0190, Subp.4. Requirements that practitioners carry picture identification are moved to new rule part 2105.0370, Item E. The responsibility of the salon for ensuring the practitioner licenses are posted is moved to new rule part 2105.0370, Item G.

Item CC: This rule addresses license posting requirements for salons, and is proposed for repeal as part of the reorganization of the rules. License posting requirements for salons are contained in new rule part 2105.0370, Item D.

Item DD: This rule prohibits animals in salons, and is proposed for repeal as part of the reorganization of the rules. Prohibitions against animals in a salon are contained in a new rule part, 2105.0375, Subp.7, Item H.

Item EE: This rule sets out requirements for child care services that might be provided by a salon. The rule is proposed for repeal, as the Board's authority does not extend to determining what requirements might be appropriate or necessary for ensuring the safety of children. Offering complimentary childcare, or childcare for a fee, is not a practice of cosmetology as defined in Minnesota Statutes, section 155A.23, Subd. 3.

2105.0390 Salon Supervision: This subpart is reorganized and rephrased for better clarity.

Item A: This proposed rule amendment updates the terminology for salon manager to designated licensed salon manager (DLSM) and addresses a common misunderstanding pertaining to the presence or absence of a DLSM as previously discussed in the rule-by-rule analysis of Item E of 2105.0305.

> **Item A(1):**This proposed rule is a rewording of the current rule provision 2105.0390, Item C under this subpart which includes licensees who are not employed by the salon but are leasing space at the salon (commonly referred to as "booth renters" or "independent contractors" in the industry), and are operating under the salon license. This specific inclusion is for the purpose of addressing existing confusion among licensees, who sometimes believe that booth renters are operating independently of the salon because there is no employment relationship. Although there may be no employment relationship, the booth renter is operating under the salon license.
>
> **Item A(2):**This proposed rule rewords a current rule (*2105.0390, Item D*) which is relocated in this item for better organization. It is reworded to require the DLSM and salon to ensure not only that only licensed individuals provide services in the salon, but also that the licensee is appropriately licensed for the particular service to be offered. A DLSM in a salon with both a nail salon license and an esthetician salon license must not only establish that a nail technician is currently licensed, but also must ensure that the nail technician does not perform any esthetic services in the salon.

Item B: This proposed rule amendment repeals the provision regarding whether a DLSM can be responsible for more than one salon at a time because it is moved to part 2105.0305, Item C for reasons of better organization.

The proposed rule amendment also repeals the current provision that a DLSM may appoint a "responsible person" when the DLSM is not on duty. The proposed rules remove this provision for two reasons. First, it is not reasonable or necessary to require the DLSM to be present at all times (see discussion regarding part 2105.0305, Item E). It is not reasonable or necessary to appoint a "responsible person" since the salon and the DLSM are held accountable under current and proposed rules for the compliance of the salon, and the "responsible person" is not held accountable. In the event of any violations, it would be extremely difficult to ascertain who the "responsible person" was, and whether there had been a clear understanding of the DLSM authority and responsibility for the unknown time period of the appointment. The absence of a DLSM may occur multiple times during each business day as break times, lunch times, outside appointments, vacations, illnesses, etc. arise, leading to confusion about who is the responsible party. For these reasons, the Board determined that the appointment of a "responsible person" accomplishes nothing, and is not a workable provision.

The proposed rule amendment includes a new provision acknowledging that salons may have various types of managers, such a business manager, to address a common confusion among licensees that any manager of a salon must hold a salon manager's license.

Finally, this proposed rule addresses an increasingly common circumstance where a salon holds two types of salon licenses, and details that the DLSM must have the same type of license as the salon license. This is needed and reasonable to provide transparency about what licensure is necessary to serve as a DLSM when salons hold two salon licenses.

Item C: This rule is proposed for repeal as the provisions are moved to Item A.

Item D: This rule is proposed for repeal as the provisions are moved to Item A.

Item C: Current Item E is re-lettered as Item C. This proposed rule amendment contains minor editing to update the wording, and does not change any requirements. The rule requires salons to comply with state law regarding time records of employees.

Item F: This rule is proposed for repeal. The provision that the salon must ensure that all equipment is in working condition does not appear to be related to the health and safety of the public, and represents a business issue best not addressed by the Board.

The provision that adequate supplies are in stock at all times is also a business issue, except as it relates to disinfectants, tools and implements which is addressed in 2105.0375, Subp. 7, Item B. It is unnecessary to repeat the requirements here.

The provision the salon and DLSM must ensure that all infection control and safety requirements are met is addressed in 2105.0375, Subp.1, and it is unnecessary to repeat the requirements here.

Item D: This proposed new rule requires that salons which lease salon space to a licensee must provide a time clock for the licensee's use, and must maintain the time records for four years. This requirement addresses an issue arising from the changes in rules proposed in this draft. Under current rule, operators must be employees of a salon in order to practice, and are prohibited from leasing space in a salon. An operator must gain 2700 hours of work experience to apply for a manager license or for an instructor license. Operator time or payroll records are required under state law (Minnesota Statutes, section 177.30) and Item C of this rule part. Such records can be used to establish whether the minimum work experience requirements for advanced licenses have been met.

Under the proposed rules, operators have the freedom to lease space in a salon, or lease a suite in a suite-style salon, but such operators will not have time records maintained by an employer because they are not employed by anyone.

Inevitably, such operators may apply for advanced licenses (salon manager or instructor) which require minimum hours of work experience. Applications for licenses, including advanced licenses, may be audited as part of a routine audit or as the result of a complaint. Because there are no employer time records that could be used to verify the work experience, the Board faces the question of how to ascertain whether the work experience requirement was met by the applicant.

The Board considered several ways of addressing this situation. The possibility of eliminating the work experience requirements for the manager license and the instructor license was considered but rejected on the basis that the work experience hours were a necessary qualification. The Board considered simply accepting a statement from an operator applying for an advanced license that the operator had obtained the required number of hours. This was rejected both because of the importance of the work experience as a prerequisite for the advanced licenses and because of the number of complaints currently received from other licensees under current rule alleging that another licensee had falsified applications reporting sufficient work experience.

The Board considered requiring operators who were leasing space to maintain appointment books, but that could place a higher burden on those individuals because only the hours with appointments would go towards the work experience requirement, whereas at a salon, an operator would get credit for the hours worked, which are not necessarily the same as the hours worked on clients. In addition, it could be difficult to ascertain the accuracy of an appointment book and it could easily be falsified.

The Board considered requiring operators to submit tax returns which could establish, based on the income reported and the average cost of services provided by an operator, an approximate number of hours worked. However, tax returns are for a calendar year which is unlikely to coincide with the completion of 2,700 hours of work experience. This could cause delays in obtaining licensure for operators. The Board also anticipates that it will be extremely difficult to determine the number of hours worked based on total income reported from cosmetology services. Finally, it is possible that operators leasing space would be operating under a business structure and would be reporting income through a business tax return which could further complicate and potentially distort any calculation attempting to identify how many hours of work were represented by the reported income.

After exploring these various options, the Board determined that the least onerous way to verify worked hours would be to simply require licensed salons leasing space to provide a time clock for the use of licensees leasing space. A time clock from Amazon.com costs from one hundred dollars to two hundred dollars. Time clock software is available on the Web at no cost, assuming the salon has a computer and internet connections. Salon spaces often rent for several hundred dollars or more a month, and a one-time expenditure would suffice for all the individuals renting space.

The time period required to maintain the records is set at four years, to allow a part-time licensee sufficient time to meet the work experience requirements and to address an audit of the application. Audits are generally conducted within twelve months of a license issuance.

2105.0393 Salons located in private residences: This new rule subpart replaces *2105.0400, Subp.5* which is proposed for repeal and moved here for reasons of better organization.

Item A: This proposed new rule simply states that the salon in a private residence (home salon) is subject to all of the requirements of the chapter. This is not a new requirement as the current rules do not exempt home salons from any rules, but is an affirmation to eliminate any potential confusion. It also replaces *2105.0400 Subpart 4, Item E*, which is proposed for repeal, and stated that toilet facilities must meet the existing standards in the rule part relating to toilets. Because the rule requires the residential salon to meet all of the requirements for salons, it is not necessary to single out requirements for toilets.

Item B: This proposed rule repeats *2105.0400 Subpart 5, Item A,* which is proposed for repeal and moved here for reasons of better organization. This requirement that salon space not be used for any residential purpose continues to be both reasonable and necessary, as a mixture of residential use and salon use could compromise infection control standards and raise compliance issues.

Item C: This proposed rule repeats *2105.0400 Subpart 5, Item B.*, which is proposed for repeal and moved here for reasons of better organization. This rule indicates that there must be a complete separation between the residential area and the salon area, and is reasonable and necessary for the same reasons that the salon may not be used for residential purposes.

Item D: This proposed rule repeats *2105.0400 Subpart 5, Item C*, which is proposed for repeal and moved here for reasons of better organization. This rule indicates that licensed services must be provided in the salon spaces, again for the same reasons as in Items B and C.

Item E: This proposed rule repeats *2105.0400 Subpart 5, Item D*, which is proposed for repeal and moved here for reasons of better organization. This rule prohibits the use of laundry tubs as shampoo bowls, for reasons of infection control and safety.

Item F: This proposed rule is a new rule provision addressing difficulties experienced by the Board in inspection of home salons. The Board generally conducts inspections of salons by geographic

location, and generally without announcement. Many home salons operate on an appointment only basis. It is common for an inspector to arrive at a home salon and to encounter an objection from the salon owner that the inspector can't inspect the salon because the salon "isn't open for business", meaning that there is no current appointment by a client. This proposed rule establishes an expectation that salon will be inspected if the salon owner or DLSM is present when the inspector appears.

2105.0397 Suite-style salons: This proposed new rule addresses a new format for salons. In this format, a business profits not from the provision of cosmetology services, but solely from leasing individual salon spaces to individuals. Typically, these suite-style salons resemble mini-malls, typically with 15-40 individual salon spaces, usually meant for one person. The business provides a space, usually equipped with a sink, a shampoo bowl, minimal counter and storage space, and a window front to a common hallway lined with other suites. Often there is no reception desk in the building, and only a building directory. Each salon operates as an independent business. The proposed rules in this subpart address the peculiarities and questions regarding this salon format.

2105.0397 Subpart 1. Suite-style salons: This proposed new rule requires that either each suite carries its own salon license, or the leasing business carries one salon license under which all suites operate. It prohibits a situation where the entire building has a salon license, but some suites operate under an individual salon license, which would be a violation of proposed rule 2105.0310, Subp.1, and would also likely lead to confusion among the public and the Board in determining responsibility for various compliance issues. It is reasonable to establish clear parameters so that all individuals leasing salon space in the building, and the leasing business itself have a clear understanding of which party is responsible for compliance with the rules chapter and Minnesota Statute, chapter 155A. The proposed rule provides that all salons must meet the salon licensing requirements, and that when the leasing business holds the salon license under which all suites operate, Subparts 2-7 apply.

2105.0397 Subpart 2. Compliance in suite-style salons: This proposed new rule restates that the salon and the DLSM are responsible for compliance with the requirements of the chapter.

2105.0397 Subpart 3. Salon license posting requirements in a suite-style salon: This proposed new rule considers the salon license posting requirement of part 2105.0370, and adjusts the rule requirements to suite-style salons. Typically, there is no reception desk or main entrance in a suite-style salon where a salon license could be posted. It does not make sense to post the salon license at one location where clients may never see it because there are generally multiple entrances to the building. The proposed rule requires that the salon license be posted at each individual suite in the client's view. The proposed rule also requires original licenses, not copies, to be posted. When an official license is photocopied, the word "void" appears on the photocopy. A business leasing multiple salon suites under the business's own salon license would need to purchase duplicates of the salon license so that an official, original salon license would be posted in each leased suite. Duplicate licenses cost $20 each and are valid for a three year license cycle, which is not a prohibitive cost to the leasing business.

2105.0397 Subpart 4. Practitioner license posting requirements in a suite-style salon: This proposed new rule modifies the posting requirements for practitioners in proposed rule 2105.0190, Subp.4, which allows the practitioner license to be posted at the reception area or at the workstation. To ensure that the practitioner's license is visible to clients, this proposed rule modifies the posting requirement so that the practitioner's license is always posted in the suite where the practitioner works.

2105.0397 Subpart 5. Inspection result posting requirements in suite-style salon: This proposed new rule modifies the inspection report and result posting requirements of proposed part 2105.0115, Subp.3 and requires both the inspection result and detailed inspection report to be posted at each suite so that clients of each suite have access to the inspection information.

2105.0397 Subpart 6. Safety data sheets in suite-style salon: This proposed rule modifies the safety data sheet (SDS) requirements of proposed part 2105.0370, item B, by requiring the salon licensee to ensure that SDS for each product used by the licensee in that suite are located in the suite itself, in recognition that each suite salon operates with different products, and to ensure the relevant information is easily located within each suite.

2105.0397 Subpart 7. Suite signage and advertising: This proposed new rule modifies the advertising requirements of proposed part 2105.0110, which requires that any advertisement, including signage, use the name of the salon as listed on the salon license. Practitioners leasing salon suites are generally marketing themselves either as an individual, or under a business name. The provisions of this part specifically allow the inclusion of the practitioner's name or business name, as long as it is followed by the words "at" salon name. For example, if Jane Doe markets herself as Jane's Hair Salon, and has leased a suite at Suite Style Salon, her advertising and window or door signage would say " Jane's Hair Salon at Suite Style Salon". This ensures that the license holder can be identified by the public when needed for complaint, compliance, or liability issues, but at the same time provides some flexibility in recognition of the marketing needs of individuals leasing salon space.

2105.0400 Specific types of Salon Licenses: This rule part is proposed for repeal for reasons of better organization, and generally replaced by proposed rule 2105.0397.

2105.0400 Subpart 1. Additional requirements: This rule part is proposed for repeal because it refers to rule parts changed by the proposed rules amendments and is no longer relevant.

2105.0400 Subpart 2. Beauty salon and barber shop: This rule is proposed for repeal because the requirement that a salon operating in a location that also carries a barber shop license post a sign identifying it as a "beauty salon" is outdated and unnecessary. Many cosmetology salons would object to being forced to identify as a "beauty shop" as the term may not reflect the salon's brand. Salons licensed by the Board are required to post salon licenses and it is unlikely that any client would be confused about the licensure. Should confusion exist, the Board would assist a client or any member of the public in identifying the proper licensee were a complaint to be filed.

2105.0400 Subpart 3. Esthetician and nail services: The rule is proposed for repeal because the subject matter has been moved to 2105.0377, Item I for reasons of better organization.

2105.0400 Subpart 4. Licensed health facilities: This rule is proposed for repeal because the subject matter has been moved to 2105.0410, Subp.1, for reasons of better organization.

2105.0400 Subpart 5. Salons in private residences: This rule is proposed for repeal because the subject matter has been moved to 2105.0393 for reasons of better organization.

2105.0400 Subpart 6. Independent contractor:

> ***Item A:*** This rule, prohibiting salons from renting space to anyone not holding a manager license, is proposed for repeal. In reviewing the rule, the Board could not justify the need and reasonableness of the requirement that a practitioner must hold a manager license as a qualification to lease space in a salon. The rule refers to "independent contractors" as a licensee who is leasing work space from a licensed salon for use as an independent business. The industry also uses the term "booth renter" to refer to those same individuals. There is no difference in a cosmetology service provided by a person employed by a salon versus a cosmetology service provided by a person leasing space in a salon. Operators meet minimum competency standards through the training and testing requirements to obtain licensure, and logically could provide those services either as an employee or as a booth

renter. While a manager has at least 2,700 hours of work experience (approximately 16 months of full time work) and has passed a test on laws and rules related to the responsibilities of a salon manager, these additional qualifications are unrelated to any difference in providing services as an employee or as an independent contractor. The salon and DLSM are responsible equally for the compliance of both employees and independent contractors in licensing, infection control standards, and other requirements of the statute and rules.

The Board does not find any persuasive argument that an independent contractor or booth renter must possess a manager license based on potential risks to the health and safety of the public.

Whether a salon chooses to rent space to licensees, to pay commission to licensees, or to employ licensees on an hourly basis or a salary basis is a business decision that must be made by the salon, and is not within the Board's purview. Salon owners often choose to rent space to licensees instead of employing licensees to avoid the responsibilities, costs, and personnel issues associated with employees. The current rule requirement unreasonably restricts the ability of a salon to rent salon space by limiting renters to only those with salon manager licenses. Removing the requirement does not prevent a salon from choosing to rent only to persons with a salon manager license.

The rule requirement also unnecessarily restricts the ability of an operator to choose where and how to practice, limiting new graduates to salons willing to employee newly licensed operators. In outstate Minnesota, there are locations where the only salons in the area are rental salons that do not employ licensees and only lease salon space to licensees. In those areas, new licensees are often forced to move to other towns to find employment since the licensee is arbitrarily prohibited by this rule from leasing space in a salon.

Independent contractor is a term of specific meaning to the IRS, to the Minnesota Department of Revenue, and to the Minnesota Department of Labor, and when used in the current rule to refer to anyone who is leasing salon space, leads to some confusion among salon owners regarding labor law requirements.

During the Request for Comments stage of rulemaking, licensees raised concerns related to removing the rule prohibiting salons from leasing space to operators. The main issues raised by commenters and the reasoning of the Board are discussed below:

- New federal changes with Gainful Employment Regulations means that cosmetology schools offering federal financial aid to students must meet and report minimum debt to income rates for graduates. A cosmetology school reported concern that the rule change would "…pose a threat to beauty schools in general" because too many students would choose to rent space in a salon instead of being an employee, would report little to no income, and there would be no verification of their income or employment. This could result in lower income being reported for the school's graduates, threatening the school's participation in the federal student loan programs. Although the Board understands the concern expressed by the school, the Board cannot impose a requirement designed to prevent under reporting of income, or designed to increase reported income for school graduates, because such requirements are outside the Board's authority, and are unrelated to the health and safety of the public. Curriculum requirements for cosmetology, esthetician, and nail students include information on business practices, and schools could certainly address these issues as well as the benefits of employment in a salon within the curriculum.

- Several persons commented that independent contractors don't declare income to avoid paying taxes. Whether or not licensees properly declare income is likely to be unrelated to whether the person holds an operator level or manager level license, is an issue for federal and state revenue authorities, and is outside the Board's purview.

Many persons expressed concerns that a new licensee practicing as an independent contractor or booth renter would not be coached by a manager. This concern appears to be based on a belief that DLSMs take new licensees under their wing, training and supporting the new licensee as they become more proficient at licensed practice, and that a DLSM would not do this for an independent contractor or booth renter. While this may have been the practice in the past, and perhaps still continues at some salons, such mentoring is not required in the statute or rules. DLSMs are only required to ensure that each licensee is in compliance with the statute and rules. As is true in many career choices, a new licensee or graduate may choose to work as an employee to gain experience and knowledge before opening their own business. This is a decision that should be made by the licensee, and it is outside the Board's authority to address this issue by limiting the choice for the licensee in the absence of any compelling reason related to the health and safety of the public.

- Concern was expressed over whether salons would take advantage of new licensees with unfair financial arrangements. This is a possibility, but that possibility exists regardless of whether the new licensee is leasing space or employed by a salon, and is a possibility with managers leasing space as well. The current rule doesn't protect the licensees from unfair business or labor practices of the salon, nor was that likely the intent of the rule. Protection of new or naïve licensees is not rationally related to the Board's authority.

Because the Board is not persuaded that there is any reason related to the protection of the health and safety to the public to continue to prohibit operators from leasing space in a salon, the rule is proposed for repeal.

Item B: This rule is proposed for repeal as it is unnecessary to have a minimum work space requirement for persons renting space at salons as the proposed rules repeal the existing work space requirement for salons. Each individual practitioner may decide whether any particular leased space is adequate for the services the practitioner plans to offer.

Item C: This rule is proposed for repeal and the requirement for liability insurance is moved to proposed rule 2105.0322, Subpart 4, for reasons of better organization.

Item D: This rule is proposed for repeal because the provisions are duplicated elsewhere in the rules. It requires that the lessee comply with all requirements of the chapter as if the leased space were a salon. Under proposed rule (2105.0190, Subpart 1), each licensee is responsible for complying with the chapter. The salon leasing the space must also comply with all requirements of the chapter (2105.0322, Subp.3 and 2105.0390, Item A).

Item E: This rule is proposed for repeal because the provisions are duplicated elsewhere. Rules requiring the salon and the DLSM to ensure compliance of the lessee are addressed in proposed rule 2105.0322, Subpart 3 and in 2105.0390, Item A.

2105.0410 Licensed services not offered in a licensed salon:

2105.0410 Subpart 1 . Nursing homes licensed under Minnesota Statutes, section 144A: This proposed rule replaces 2105.0400, Subp.4 which is proposed for repeal and moved here for reasons of better organization. The wording is changed to address nursing homes because the current rule language using the term "licensed health care facilities" is too vague and could potentially be applied to a number of types of facilities not intended to be addressed by the rule. The rule is clarified to address confusion about whether the rule applies to senior apartments, assisted living residences, memory care facilities and other varieties of senior campuses which may include facilities that are not nursing homes. Nursing homes often include a salon facility for resident use, and this rule part discusses when it is necessary for the salon to hold a

cosmetology salon license, and when a salon license is not necessary. These proposed rules are affected by the amended definition of "nursing home" in 2105.0010, Subp.11c.

Item A: This proposed rule asserts the conditions under which a nursing home salon is required to be licensed, and is consistent with current rule requirements but is re-worded in an effort to provide clarity. Salons in nursing homes that offer services to individuals who are not residents of the nursing home are not exempted from licensure requirements, and without a homebound service permit, a licensee cannot provide any service for nursing home residents in an unlicensed nursing home salon.

Item B: This proposed rule establishes the conditions under which a nursing home salon does not require licensure, and again is consistent with current rule requirements. The rule is re-worded in an effort to provide clarity. The provision specifically allowing nursing home staff to provide limited cosmetology services without a salon license is continued, as is reasonable and needed for the personal care of nursing home residents. The rule acknowledges that licensees may use homebound service permits to provide services for residents.

2105.0410 Subpart 2. Special Events Permits: These proposed rules related to special event permits are consistent with Minnesota Statutes, section 155A.275 which provides for a special event permit used at events and outside of a licensed salon.

Item A: This proposed rule ensures that special events permit holder carries professional liability insurance consistent with the coverage required at salons. It is reasonable and necessary to ensure that the protection for the public that exists at a salon would also exist when a special event permit is used outside of a salon.

Item B: This proposed rule is consistent with the limitations in Minnesota Statutes, section 155A.275 Subdivision 1, which limit the services that can be provided using a special event permit, and is consistent with Minnesota Statutes, section 155A.275 Subdivision 2 (c) which reinforces that the services provided by a permit holder must be within the scope of the license held by the permit holder (for example, a nail technician with a special events permit can't perform any hair services or any esthetic services).

Item C: This rule part explains the restrictions on the permits.

Item C(1): This proposed rule explains how long a permit is valid. The fees for a special event permit in Minnesota Statutes, section 155A.27, Subdivision 1a(d) are listed as "per year". The proposed rule states the permit is valid through December 31 of the year in which it is issued, and also states that it is only valid with a current manager license. This is because at the time of application for a special event permit, a person may hold a current manager license which may expire within that year. It is reasonable to clarify in rule that the special event permit is not valid without a current practitioner license, and it is necessary and reasonable to provide a consistent way to apply the "year" to the permit.

Item C(2): This proposed rule explains that one permit covers all the events a permit holder registers for in the calendar year, to eliminate any confusion over whether a permit is required for each event.

Item C(3): This proposed rule requires the permit holder to register each event at least 48 hours prior to the event, using the Board online system so that potential inspections may take place.

Item C(4): This proposed rule explains that the permit holder should print the permit and bring it to all special events. This allows clients receiving services to establish that the permit holder is properly licensed.

Item C(5): This proposed rule requires the permit holder to comply with the infection control requirements of the chapter, and to carry a first aid kit. These are necessary and reasonable requirements to protect the health and safety of the clients.

Item C(6): This proposed rule requires the permit holder to bring enough combs, brushes, clips, and other tools and implements to provide services to all the clients at a special event, ensuring that only disinfected or new tools and implements are used on clients. The rule recognizes that a permit holder may not have access to a facility at the special event where tools and implements could be disinfected, and may not have time to perform the cleaning and disinfection of tools and implement. This is a reasonable and necessary requirement to protect the health and safety of the clients.

2105.0410 Subpart 3. Homebound service permit: This subpart replaces *2105.0450* which is proposed for repeal and moved here for reasons of better organization. The Certificate of Identification was renamed Homebound Service Permit in the 2105 legislative changes, and the wording in this rule part is updated to reflect that change and replaced with a simpler explanation of a homebound service permit.

Item A: This proposed rule part explains the requirements to obtain a homebound service permit which have not been changed from current rule.

Item A(1): This proposed rule restates the current requirement that the applicant hold a current cosmetologist, esthetician, nail technician, or salon manager license which is consistent with Minnesota Statutes, section 155A.275, Subd.2.

Item A(2): This proposed rule is a new requirement that the permit holder show evidence of professional liability insurance. By requiring each homebound service permit holder to show evidence of liability insurance, an apparent reason for requiring the salon employment is removed. The current rule provision requires salon employment, and the repeal of the requirement for salon employment is discussed under *2105.0450, Subp.1, Item C.*

If a homebound service permit holder is employed by a salon, and that salon's liability coverage specifically includes salon employees providing services outside of the salon under a homebound service permit, the permit holder applicant could provide such documentation to satisfy the proposed provisions of Item A(2). It is reasonable to ensure that the services provided under a homebound service have the same protection of liability insurance coverage required by statute for services provided in a licensed salon.

Item A(3): This proposed rule repeats *2105.0450 Subpart 1, Item D* which is proposed for repeal for reasons of better organization. The proposed rule requires the applicant to attest that the services will only be provided to homebound individuals. The current rule requirement that the applicant attest that the applicant represents a salon is removed as salon employment is no longer required under proposed rule. A new requirement is contained in this proposed rule that the applicant will carry the homebound service permit when using the permit to provide services.

Item A(4): This proposed rule simply refers to the requirement of paying the permit fees required by Minnesota Statutes, section 155A.25.

Item B: This proposed rule clarifies that the homebound service permit is issued for a three year cycle, consistent with the permit fees in Minnesota Statutes, section 155A.25, Subd. 1a(d)(1).

Item C: This proposed rule clarifies that the permit is not valid unless the permit holder's underlying license is current. This is because without a current license, a practitioner cannot practice cosmetology even with a permit.

Item D: This proposed rule requires the permit holder to carry professional liability insurance consistent with the coverage required at salons. It is reasonable and necessary to ensure that the protection for the public that exists at a salon would also exist when a homebound service permit is used outside of a salon.

Item E: This proposed rule replaces *2105.0450 Subp.3* which is moved here for reasons of better organization, and requires the permit holder to comply with the infection control requirements of the chapter. The proposed rule also requires the permit holder to carry a first aid kit unless the cosmetology services are provided at a nursing home, because nursing staff at the nursing home are able to address any first aid services necessary. Requiring permit holders to carry a first aid kit and to comply with all infection control requirements of the chapter are necessary and reasonable requirements to protect the health and safety of the clients.

Item F: This proposed rule clarifies that any work hours gained under the service permit cannot be used to satisfy the minimum work experience hour requirements for other licenses. The only two licenses requiring work experience are salon manager and school instructor licenses, which require licensed work experience in a licensed salon. The work experience requirement is not a new requirement. It is reasonable to make this transparent by highlighting it under the rules for service permits, so that licensees are not surprised by the rule. It is reasonable to continue the current rule because homebound service permit holders do not operate under the supervision of a DLSM, and because there is no way to verify hours worked in various residences and nursing homes.

2105.0450 Certificate of Identification: This rule is proposed for repeal and replaced by 2105.0410 Subp.3. The repeal of certain provisions of 2105.0450 is discussed in the rule by rule analysis of 2105.0410 Subp3.

2105.0450, Subpart 1. Issuance:

Item A: This rule, proposed for repeal, is moved to the new rule section on homebound service permits (2105.0410, Subpart 3, Item A(2)).

Item B: This rule, proposed for repeal, requires that a homebound service permit applicant have a minimum of 2,700 hours of licensed practice before being eligible for a permit. The Board determined that this limitation was unnecessary and unreasonable, as any licensee meets the training and testing requirements that establish minimum competency
.

Item C: The rule which is proposed for repeal requires the permit holder to be an employee of a salon and assumed, perhaps erroneously, that the liability coverage carried by the salon would cover the licensee using a homebound service permit to provide services outside of the salon. The rule is proposed for repeal because it is not needed or reasonable. There are licensees who are not employed by a salon, but who wish to provide services at nursing homes and for former clients who are now homebound. These licenses have argued that they do not wish to work in a salon, and that they wish to limit their licensed practice to working under the homebound service permit. The proposed rule on homebound service permits requires the permit holder to carry professional liability insurance. Employment in a salon is not a needed or reasonable requirement.

Item D: This rule, which requires the licensee to attest that the services will be provided only for homebound individuals, and only when representing a salon, is proposed for repeal. The limitation on serving only homebound individuals is repeated in the new rule section 2105.0410, Item A(3). The portion of the rule requiring the individual to represent a salon is repealed. As discussed earlier, the Board determined that the requirement that a permit holder be employed by a salon is unnecessary.

2105.0450 Subpart 2. Retention: This rule, proposed for repeal, requires that the permit remain in the possession of the salon when not in use. Because the current rule provision that an applicant be employed by a salon is proposed for repeal, this rule is no longer applicable.

2105.0450 Subpart 3. Health and safety procedures: This rule requiring the licensee to comply with sanitary, disinfecting, and safety procedures is proposed for repeal, and the requirements are moved to the new rule section of 2105.0410, Subpart 3, Item D.

2105.0510 Intoxicants and controlled substances: The proposed rule amendment simply updates the language of the rule and does not change the provisions of the rule.

2105.0520: License Cycle: This proposed new rule addresses the confusion over the three year license cycle. Minnesota Statutes, section 155A.25, Subdivision 1a. outlines the fees for "three-year" license fees. Minnesota Statutes, section 155A.25, Subdivision 4, states that individual licenses expire on the last day of the licensee's birth month. Salon licenses expire in three years on the last day of the month of initial licensure.

New licensees are often confused when their first license is for a period of less than three years. This is because the first year of the license cycle will nearly always be less than a full calendar year. For example, an applicant with an October birthday applies for a license in January. The license is issued in January of 2106, and the first year ends on October 31, 2016. The second year finishes on October 31, 2017, and the license expires in third year on October 31, 2018. This applicant's actual first license cycle would be for 34 months (January 2016 through October, 2018), and not for the full three year period of 36 months.

The proposed new rule explains how the three year license cycle is applied for both individuals and salons. This is needed because of the number of questions and complaints from new licensees regarding the first license cycle and questioning why the first license was for less than 36 months. The proposed rule is reasonable and necessary, and provides transparency so that applicants may understand how the term of the license is applied to the applicant's individual circumstances. The proposed new rule is consistent with statutory requirements.

2105.0600. Refresher Courses: This rule is proposed for repeal, as the requirement for refresher courses when renewing an expired license has been repealed. The reasons for eliminating the requirement are discussed in detail under the rule analysis of proposed rule 2105.0215 Subpart 3.

2105.0610. Credit towards another license: This rule part is proposed for repeal because the rule is duplicated in 2110.0550 and is unnecessarily repeated here.

2105.0650 Penalties: The proposed amendments to this rule include correcting an incorrect reference to a Minnesota Statute which pertains to the Commerce Department and is a holdover from the years in which Commerce Department was responsible for the regulation of cosmetology. It also corrects a reference to "licensee", replacing the term with"entity". The current rule language contradicts the statute (Minnesota Statutes, section 155A.33, Subdivision 1) which provides that the Board may take action if a person has violated a statute, rule or order. Without this correction, the rule could be interpreted to mean that the Board could take no action against a person practicing cosmetology, esthiology, or nail technology without a license because that person or business was not a licensee, which is clearly not the intent. The word "entity" is chosen as it is applicable to an individual or to a business.

Chapter 2110 Cosmetology; Schools

2110.0010 Definitions:

Unnecessary definitions are proposed to be repealed as the terms no longer appear in the proposed rules changes. Some definitions are amended to bring the definition up to date or to eliminate confusion in the application of the definition, and new definitions are proposed to clarify words and terms used in the proposed rules amendments.

"Accommodate or to be accommodated" The definition is updated to use the simpler word "student" instead of "day student enrollees".

"Advanced training" This definition is proposed for repeal because the term is no longer used in the rule chapter.

"Advertising": The definition for advertising is updated to reasonably include all forms of electronic media advertising. This change is needed and reasonable because of technological developments in media advertising, and because the types of media used to advertise has changed since the definition was placed into rule.

"Application of artificial nails" This definition is proposed for repeal because the terminology is widely understood, and other specific cosmetology services are not defined. At the time the definition was introduced, artificial nails were new to the industry and the definition may have been necessary.

"Beauty coloring product" This definition is proposed for repeal because the language is not used in current or proposed rule.

"Clean" is a term used throughout the rules, and is amended here to make clear that an item is not clean when debris such as hair, nail dust, skin matter, etc. is present. The effectiveness of a disinfectant is decreased when used on an item with soil or debris present. The definition is also amended to allow items to be cleaned with soap and water, or a cleaning agent, and then rinsed. A cleaning agent is added to the definition in recognition of the numerous products in the cosmetology industry which are designed to clean industry specific tools, such as brush cleaners, flat iron cleaners, blade washes, and commercial surface cleaners.

"Clinic": The definition is updated to simplify the wording for ease of comprehension.

"*Communicable disease*" This definition is repealed because the term is no longer used in the rules, and therefore is no longer applicable.

"Community education" This definition is repealed because the term is not used in the rules, and therefore is no longer applicable.

"Demonstration" This definition is repealed because the definition is inconsistent with the term as used current rules, and where the term appears, no definition is necessary.

"Disinfect" is reasonably defined to ensure that this term, which is the basis for infection control in salons and school clinics, is clear and readily understood. In the past, the rules have used an incorrect term, "sanitize" which has been replaced by the correct terminology of "disinfect".

"Disinfectant" is reasonably defined to differentiate between various cleaning products, and those antimicrobial pesticides that meet the Environmental Protection Agency (EPA) criteria for use in hospitals and other health care settings. To be registered with the EPA as a hospital level disinfectant, the disinfectant

must meet effectiveness tests established by the Association of Official Analytical Chemists (AOAC) against three target organisms (Salmonella choleraesuis for effectiveness against gram-negative bacteria; Staphylococcus aureus for effectiveness against gram-positive bacteria; and Pseudomonas aeruginosa for effectiveness against anosocomial pathogen). Such disinfectants, also known as registered antimicrobial pesticides for use in a public health setting, eliminate viruses, funguses, and bacteria.

Because various cleaning products (which are not disinfectants under the proposed definition) tout germ-killing or disinfectant properties, licensees have confused such products with an effective hospital-level disinfectant. All disinfectants which are acceptable carry an EPA registration, and state on the label that it is approved for a health care setting, hospital setting, or medical setting.

This definition has an impact on a current rule proposed for repeal (*2105.0380, Item M*) which requires a disinfectant to be a tuberculocidal agent, in contrast to the proposed definition which does not include that requirement. According to the Centers for Disease Control and Prevention, tuberculosis (TB) is spread by through the air, and can be contracted when a person breathes in contaminated air, but cannot be transmitted by sharing or touching items from a TB infected individual.

However, a disinfectant that is effective against tuberculosis has a broad-spectrum capability against mycobacterium, meaning that it could inactivate a broader spectrum of pathogens including HIV. Tuberculocidal disinfectants contain carcinogenic ingredients, especially of concern when the disinfectant becomes airborne when the disinfectant is dispensed with an aerosol sprayer to clean clippers and other tools. In addition, the harshness of the tuberculocidal disinfectant ruins plastics and metals over time, which may lead to compliance issues as licensees may not use disinfectant to avoid ruining expensive shears and other tools. Because of this, and because the EPA has determined that surface disinfectants for use in a hospital setting do not need to meet a tuberculocidal standard, the proposed definition of disinfectant does not include any reference to tuberculocidal effectiveness. This proposed change will allow licensees to use less harsh and less expensive disinfectant products, but will still adequately protect the health and safety of the public receiving cosmetology services.

"Dispensary" is reasonably defined in a manner that establishes the purpose of the dispensary, and removes a reference that appeared to require that cosmetology supplies be stored in the dispensary. Salon businesses are not reasonably restricted as to where supplies may be stored by this change.

"Hazardous" is reasonably defined with reference to definitions under the Minnesota Department of Labor and Industry related to the Minnesota OSHA requirements. Schools, as licensed by the Board are subject, as an employer, to DOLI requirements, including the state administration of federal OSHA regulations.

"Homebound" is reasonably defined to clarify which individuals may be served by licensees with a Homebound service permit, which provides for licensed services outside of a licensed salon and in the residence of a homebound individual.

"Licensed services" is amended to clarify that the work of estheticians and nail technicians is included in the practice of cosmetology. At the same time, language referencing various wig services as licensed practice is removed from the definition and placed in a new rule section on the scope of practice (2105.0105, Subpart 1).

"Operator" is a term used throughout the rules, and makes a distinction between the basic license for cosmetologists, estheticians, nail technicians, and the manager level license for cosmetologist salon managers, esthetician salon managers, and nail technician salon managers. It is reasonably defined to prevent confusion, and by itself does not impose any additional requirement or burden.

"Porous material" is a term used in proposed rules on infection control, and is reasonably defined to provide clarity in determining which implements and tools are limited to single use. The definition does not impose any new or additional requirements on licensees.

"Simple braiding devices" is simply renumbered, and the definition is unchanged.

"Staff": This definition is proposed for repeal because the definition is no longer accurate. Where the word staff appears in the proposed rule drafts, the word is used in conjunction with a clarifying adjective, as in the case of "school staff" or "board staff".

"Unregulated service" is amended to update and simplify the language and to clarify services which are not regulated by the Board. The definition adds body art, body painting, henna tattoos, eyebrow embroidery, eyebrow microblading, and permanent makeup to services that are not regulated by the Board. Body art is defined by Minnesota Statutes, section 46B.01, Subd. 4. to include body adornment using tattooing and body piercing, and is regulated by the Minnesota Department of Health (MDH). Body painting includes face painting and other temporary painting of the skin. Henna tattoos, also known as mehndi, is a staining of the skin with henna plant dyes in traditional designs, and represents a cultural tradition practiced mainly in India and Pakistan. In Minnesota, face painting and henna tattoos are often offered at festivals, fairs, weddings, children's events, and other celebratory events, and do not represent the practice of cosmetology.

Permanent makeup is a form of tattooing and is regulated as body art by MDH, and is included in the list of unregulated services to eliminate any confusion related to the Board's regulation of makeup services.

Eyebrow embroidery and eyebrow microblading are also regulated as body art by MDH as both involve placing pigment beneath the skin, and are included in the list of unregulated services to eliminate any confusion related to the Board's regulation of makeup services

The proposed amendment also clarifies that tanning includes both spray tanning and tanning by UV radiation, and adds Botox and other injectables as services not regulated by the Board. It is reasonable to exclude services which are not on the surface of the body as the statutory definition of cosmetology, Minnesota Statutes, section. 155A.23, Subd 2. specifically refers to services on the surface of the body.

A cosmetic service, body wrapping, is removed from the list of unregulated services and included the list of examples of esthetic services in part 2105.0105, Subpart 2, Item D. In 1982, the Department of Commerce which then had regulatory authority over the practice of cosmetology, adopted amended cosmetology rules (then 4 MCAR 10.100) which included body wrapping in the definition of unregulated services. The Board has been unable to ascertain the rationale for listing body wrapping as unregulated.

The proposed rule amendment to remove body wrapping from the definition of unregulated services is consistent with the protection of the health and safety of the public. A body wrap is a surface treatment utilizing products or equipment to enhance and main the texture, contour, integrity and health of the skin and body. Body wrapping is an esthetic service which has long been part of the esthetic curriculums in required training. It is a recognized spa treatment used primarily to exfoliate the skin.

An untrained person can harm a client when using incorrect methods, and when using active ingredients. Licensees are trained to perform an intake evaluation to assess each client, guarding against contraindications for each treatment, and to ensure the provision of safe body wrapping treatments. When an untrained person wraps the body too tightly, compressing body tissues, the capillary blood flow to the tissues can be slowed or stopped, which can force body fluids inwards, surrounding the internal organs and posing serious health risks. Some body wrapping methods have associated health risks, and can dehydrate the body. Severe dehydration can result in hypovolemic shock, which if not treated, can cause death in minutes. Seaweed based wraps which may have a high iodine content, may represent a health risk if the client has an allergic reaction.

Because body wraps can represent a threat to the health and safety of the client when provided without the proper training and background in the theory of body systems, and because body wraps meet the statutory definition of a cosmetology service, body wraps are removed from the list of unregulated services in the proposed amendment. By including body wraps in regulated services, body wraps performed in a licensed salon are also subject to proper infection control requirements.

The amended definition provides an exemption for the regulation of body wraps, and that is when a body wrap is performed by a massage therapist. Massage therapy training often includes body wrapping, and many massage therapists perform body wrapping services. Currently, there is no state agency that regulates massage therapists, and it is not the Board's intention to address or attempt to regulate services provided by massage therapists.

2110.0100 Unregulated Services:

2110.0100 Subpart 1. Disclosure of unregulated services: This part is proposed for repeal, as the need and reasonableness of the requirement for signage listing unregulated services offered at the school clinic could not be supported. The current rule requires a school clinic to post a sign to list any service that is not regulated by the State of Minnesota. The Board is not necessarily aware of all of the 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, but rejected that idea because the Board currently is not able to answer questions from the public or licensees as to whether the Board regulates various personal services. This is because the Board has been advised that it must limit answers to such questions to 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. It is unreasonable for the Board to refuse to answer a question as to whether the Board regulates a service, and to then turn around and cite the school for failing to list that service on an unregulated service sign. The Board declared this rule provision obsolete at its October, 2015 Board meeting.

2110.0100 Subpart 2. Disclosure of courses: This part is proposed for repeal as identifying which parts of a curriculum are related to services not regulated by the state faces the same issues as discussed above. The rule is unnecessary as curriculums, under current and proposed rule (2110.0500), are subject to approval by the Board. The provision limiting the amount of time spent in a licensure course on unregulated services is proposed for repeal because the requirement is moved to 2110.0500, Subpart 4 for reasons of better organization.

2110.0110 Advertising:

Item A: This item contains both a provision proposed for repeal and a proposed amendment. The rule repeals a provision prohibiting misleading or inaccurate advertising related to licensed services and policies because it is difficult to enforce and could involve the Board in matters over which it has no regulatory authority. For example, if there was a dispute about the advertised cost of a service, based on allegedly misleading advertising, the Board could be asked to enforce the rule but the consumer transaction is outside the Board's authority.

Item A is revised to add a requirement that the school name shown on the license must appear in all advertising and business signage. This requirement is in current rule under *Item C*, which is proposed for repeal and moved here for reasons of better organization. This is a reasonable requirement to ensure that prospective students can verify the license status of the school.

Item B: This proposed rule amendment updates the language in the rule without any change in requirements.

Item C: This rule item is proposed for repeal, and partially repeated in Item A. The provision that school advertising include the type of license held is unnecessary, as there is only one type of school license issued by the Board.

Item C: This rule part is the current Item E and is re-lettered as Item C. The reference to the size type and the requirement for boldface type is proposed for repeal as unnecessary and unneeded.

Item D: This rule item prohibits advertising that mentions unregulated services and is proposed for repeal as it is unnecessary.

Item D: This proposed rule requires schools to maintain advertisements for clinic services for three years, enabling the Board to review school advertising during school compliance audits or inspections. Because maintaining records of marketing and advertising efforts is a standard business practice, it is not expected that this rule requirement will be burdensome to schools. This is a current provision in *2110.0320, Subpart 3* which is proposed for repeal and placed here for reasons of better organization.

Item F: This rule part is proposed for repeal, as schools do not pay students who are practicing cosmetology services in the school clinic and the rule is unecessary.

2110.0120 Inspections: This rule part is proposed for repeal as the proposed amendments are extensive enough to warrant replacement with a new rule part, 2110.0125.

Item A: This requirement to provide a written response for every cited violation is proposed for repeal because it is unnecessary to always require a written response to violations cited on inspection. For example, many of the technical violations, such as not having a copy of the laws and rules, or not having the correct number of wastebaskets do not warrant a requirement for the school to respond in writing, and do not warrant the time spent by the Board tracking whether a response has been received. This rule is replaced by 2110.0125, Subp.2, Item B, and discussed in that section below.

Item B: This rule item is proposed for repeal, and proposed rules on inspection penalties and discipline are moved to 2110.0115, Subp.4 and discussed under that part.

2110.0120 Subpart 2. Business hours and location: These rule provisions are proposed for repeal as it is unnecessary. Proposed rule 2110.0310, Subpart 1, Item J requires the school application for licensure to include the operating hours, and the rationale for that requirement is discussed under that rule part.

2110.0120 Subpart 3. Inspection Requirements: This rule is moved to 2110.0125, Subpart 1, Item A. as part of the reorganization of the rules related to Board inspections.

2110.0120 Subpart 4. Results: This rule is proposed for repeal and not moved to a new rule part. The proposed rules (2110.0125, Subpart 3) provide that a written inspection results and report will be provided to the school. It is likely that there will be conversations between the inspectors and school personnel at the time of inspection, but the formal results and report will represent the final outcome of the inspections.

2110.0120 Subpart 5. Report availability notice: This rule is repealed as part of the reorganization of the rules on inspection, and is replaced by the language in 2110.0125, Subp.3.

2110.0125 Inspections: This part replaces current rule part *2110.0120* which is proposed for repeal because the proposed reorganization is extensive. This new rule part on inspections is reorganized to make it simpler for licensees to find requirements and easier for the Board to administer.

Inspections of schools are fundamental to the protection of the health and safety of the public by ensuring that licensing, operating, and infection control requirements are met in the school and the school clinic, and that school operating requirements are met as well. There are approximately 40 licensed schools in Minnesota. Each school has a clinic where cosmetology services are offered to the public by students under the supervision of instructors, providing practice opportunities for the students. Inspections of school clinics ensure that infection control standards are being met. Inspections 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. The rules in 2110.0125, as amended or proposed, or as transferred from the former *2110.0120*, address *when* inspections occur, *what* the outcome of inspections will be, *who* is responsible for correcting violations, and *what* is required of the licensee and the Board related to inspection results.

2110.0125 Subpart 1. Protocol:

Item A: This proposed rule contains three provisions.

A current rule provision of *2110.0120, Subp.3* (proposed for repeal) which establishes that the Board may inspection schools when the Board deems it necessary is moved to this section and remains a reasonable and necessary requirement which does not unnecessarily burden the license nor incur any cost with compliance.

The second provision of this proposed rule clarifies that all licensees and all employees of a school are required to cooperate with an inspection, as implied by Minnesota Statutes, section 155A.25, subdivision 1a which includes inspection penalties for the failure to cooperate. This rule is needed and reasonable and by itself, does not impose any additional burdens or requirements on licensees and has no associated cost.

The third provision of this proposed rule clarifies that schools may not delay inspections when a Board inspector appears at a school. Schools, licensees, and employees of schools may wish to delay an inspection for a variety of reasons, including uncertainty as to whether a licensee or employee should "allow" an inspection when a school owner or designated school manager isn't present; a hope that the inspector might return at a later time or wait until a manager or owner is present to accompany the inspector; delays to allow evidence of violations to be removed; or for other reasons.

It is important that inspectors begin inspection at a school on arrival for practical reasons and to provide the most accurate assessment of the compliance of the school and licensees. By commencing inspections immediately on arrival after providing identification, the inspector limits opportunities for a school or practitioner to hide evidence of non-compliance, and makes optimal use of state resources.

The Board considered proposing language that licensees must allow inspections "without delay and at reasonable times" but concluded that such language was too vague. The Board also considered clarifying the proposed language "at all times" by adding a qualifier "during business hours" but "business hours" is also a nebulous term. Many schools have evening or weekend classes, or may consider business hours to be only those times when there is a scheduled class. Other persons might interpret business hours to be "banker's hours". For these reasons, the proposed rules simply states that inspections may occur at any time.

This rule provision may potentially increase the efficiency of inspectors with associated costs per inspection reduced, but will not impact the overall expenditures of the Board, and has no associated costs for licensees. It should be noted that the Board practice is to be considerate of the business needs of schools and school clinics, and to be as disruptive as possible during inspections.

Item B: This proposed rule places a requirement on the Board for the protection of licensees. This codifies a current practice of inspectors to produce an identification badge with photo id when beginning an inspection. It is placed into rule by this amendment after safety concerns were expressed by a home salon owner during the Request for Comments stage of this rulemaking activity, and after a person fraudulently representing themselves as a Board inspector coerced cash from a licensed salon in 2015. While placing the requirement into rule does not change current Board practice, it puts licensees on notice that a photo identification should be offered when an inspector approaches a school. Because state inspectors are already furnished with photo identification badges, this rule does not pose any new or additional costs to the Board.

2110.0125 Subpart 2. Violations and orders to comply: This proposed rule identifies responsibilities of the school, the designated school manager, and the Board when violations of Minnesota Statutes, section 155A or Minnesota Rules, Chapter 2105 and Chapter 2110 are found during an inspection.

Item A: The proposed rule no longer requires written reports to the Board on corrections to violations for every inspection as is currently required under *2110.0120, Subpart 1, Item A* which is proposed for repeal. The proposed rule continues and clarifies the expectation in the repealed rule that the licensee will take immediate action to bring the school, school manager, and instructors into compliance within ten business days. Immediate action is specified because the previous rule, which stated that violations must be corrected within ten business days, was interpreted by licensees as permission to allow violations such as unlicensed practitioners or lack of disinfectant to continue for the ten days. The addition of "immediate action" clarifies that any violation which can be immediately corrected must be corrected, but acknowledges that some corrections might not be instantaneous by providing the 10 day period to complete compliance actions. This rule has no costs associated with it for either licensees or the Board.

Item B: The proposed rule codifies a practice that has existed for at least a decade. Traditionally, the Board has issued an Order to Comply when licensing or infection control violations are found on inspection. The orders require a written affirmative statement of the actions the licensee has taken to resolve the violations.

Current rule *2110.0120, Subpart 1, Item A* (proposed for repeal) requires a written response to every violation cited by the Board even when the only violation is a minor technical violation. The proposed rule requires written reporting to the Board only when an Order to Comply is issued. The Board will generally issue an Order to Comply when cited violations include matters more immediately related to the health and safety of the public such as infection control violations or licensing violations. If an Order to Comply is issued, all violations cited on inspection are included. The proposed rule provides guidance to the school and the designated school manager regarding how to respond to an Order to Comply. The amended rule is needed and reasonable, and poses less of a burden on schools by reducing the need for written response to the Board every time a violation is cited on inspection. This item does not impose new requirements on licensees, and therefore there are no new costs associated with Orders to Comply. If a licensee has been in non-compliance with a rule requirement, correction of the violation may potentially include some costs. Costs associated with compliance with any new rule requirements are discussed under each new rule part.

2110.0125 Subpart 3. Posting of Inspection Results: The proposed Subpart 3 addresses the posting requirements of inspection results which were previously found in *2110.0120 Subpart 5* (proposed for repeal). *Subpart 5* required schools to post signage indicating that the school had been inspected and the inspection report was available for review on request.

The Board's inspection reports are evolving to provide greater detail and information to licensees and the public regarding the violations. Each inspection will result in a two part document, with the first part being an inspection result document that provides an overall indication of the inspection results. The second part will be a more detailed document that will list each specific violation and related information to assist the school and the designated school manager in understanding the violations. Instead of posting a sign as required by current rule *2110.0120 Subp.4* (proposed for repeal), the proposed rule requires the posting of the inspection result document. Instead of making the report available on request, the proposed rule requires that the detailed inspection report be visibly available to the public in the reception area of each school clinic. This could be something as simple as placing the report with the magazines customarily provided in the waiting area, or placing the report near a cash register, instead of filing the report somewhere in the school. The proposed rule makes both a summary inspection result and the detailed inspection report readily available and much more accessible to the public. The rule change does not create an additional burden on the school, does not add any cost to the school, and is both needed and reasonable.

2110.0125 Subpart 4. Inspection Penalties and Discipline. This proposed subpart replaces the current rule in 2105.0120 Subpart 1, Item B.

> **Item A:** This proposed amendment addresses confusion among some licensees regarding the possible outcome of violations cited during an inspection by clarifying that licensees cited for violations on an inspection may be subject to specific inspection penalties listed in statute and the general disciplinary provisions of the statute. Each rule or statute violation is subject to general disciplinary actions under Minnesota Statutes, section 155A. 33. In addition, Minnesota Statutes, section 155A.25, subd.1a (b) lists eight violations that have a specific inspection penalty out of the many rule and statutory requirements reviewed during an inspection. If any of the eight listed penalty violations are cited, the applicable penalties may apply. If violations of the eight listed penalty violations continue on subsequent inspections, or if other violations are cited, the general disciplinary provisions of the statute may apply. Practically, this means that if a school has a violation for which there is an associated penalty, and also has significant other violations such as critical infection control violations, the penalty provision may be deferred and all the violations addressed through a disciplinary process. The proposed rule is needed and reasonable and does not create any new restriction or burden on licensees.
>
> **Item B**: This proposed rule clarifies the application of inspection penalties, because in some cases, the statutory language of Minnesota Statutes, section 155A.25, Subd. 1a (b) does not clearly establish the party subject to the inspection penalty. Under parts 2110.0600 and 2110.0625, Item A, each school and designated school manager are responsible for ensuring that the school and all practitioners are in compliance with statute and rule requirements. Under part 2105.0190 Subpart 1, each individual instructor and school manager is responsible for the licensee's own compliance with statute and rule.
>
> The proposed rule lists the inspection penalties identified in Minnesota Statutes, section 155A.25. Subd. 1a(b) that might be assessed to a school, to the school's designated school manager, and to an instructor practicing at the school. This rule provides transparency and allows licensees to reasonably predict whether an inspection penalty might be applied.

2110.0125 Subpart 5. Application of Inspection Penalties:

Item A: This proposed rule acknowledges the Board's responsibility to consider factors as required under Minnesota Statutes, section 14.045 subdivision 3 before applying penalties listed in Minnesota Statutes, section 155A.25. Subd.1a(b). The rule informs licensees of the Board's obligations, and provides transparency regarding penalty provisions.

Item B: This proposed rule establishes a limit to the total amount of inspection penalties that might be assessed to a school, to a designated school manager, or to an instructor. Because the penalties are based on each violation, a licensee could potentially have multiple violations adding up to an unanticipated and perhaps unfair amount, which could easily exceed the amount of a civil penalty that might have otherwise been imposed if the violations had been addressed through a complaint process instead of through applied inspection penalties.

2110.0130 Exam Administration: This rule part is proposed for repeal as it is no longer relevant. Tests required for licensure are conducted by testing vendors, and the Board has not been directly involved with test administration for some years. The provisions of Subp.4 regarding how long a test score is valid has been addressed in each instance in proposed rules where a test is required in Chapter 2105. Portions of this rule were declared obsolete by the Board in the 2010 Annual Report on Obsolete, Unnecessary, or Duplicative Rules, as required by Minnesota Statutes, section 14.05, Subdivision 5.

2110.0140 Instructors: This rule is proposed for repeal because licensing requirements for instructors is moved to 2105.0145, Subpart 4 for reasons of better organization. Chapter 2105 includes rules for all individual licenses.

2110.0150 License reciprocity with other jurisdictions: This rule is proposed for repeal because all rules relating to instructor licenses are relocated in Chapter 2105 for reasons of better organization. The rule provisions for instructors who wish to transfer an instructor license from another state are moved to 2105.0183, Subpart 4.

2110.0190 Reinstatement after suspension or revocation: This proposed rule updates the language in this rule section.

Items A through F are proposed for repeal and replaced by simpler language.

Item A: *Item B* is re-lettered as Item A and the language is simplified. This proposed rule requires application on a form. The use of an application form standardizes the presentation of the applicant's credentials for more efficient application review and processing.

Item B: This proposed rule proposes a clause that suggests the Board will be required to identify in revocation or suspension orders any requirements for regaining licensure, as the licensee must meet those requirements in order to be relicensed. It also clarifies that the licensee must meet the renewal requirements, if any, for renewing a license that expired on the date of revocation or suspension. The proposed rule removes a current rule requirement that the licensee must meet the requirements for initial licensure and removes a requirement that two years must pass before the licensee may apply for reinstatement. The Board has determined that requirements for reinstating the school license will be identified in the revocation or suspension order. This means that the requirements for reinstatement will be individually determined based on the circumstances instead of universally applied to all revoked or suspended applicants.

Item C: This proposed rule clarifies which fees under Minnesota Statutes, section 155A.25 are applicable.

2110.0200 Transfer of License Prohibited: This rule amendment simply updates the current rule, and specifies that the school license is not transferrable to other locations. The rule change does not impose any new requirements.

2110.0300 Compliance by present licensees and students: This rule is proposed for repeal as discussed under each subpart below.

2110.0300 Subpart 1. Scope: This rule is proposed for repeal because it relates to licenses in effect in 1983, and is no longer relevant.

2110.0300 Subpart 2. Senior instructor licenses: This rule is proposed for repeal because it relates to the abolishment of senior instructor licenses in the late 1980's and is no longer relevant.

2110.0300 Subpart 3. Variances: This rule is proposed for repeal because the rule is unnecessary as rule variances are addressed in Minnesota Statutes, section 14.055 and 14.056 .

2110.0310 School licensure:

2110.0310 Subpart 1. Application contents: The proposed rule amendment updates and simplifies the language and makes no substantive change.

> **Item A:** The proposed rule makes no substantive changes, updates the language regarding basic application information, and moves a portion of existing requirements to a new Item B for better organization. This proposed rule amendment clarifies that the application must include both the salon name and the legal name of the school, the names of the owners, and the physical location of the school. These are reasonable requirements necessary to establish licensure and to provide for administration of the rules.
>
> **Item B:** This new proposed rule contains current provisions, asking the applicant to provide the addresses and contact information for the school owners.
>
> ***Item C:*** The current Item C is re-lettered to become Item J.
>
> **Item C:** The proposed rule consists of existing requirements in current Item B asking for the notarized signatures of the owners and the school's designated school manager (DSM) attesting to the accuracy of the application material.
>
> ***Item D:*** The provisions of current Item D are amended and moved to Item K.
>
> **Item D:** This proposed rule codifies an existing practice verifying that the school business is properly registered with the Minnesota Secretary of State by requiring a Certificate of Assumed Name if the school is operating under an assumed name. Minnesota Statutes, section 333.01 requires the filing of the certificate when business is conducted under anything other than the true name of the person. The certificate, if applicable, assists the Board in determining whether the required professional liability insurance, workers compensation insurance if applicable, and required surety bond are issued to the applicable party. The Assumed Name Certificate can be printed from an online system at the Minnesota Secretary of State's website at no cost.
>
> ***Item E:*** The current Item E is re-lettered to become Item L.
>
> **Item E:** This proposed rule codifies an existing practice verifying that the school business is properly registered with the Minnesota Secretary of State in compliance with Minnesota Statutes, section 333

by requiring an active Certificate of Organization, except for those businesses operating as a sole proprietorship or general partnership. This assists in proper identification of the business entity involved in operating the school. A record printed at no cost from the Minnesota Secretary of State's website satisfies this requirement.

Item F: The current Item F is re-lettered to become Item M.

Item F: This proposed rule codifies an existing practice requiring a social security number for sole proprietorships, or a tax identification number for other businesses. This requirement is consistent with Minnesota Statutes, section 270C.72, Subdivision 4, which directs the Board to require the social security number of Minnesota business identification number on all license applications.

Item G: The current Item *G* is re-lettered to become Item N.

Item G: This proposed rule requires verification of the professional liability insurance required in Minnesota Statutes, section 155A.30, Subd.5(6).

Item H: The current Item H is re-lettered to become Item O.

Item H: This proposed rule requires verification of the workers compensation insurance required in Minnesota Statutes, section 155A.30, Subd.5(7).

Item I: The current Item I is re-lettered to become Item P.

Item I. This proposed rule requires verification of the surety bond required in Minnesota Statutes, section 155A.30, Subd.5 (8).

Item J: The current Item J is replaced in more detail in Item P and Item R.

Item J: This proposed rule, formerly lettered as Item C, asks for the school's operating hours and also requests the projected opening date of the school, for purposes of reviewing application.

Item K: The provisions in current Item K are amended and moved to Item Q.

Item K: The proposed rule replaces current Item D, related to the school's compliance with applicable building and fire codes, and also asks the school to attest that it is compliance with applicable OSHA requirements. OSHA compliance is required of all employers in Minnesota Statutes 182.653, Subd 3, and relates to the health and safety of not only the employees in the school. A school meeting OSHA standards will be aware of the health and safety of the students who are also working with hazardous substances, and this requirement is consistent with Minnesota Statutes, section 155A. 30, Subdivision 5(4) which requires that the conditions under which students work and study must be "healthful and safe".

Item L: The current Item L is re-lettered to become Item S.

Item L: This proposed rule replaces current Item E requiring the name of the designated school manager DSM), and adds a signature from the DSM accepting the responsibilities of the DSM position. Because the DSM is subject to the inspection penalties for non-compliance under proposed 2110.0125, Subp.4, Item B, and for school and instructor compliance with the rules and statute, it is reasonable to the DSM on notice to ensure awareness of the responsibilities.

Item M: The current Item M is re-lettered to become Item T.

Item M: This proposed rule replaces current Item F, and requires that the school also identify whether each instructor is a cosmetology instructor, an esthetics instructor, or a nail technology instructor. It is needed and reasonable to require the school to identify the instructors, which enables the Board to determine whether the school anticipates sufficient instructors to meet the requirements related to instructor-student ratio and curriculum requirements.

Item N: The current Item N is re-lettered to become Item U.

Item N: This proposed rule replaces current Item G, and removes the requirement specifying the size of paper on which the floor plan is drawn. It is unnecessary to limit the size of the paper, and the limitation has caused problems when applicants wish to submit floor plans from construction plan drawings.

Item O: The current Item O is re-lettered to become Item V.

Item O: This proposed rule replaces current Item H, with minor editing.

Item P: The current Item P is re-lettered to become Item W.

Item P: This proposed rule replaces current Item I, and adds a requirement not only to identify the course by license type (cosmetology, esthiology, or nail technology), but also to provide a projected course schedule for the first year of operation. The proposed rule also requires that the school demonstrate available instructors, classroom space, and clinic space for each course. This information is necessary so the Board can determine whether the school has sufficient resources to operate and to meet minimum requirements established in rule or statute.

Item Q: This proposed rule replaces current Item K, and adds a requirement that the school not only list the number of students it can accommodate for the first year, but also the number for each course scheduled for the first year.

Item R: This proposed rule replaces current Item J and clarifies what information must be included in the "detailed outline" of the courses to be offered. The clarification allows applicants to anticipate the exact information needed to allow the Board to evaluate the curriculum, and whether that curriculum meets the requirements established in current rules (parts 2110.0510 on cosmetology training, 2110.0520 on esthetician training, and 2110.0530 on nail technician training).

Item S: This proposed rule replaces current Item L and makes no changes.

Item T: This proposed rule replaces current Item M and adds a requirement to provide a copy of the student handbook as well as the student rules and disciplinary policies.

Item U: This proposed rule replaces current Item N and makes no changes.

Item V: This proposed rule replaces current Item O and makes no changes.

Item W: This proposed rule replaces current Item P, and substitutes a requirement to submit pro forma income and cash flow projections for the first three years of operation for the current wording, which simply requires "evidence" of sufficient financial worth. The new language identifies exactly what information is needed in order for the Board to determine whether the applicant has sufficient resources. This is consistent with Minnesota Statutes, section 155A.30, Subd 3 (7) and (8),

and section 155A.30, Subdivision 5 (1), and allows applicants to anticipate the exact information needed to enable the Board's evaluation of the applicant's financial resources.

2110.0310 Subpart 2. Payment of Fee: This proposed rule updates the language in existing rule but does not make any substantive changes.

2110.0310 Subpart 3. License Cycle: This proposed rule explains how the three year license cycle is applied to school licenses, consistent with Minnesota Statutes, section 155A.25, Subd 1a and 155A.25, Subd. 4.

2110.0320 Maintaining a school license:

2110.0320 Subpart 1. Scope: This subpart is retitled to better reflect the proposed rule amendment. The current rule language addressing the topic of license display is proposed for repeal as the license posting requirements are also is contained in current rule in part 2110.0720. The proposed rule states that the rule requirements in this part apply to all cosmetology schools. The subparts address topics of frequent questions from schools, and address common issues in an effort to provide transparency so that schools may better understand what changes impact licensure.

2110.0320 Subpart 2. Notification of changes: This part is proposed for repeal because the extensive amendments to requirements related to various types of changes are reorganized and addressed in the new Subparts 4 through 12.

2110.0320 Subpart 3. Retention of ad copies: This rule is proposed for repeal because the rule provisions for keeping advertising records of clinic service advertising are relocated for reasons of better organization to rules on advertising, 2110.0110, Item D.

2110.0320 Subpart 4. Change of Name: This proposed rule addresses school name changes, and replaces *2110.0370, Sub 5,* which is moved to this rule part for reasons of better organization. The proposed rule mirrors the requirements for salon name changes in Chapter 2105. The proposed requirements allow a 60 day grace period for the school to report a name change, provide legal documentation of the name change, and to pay the fees required in statute. It is reasonable to require the legal documentation of the name change to ensure that the school has completed filing requirements with the Minnesota Secretary of State's offices. The school may print out documents from the Secretary of State's online site and it is not an unreasonable burden for the school to provide such documentation.

2110.0320 Subpart 5. Change of Location: This proposed rule addresses a school move to a new location, providing a 60 day grace period in which the school must apply for and receive a new school license. Current rule and proposed rule 2110.0200 clarifies that a school license is valid only for the location listed on the license. The new license application will ensure that the new school location meets the physical and other licensing requirements impacted by location changes.

2110.0320 Subpart 6. Change of owner: This proposed rule addresses a change of owner, and requires the new owner to obtain a new school license within 60 days after the school is sold. The new license application will ensure that licensing requirements such as the surety bond, insurance coverages, and the financial resources necessary to protect the public are met.

2110.0320 Subpart 7. Change of business structure: This proposed rule addresses changes in the business structure of a school. Because a business structure change can impact the identity of the business owner(s), the validity of the surety bond, insurance coverages, tax identification numbers, and other licensing requirements, the owner has 60 days after the change in business structure to obtain a new school license.

2110.0320 Subpart 8. Change of designated school manager: This proposed rule addresses the departure of the current designated school manager (DSM), and requires that within 10 days, the school must take certain actions as identified in Items A and B below.

> **Item A:** This proposed rule requires that the school appoint an acting DSM who has an instructor license or a school manager license. This is reasonable and necessary because the Board believes the school manager is critical in ensuring school compliance with the rules and statutes governing cosmetology to protect the health and safety of the public. Schools have ready access to licensed instructors, who likely teach students about the rules and statutes, and who could temporarily fill the school manager's role.
>
> **Item B:** This proposed rule requires the school to notify the Board of the departure of the DSM, the name and license number of the acting DSM, and provides a 30 day grace period for the school to hire a new DSM and to register the DSM with the Board. A practitioner with sufficient work experience (2,700 hours) may qualify to be the new DSM by passing the salon manager test and obtaining a salon manager license within the 30 day time period. This is a reasonable requirement, which will assist the Board in monitoring the school's status, and allows opportunity for intervention before student progress is in jeopardy.

2110.0320 Subpart 9. Change of instructors: This proposed rule repeats a current rule, *2110.0320 Subp.2, Item A,* proposed for repeal and moved here for reasons of better organization. The rule requires schools to notify the Board within 10 days of a change in instructors. This notification can take place via email, and is necessary to allow the Board to monitor school statuses to avoid situations where student hours may not be credited because the school is out of compliance, and allows opportunity for intervention before student progress is in jeopardy.

2110.0320 Subpart 10. Change or addition of courses and curriculum:

> **Item A:** This proposed rule requires a school to notify the Board via email if the school discontinues or plans to discontinue a course offering. This is to assist the Board in complying with Minnesota Statutes, section 155A.30, Subd.8 which requires the Board to maintain a list of licensed schools for the public. It will also benefit the school because prospective students will not be referred to the school for a course no longer offered. This rule is needed and reasonable requirement, and is not overly burdensome.
>
> **Item B:** This proposed rule repeats a current rule, 2110.0320 Subp.2, Item B, which requires Board approval of any changed or new curriculum and requires the school to submit the same information on the curriculum as required for the initial approval in a school license application in proposed 2110.0310, Item R.

2110.0320 Subpart 11. Change or addition of textbooks: This proposed rule requires Board approval of a change in textbook, using a form. The majority of textbook changes involve simply using an updated textbook of the same curriculum, but occasionally schools are interested in using a new textbook. The rule enables the Board to review the textbook to ensure that the curriculum needs identified by the Board are met with the new textbook.

2110.0320 Subpart 12. Change or remodeling of the school physical plant: This proposed rule repeats a current rule, *2110.0320 Subp. 2, Item C* proposed for repeal and moved here for reasons of better organization. The rule requires the school to notify the Board of substantive prospective physical changes to the school. This notification allows the Board to ensure that changes to clinic space and classroom space are consistent with licensing requirements related to the health and safety of the students and clinic clients.

2110.0320 Subpart 13. Location of training:

Item A: This proposed rule replaces *2110.0370, Subpart 1, Item A* which is proposed for repeal for reasons of reorganization. The amendment adds a reference indicating that instruction has to take place in the school except as provided in Item B of the subpart, or in part 2110.0500 which addresses field trips. It is needed and reasonable to restrict instruction to the classroom and clinic to ensure that the required hours of training are focused on the approved curriculum.

Item B: This proposed rule replaces 2110.0370, Subpart 1, Item B which is proposed for repeal and moved here for reasons of reorganization. The rule text is not changed, and no additional requirements are added. Allowing online theory based classes is a reasonable exception to the requirement that training must take place in the school, as online learning is a recognized and accepted method of classroom delivery. The rule also includes a restriction that practice-based classes can't be offered online, as practice requires an instructor's close supervision, including consultation between the instructor before, during, and after a clinic practical service.

2110.0320 Subpart 14. License: This proposed rule replaces *2110.0370, Subpart 2*, which is proposed for repeal and moved here for reasons of reorganization. The rule states an obvious requirement that a school must have a license to operate, consistent with Minnesota Statutes, section 155A.30, Subd. 5.

2110.0320 Subpart 15. Insurance: This proposed rule logically requires the school to maintain the insurances (professional liability and workers compensation) and the surety bond required for initial licensure, which is consistent with Minnesota Statutes, section 155A.30, Subd. 5.

2110.0320 Subpart 16. Separation of school from any salon: This proposed rule replaces *2110.0370, Subpart 6* which is proposed for repeal and moved here for reasons of better organization. It is reasonable to require a clear separation from a salon business and a school clinic operated by a school because commingling a salon business and a school clinic business could lead to confusion. Clients may not be aware of which services are being provided by students. Instructors may be distracted by salon clients, and students may not be properly supervised during clinic services.

2110.0330 School license renewal:

2110.0330 Subpart 1. Requirements: The proposed rule amendment simplifies the language of the introductory statement. Items A through E are proposed for repeal as the rules are rewritten for clarity and reorganized. The requirements of these items are repeated in the new subparts of the rule. Item F is proposed for repeal and not repeated in a new rule part. Item F states that the postmark date determines whether a renewal was received prior to the license expiration date. Postmark dates are no longer a reliable indicator of receipt dates, and there are delivery methods other than the US Postal service. For these reasons, Item F is proposed for repeal as it is obsolete.

2110.0330 Subpart 2. School license expiration and renewal:

Item A: This proposed rule clarifies expiration dates of school licenses, consistent with Minnesota Statutes, section 155A.25, Subd.5, and establishes that the school owner and the designated school manager (DSM) are responsible for renewing the license. This is consistent with the inspection penalties that may be assessed to both the school owner and the DSM under 2110.0125 Subpart 4.

Item B: This proposed rule requires schools to submit complete renewal applications at least 30 days before the expiration date of the license. This provides sufficient time for the Board's review of the renewal application, which can include curriculum review for new or revised curriculum. It is

reasonable to ensure a school license is renewed before the expiration date as student hours are valid only under a current license.

2110.0330 Subpart 3. School continuation of insurance and surety bond: The provisions of *2110.0330, Subp.1, Items B and C* are proposed for repeal and moved here for reasons of better organization. The rule logically requires the school to establish that professional liability insurance, workers compensation insurance and the surety bond are current, which is consistent with Minnesota Statutes, section 155A.30, Subd. 5. These provisions are part of current rule proposed for repeal in the reorganization of this rule.

2110.0330 Subpart 4. School licensee roster: The provisions of *2110.0330, Subp.1, Item D* are proposed for repeal and moved here for reasons of better organization. The rule requires the identification of a designated school manager, a complete list of instructors, instructor license numbers and work schedules to allow evaluation of whether the school is in compliance with student to instructor ratios. It is reasonable to ensure that a school continues to meet initial licensure requirements for staffing before issuing a renewed license.

2110.0330 Subpart 5. Course offerings: This proposed rule requires the school to provide information on current and anticipated course offerings, course schedules, and curriculums to ensure that the school is in compliance with initial licensure requirements before issuing a renewed license. If a school has not changed curriculums since the curriculum was approved by the Board, the school can simply attest that the curriculum has not changed. Although current and proposed rule require schools to gain approval of any curriculum changes, the proposed rule also requires, in the event that the school failed to gain approval of any change, that the school submit required documents for any changed curriculum which has not been approved by the Board. It is reasonable to ensure that a school continues to meet initial licensure requirements before issuing a renewed license.

2110.0330 Subpart 6. Fees: This proposed rule simply requires the payment of the fees required under statute.

2110.0330 Subpart 7. Failure to renew before license expiration date: This rule part replaces *2110.0340 Delinquent School Licenses.*

Item A: This proposed rule establishes that late fees apply whenever a complete renewal application has not been received by the expiration date. It is reasonable to clarify when late fees apply to provide transparency for licensees.

Item B: This proposed rule clarifies that a school must be relicensed before the expiration date, and that the submittal of a partial or complete renewal application is not equivalent to being licensed. This is reasonable because the renewal process includes establishing that the school meets all requirements in rule and statute of initial licensure which requires an evaluation and review of the application.

Item C: This proposed rule provides a grace period of 30 days in which a school with an expired license can still apply to renew the school license. After 30 days, the school license cannot be renewed and the school must apply for a new license as a new applicant. This grace period exists in current rule in *2110.0340, Item B*, which is proposed for repeal as part of the reorganization of the rules.

Item D: This proposed rule establishes that student hours earned during when a school license is expired 31 days or more cannot be credited towards the required number of school hours for licensure. This rule exists in current rule *2110.0340, Item B*, which is proposed for repeal as part of the reorganization of the rules.

2110.0340 Delinquent School Licenses: This rule part is proposed for repeal, as the substantive changes and reorganization necessitated a new rule part, 2110.0330, titled Failure to Renew before Expiration Date. T

> ***Item A:*** This rule part is proposed for repeal, as it provides that a school with license that is expired less than 30 days must submit a written request for renewal of the license. A renewal application is essentially a written request to renew the license, and is required for all school license renewals under current and proposed rules, rendering this requirement irrelevant.
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> ***Item B:*** This rule part is proposed for repeal, as the provisions of this rule are moved to 2110.0330 Subpart 7, Item C and Item D for reasons of better organization.

2110.0360 Duplicate License: This rule is proposed for repeal as it is neither necessary nor reasonable to require a school to submit an affidavit explaining why it requires a duplicate license.

2110.0370 Basic Requirements for Schools: This rule part is proposed for repeal as part of the reorganization of the rules.

2110.0370 Subpart 1. Location: This rule part is proposed for repeal because the rule is incorporated into 2110.0320, Subpart 13.

2110.0370 Subpart 2. License: This rule part is proposed for repeal because the rule is incorporated into 2110.0320 Subpart 14.

2110.0370 Subpart 3. Employment of licensed instructors: This rule part is proposed for repeal, for reasons of better organization. The provision regarding the use of unlicensed instructors is moved to 2110.0630. The provision related to guest instructors is addressed in 2110.0500 Subp.3. for reasons of better organization.

2110.0370 Subpart 4. Termination: This rule part is proposed for repeal, for reasons of better organization. The provisions regarding change of ownership and change of location are moved to 2110.0320 Subp.5 and Subp.6.

2110.0370 Subpart 5. Change of Name: This rule part is proposed for repeal, for reasons of better organization. The provisions regarding change of name are moved 2110.0320 Subp.4.

2110.0370 Subpart 6. Separation of school from salon:

> ***Item A:*** This rule part is proposed for repeal because the provisions are incorporated into 2110.0320, Subpart 16 for reasons of better organization.
>
> ***Item B:*** This rule part is proposed for repeal because the provisions are incorporated into 2110.0320, Subpart 16 for reasons of better organization.
>
> ***Item C:*** This rule part is proposed for repeal and its provisions, requiring the school and a salon to have separate managers, are not repeated in new rule text. Because the proposed rule in 2110.0320, Subpart 16 requires any salon to be operated completely separate from a school clinic, it is not necessary to also prevent in rule any school manager from also serving as a designated licensed salon manager at a salon. The rule is therefore unnecessary and proposed for repeal.
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> ***Item D:*** This rule part is proposed for repeal and its provisions, requiring separate entrances and telephone numbers for a school and a salon, are not repeated in new rule text. The proposed rule in 2110.0320, Subpart 16 requires any salon to be operated as a separate and distinct business from a

school clinic. This would include prohibiting sharing of telephone numbers and entrances. The rule is therefore unnecessary and proposed for repeal.

Item E: This rule part is proposed for repeal and its provisions, prohibiting salon employees who are not licensed instructors from teaching in a school owned by the salon owner, are not repeated in new rule text. Current and proposed rules already require instructors to hold an instructor license, making this rule unnecessary and repetitive. This rule part is therefore proposed for repeal.

Item F: This rule part is proposed for repeal because the provision that instructors may not perform client work in a salon during instructional hours of a school is unnecessary because other rule parts address the provision. Part 2110.0630, Item C requires instructors to devote scheduled instruction time to instruction, and prohibits instructors from having any other duties during class or clinical time. Proposed rule part 2110.0740, Item E prohibits instructors from performing any cosmetology services in a school clinic, except as necessary to in the presence of a student for instructional purposes.

Item G: This rule part is proposed for repeal because the provision that salons and schools with the same owner must maintain separate stocks of supplies is unnecessary is unnecessary for the purposes of regulating cosmetology.

2110.0370 Subpart 6. Exclusive use: The rule is proposed for repeal and is moved to proposed rule part 2110.0390, Subp.1, Item E for reasons of better organization.

2110.0380 Facilities requirements for licensure: This proposed rule amendment updates the language and rule citations which changed as a result of the reorganization of the rules, and does not impose any new requirements.

2110.0390 Physical Requirements: This proposed rule amendment updates language and makes changes to maintain consistency between Chapter 2105 and 2110.

2110.0390 Subpart 1. Space:

Item A: The proposed rule amendment here is limited to simplifying and updating the language, and does not make establish any new requirements. The rule continues to reasonably establish a minimum amount of space for each student, and excludes certain areas such as offices, restrooms, and breakrooms from the space calculations.

Item B: This rule part is proposed for repeal for reasons of better organization, and the rule provisions are addressed in Subpart 3, which identifies requirements for a dispensary.

Item B: This proposed rule replaces 2110.0400, Item G, which is moved to this rule part for reasons of better organization. It is reasonable to require a school to provide adequate chairs and work table space for students.

Item C: This rule part regarding dispensaries is proposed for repeal and moved to Subp.3 for reasons of better organization.

Item C: The former Item D is re lettered as Item C, and the language regarding a student break room is updated. The size of the required breakroom is not changed. It is reasonable to require a school to provide a student breakroom.

Item D: This proposed rule requires the school to meet the applicable building codes, fire codes and zoning codes. This is a reasonable requirement and is related to the health and safety of the students and the public utilizing the school clinic services.

Item E: This proposed rule replaces *2110.0370, Subp.6* which is proposed for repeal and moved here for reasons of better organization. The rule prohibits the use of any portion of the school for residential purposes.

2110.0390 Subpart 2. Walls and ceilings: This proposed rule is retitled to reflect the new proposed rule requirements related to keeping walls and ceilings clean and in good repair. This mirrors the requirements for salons in 2105.0360, Subpart 3. The language regarding a provision that entrances and exits comply with building codes is proposed for repeal, as the school is required to comply with building codes for all parts of the school in Subpart 1, Item D, and it is not necessary to single out entrances and exits.

2110.0390 Subpart 2a. Floors: This proposed rule repeats the requirements for salons in 2105.0360, Subpart 4, and requires floors to be kept clean and free of hair, nails, skin, wax, and liquids. The rule also prohibits carpeting in clinic areas where hair, skin, and nail services are provided to clients. Carpets retain hair, skin debris, wax, and other matter. The proposed rule prohibits carpet from the service area of salons licensed after January 1, 2017. An easily washable floor surface allows for better infection control by allowing for better removal of body debris (hair, skin, nails, and fluids).

2110.0390 Subpart 3. Electrical requirements: This proposed rule amendment expands the requirements regarding a school's electrical use, requiring the school's use to comply with the state Fire Code. This is not a new requirement as schools are currently subject to the fire code, but this may not be recognized by all school owners.

Item A through C: These proposed rules address common safety issues related to the use of power strips and extension cords. Because hair services, skin services, and nail services typically include the use of multiple small electrical appliances, these rules highlight the required limitations (consistent with state fire code) on the use of outlets, power strips, and extension cords.

Item D: This rule is part of the current rule, and is re-lettered here as Item D. The rule requires that classrooms be clearly lit and include at least two electrical outlets. The rule is reasonable and represents a minimal safety standard.

2110.0390 Subpart 3a. Dispensary: This proposed rule requires that each school clinic have a space in which chemicals may be mixed and stored, and tools and implements may be cleaned and disinfected. The purposes of the requirement for a dispensary is to ensure that each clinic has adequate space with a sink and running water for the safe mixing and disposal of color and other chemical solutions, and to ensure that it is possible for students to comply with the infection control requirements.

Item A: This proposed rule requires the dispensary area to have a sink, which is part of current rule in 2105.0370 Subp. 6, and is relocated in this subpart for reasons of better organization. Cleaning and disinfection protocols, as addressed in part 2105.0375 require access to water and a sink so that items may be washed with soap and water or a cleaning agent and rinsed, and space in which to allow items to soak in disinfectant for ten minutes.

The rule also requires single service towels, soap, and a work space. The proposed rule states that a shampoo bowl may not be used as a dispensary sink. This is because disinfectants are microbial pesticides, and represent a safety risk to both students and the client. If a shampoo bowl was allowed to be used as a disposal sink for microbial pesticides, there is an unacceptable risk to clients of exposure to hazardous substances, especially in an environment where multiple students may be

simultaneously disinfecting items and shampooing clients. Each student may not be aware of whether there has been pesticide in the shampoo bowl, and whether the bowl has been rinsed sufficiently to remove any residue so that it doesn't come in contact with the client's skin or splash into the client's eyes. Eye contact with these disinfectants can cause burns, and can, in the worst case scenario, cause blindness.

The rule also contains a provision that the dispensary must not be located in a restroom, so that both the safety of the restroom users is protected, and so that the dispensary space is available at all times so as not to delay or interfere with infection control requirements. In addition, general principles of sanitation prohibit attempting to disinfect instruments in a bathroom location.

Item B: This proposed rule expands on a current rule proposed for repeal. Current rule *2110.0390, Subpart 1, Item B* requires that supplies and materials be inaccessible to the public and *2110.0390, Subpart 1, Item C* requires the dispensary to be inaccessible by clients. The provisions are relocated to this subpart for reasons of better organization. The proposed rule continues to require that hazardous substances are inaccessible to the public, but acknowledges that during the disinfection process, and during the preparation of hair coloring, acid-based skin peels, and other cosmetic substances, clients are likely to be present. Because of this, the proposed rule requires a school employee to be present when a hazardous substance is temporarily accessible to the public. The Board considered requiring a licensed instructor or licensed school manager to be present, but determined that a school employee could serve the same function of ensuring that the public did not come into contact with the hazardous substance. Allowing any school employee provides more flexibility for the school, and allows the school to avoid pulling an instructor from other duties to temporarily attend to the hazardous substance.

2110.0390 Subpart 4. Restrooms: The title of this rule part is updated.

Item A: This proposed rule amendment changes the provisions of the current rule which requires separate facilities for men and women at the school or in an adjacent common area. The requirement for separate facilities for men and women is removed, as gender segregation is outdated. It is also unnecessary for the Board to attempt to regulate how each school might address gender identity issues related to gender segregated restrooms. The rule change is reasonable and needed, as it allows schools to make a business decision about how to best provide restrooms and in what configuration.

Item B: This proposed rule amendment requires the restrooms to be minimally equipped with a sink with running water, a toilet, soap, towels, and a waste receptacle. This is a necessary and reasonable requirement for basic infection control practices.

Item C: This proposed rule requires that any hazardous items not be accessible to the public, which is a reasonable and basic safety precaution to protect clients including children.

2110.0390 Subpart 5. Ventilation: This proposed rule amendment removes the language that states the school must meet the physical requirements for salons in chapter 2105, because the requirements are now stated in this chapter. It replaces that section with proposed language regarding the ventilation of schools and school clinics, and requires that schools must comply with building codes, and adds a provision that the ventilation must comply with state and federal OSHA requirements. The state and federal OSHA regulations are relevant to the workplace hazards of inadequate ventilation, and the safety and health of students, practitioners and the public. This is a needed and reasonable rule addition, as the Board does not have the capacity to determine whether ventilation is adequate or meets any particular standard, and such complaints are of necessity referred to MN OSHA.

2110.0390 Subpart 6. Safety items:

Item A: This proposed rule requires school clinics to have and maintain a fire extinguisher in the school clinic. This is a requirement of the state fire code, and is a reasonable safety precaution. The proposed rule also requires the school to instruct employees on the location and use of the extinguisher, so that in the event of a fire, school personnel may make use of the fire extinguisher.

Item B: This proposed rule requires school clinics to maintain a first aid kit and specifies that the kit must meet the ANSI Z308.1-2015 standard, which is the standard OSHA refers employers to regarding contents of required first aid kits. This particular standard is for the most basic first aid kit for small businesses. The standard was recently updated in mid-2015, and the proposed rule indicates that either this standard, or the most recent version of the standard must be met. First aid kits meeting the standard can be purchased for approximately $20 on Amazon.

Item C, D, and E: These proposed rules addresses the existing state and federal requirement for hazard communication standards in the workplace. The school clinic is a workplace for the instructors, and students and the clinic clients will benefit from the standard as well. The proposed rules require the school to have safety data sheets (SDS) available for each product used in the school clinic, to inform all employees and students of the potential health effects of hazardous products, and to inform all employees and students how to protect themselves from exposure. Although these requirements may be new to some school owners and school managers, because these requirements already exist (Minnesota Statutes, section 182 and in Minnesota Rules, Chapter 5206) this proposed rule does not add a new burden to licensees.
In 2014, the legislature added continuing education requirements for the renewal of operator licenses, including three hours on health, safety and sanitation matters consistent with OSHA standards (Minnesota Statutes, section 155A.271, Subdivision 1). Anecdotally, the Board has heard from presenters and licensees attending the classes that licensees in general were unaware of the OSHA requirements regarding hazardous substances, and were unfamiliar with Safety Data Sheets (or Material Data Sheets or MDS as the sheets formerly named). The proposed rules include a new requirement (proposed 2105. 0374, Subdivision 4, Item E) that licensees and students use tongs or gloves when disinfecting items in the disinfectants classified as microbial pesticides. During town hall meetings held in the fall of 2014 to elicit comments on the proposed rules, the Board heard objections to requiring tongs or gloves, based on a prevalent practice of using bare hands to pull items out from the pesticide solutions. These objections suggest that licensees in general are unaware of the risks of handling the solutions. In addition, it is known that cosmetologists, estheticians, and nail technicians face higher rates of birth defects, respiratory diseases, and dermatitis related to occupational exposure. Given the higher occupational risks for health issues, the feedback from the CE classes, the feedback from licensees objecting to a basic safety standard, and the fact that MN OSHA does not have the capacity to enforce compliance with hazard communication standards in school clinics in Minnesota, it is reasonable and necessary to add these requirements in this rule chapter to protect the health and safety of licensees, students, and the public receiving services at school clinics.

2110.0400 Fixtures, Furniture, equipment: This rule part lists certain equipment requirements. The Board is not prepared to propose substantive and needed revisions to necessary fixtures, furniture and equipment because a major update of school facility requirements and curriculum requirements will be addressed in a future rule project, at which time schools, instructors, students, practitioners, and the public will be consulted to determine the need and reasonableness of each current requirement listed in this part and propose appropriate revisions.

The upcoming rule project may also address anticipated changes on the federal level regarding postsecondary training, and any changes made at this point may be premature without guidance from the possible federal changes.

Proposed revisions in this rule section, therefore, are limited to simplifying or updating the language for easier comprehension, with these exceptions:

> ***Item E:*** This item is proposed for repeal because the rule requires schools to have at least one heat cap, and heat caps are no longer used in cosmetology curriculums, and represent an unnecessary expenditure on the part of schools. This rule was declared obsolete by the Board in the 2010 Annual Report on Obsolete, Unnecessary, or Duplicative Rules, as required by Minnesota Statutes, section 14.05, Subdivision 5. While there are other requirements which may be unnecessary, the Board has not yet had the opportunity to consult with industry and school experts to draft updated requirements.
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> ***Item G:*** This requirement for a desk table and chair in the classroom area is deleted because it unnecessarily forces schools to use traditional classroom style seating. Because schools may use online classes for classroom work, and may use theatre style or cafeteria style seating for classroom work, repealing the rule provides some flexibility for schools.
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> ***Item J:*** This item is proposed for repeal, and requires compliance with certain requirements for salons. It is proposed for repeal because the proposed rule amendments detail the requirements in this rule chapter for schools instead of referring to Chapter 2105, and because the rule citations in the item are no longer accurate.
>
> **Item I:** This new proposed rule item requires school clinic fixtures to have washable finishes, to be clean and in good repair. This requirement was previously represented in current rule by a reference to complying with chapter 2105, and is placed here for better organization. It is reasonable and necessary to be able to disinfect furniture and fixtures in the clinic service area, and doing so provides optimal infection control.

In recognition that further work is needed to update the school requirements regarding fixtures and equipment, the Board is prepared to address any issues through a rule waiver process if a new school applying for licensure finds any of the current and yet to be reviewed requirements constitute a hardship.

2110.0410 Supplies and Materials: This rule part lists certain supply and materials requirements. The Board is not prepared to propose substantive revisions to necessary supplies and materials because a major update of school facility requirements and curriculum requirements will be addressed in a future rule project, at which time schools, instructors, students, practitioners, and the public will be consulted to determine the need and reasonableness of each current requirement listed in this part and propose appropriate revisions. The upcoming rule project may also address anticipated changes on the federal level regarding postsecondary training, and any changes made at this point may be premature without guidance from the possible federal changes.

In the meantime, the Board is prepared to address any issues through a rule waiver process if a new school applying for licensure finds any of the current and yet to be reviewed requirements constitute a hardship.

2110.0410 Subpart 1. Basic supplies:

> **Item A:** The proposed rule amendment is limited to simplifying and updating the language for easier comprehension, and makes no substantive changes.
>
> **Item B:** The proposed rule amendment simplifies the language for easier comprehension, and clarifies that the school may not charge students for the supplies and materials necessary to provide cosmetology services in the school clinic for clients. Students have complained that they have been

charged five and ten dollars for "supplies" when performing cosmetology services as part of the curriculum.

The school receives tuition from students, and may set the charges to clients in the school at an appropriate level sufficient to recoup the cost of supplies (2110.0740, Item J.). It is unreasonable to charge students for the cost of hair color, shampoo, nail polish, waxes, conditioner, disposable supplies, and other items necessary to perform cosmetology services at the same time the school is benefiting from the student's tuition and the income received from the client at the school clinic. The curriculum requires the students to complete a minimum number, or quota, of specified clinical exercises (2110.0510, Item D.). Quotas are often met by performing services under the supervision of an instructor in the school clinic for paying clients. It is not unusual for students to complete more than the required number of certain services while they work in the clinic because some services are more popular than others, and it may take longer to complete some quotas because the students must wait for a client to request one of the less common services. The school may benefit financially when students perform these extra services because students are not paid, but the student also benefits from the additional experience.

Allowing the school to also charge the student for supplies needed for the service exercises or extra services, however, provides an additional financial incentive to the school related to the student's participation in the school clinic services which is unrelated to the student's education. It also provides a financial incentive for the student to steer clients away from requested services where the student knows the student will be charged for supplies, and towards services the student needs to perform to meet the service exercise quotas.

Item C: The proposed rule amendment is limited to simplifying and updating the language for easier comprehension, and makes no substantive changes.

2110.0410 Subpart 3. Instructional materials: The proposed rule amendment is limited to simplifying and updating the language for easier comprehension, and makes no substantive changes.

2110.0410 Subpart 4. Instructional aids: This rule is proposed for repeal. The rule requires schools to have bulletin boards, and to post copies of communications to students, student rules and disciplinary policies on the bulletin board. The rule also requires one blackboard per classroom. Some schools are moving to electronic textbooks, and use electronic communications (email) instead of posting paper notices. Schools are also using electronic visual equipment in classrooms, and may find blackboards useful. Removing this rule does not prevent a school from utilizing bulletin boards and blackboards, but allows the school to make an independent business decision regarding communication and teaching methods.

2110.0410 Subpart 5. Reference materials: The proposed rule amendment is limited to simplifying and updating the language for easier comprehension, and makes no substantive changes.

2110.0420 Advanced Training and Demonstrations: This rule is proposed for repeal because it is not needed and addresses areas outside the Board's authority. The Board's regulatory authority is related to the practice of cosmetology, and the licensing and operations of cosmetology schools. It does not extend to education, demonstrations, or classes on topics related to cosmetology outside of the cosmetology school curriculum when such programs do not constitute the practice of cosmetology as defined by Minnesota Statutes, section 155A.23, Subd.3. Such classes may legitimately be offered in community education settings, at trade shows and professional conferences, by industry professionals at salons or other locations, as part of the marketing of products and equipment, or in other situations. Because such activities are not part of the regulated school curriculums, the rule is unnecessary and proposed for repeal.

2110.0430 Intoxicants and controlled substances: Proposed revisions in this rule section are limited to simplifying or updating the language for easier comprehension, and no substantive changes were proposed.

2110.0500 Curriculum approval and content:

2110.0500 Subpart 1. Curriculum approval: This proposed rule amendment updates and simplifies the language, and corrects references to other parts where citation numbers have changed. It also moves a provision regarding a limitation on how much time can be devoted to unregulated services to its own subdivision in Subpart 4. for reasons of better organization.

2110.0500 Subpart 2. Field trips and extracurricular activities: This proposed rule allows schools to credit hours spent on field trips or extracurricular activities when students are accompanied by an instructor up to one percent of total required training hours. A cosmetology student must complete a 1550 hour program and under the proposed rule, the school could include up to 15.50 hours of trips to industry events, or other extracurricular activities. Esthetician students complete a 600 hour program and nail technicians complete a 350 hour program, and under this rule could also benefit from extracurricular activities. The proposed rule provides some flexibility for schools, while limiting the time to ensure that the core curriculum requirements could be met.

Current rules allow schools to spend 3% of the curriculum hours on a combination of field trips and guest presenters, which represents 45 hours in a 1550 hour cosmetology curriculum. The proposed rules in this subpart, and in Subpart 3 on guest presenters provides for a maximum of 1% for each, for a total of 2% of the curriculum time spent on field trips and guest presenters. This reduction of 1% is the equivalent 15 fewer curriculum hours that could be devoted to field trips and guest presenters.

The Board considered limiting the hours for field trips to 1.5% or 2% of the curriculum time, but chose to limit it to 1%. In 2014, the Board appointed a task force on the practical skills test, consisting of seven licensed instructors from various cosmetology schools. The Board was surprised to hear nearly universal agreement from the instructors that there was insufficient time in the 1550 hour cosmetology curriculum to complete all parts of the required curriculum. For this reason, reducing the discretionary time that a school may spend on extracurricular activities by 1% (15 hours out of the 1550 hour cosmetology curriculum, 6 hours out of the 600 hour esthetics curriculum, and 3.5 hours out of the 350 hour nail technology curriculum) is reasonable.

Minnesota Statutes, section 155A.30, Subd. 11(b) states that instruction must be given within a licensed school building. This statutory requirement ensures that instruction takes place in a school building which meets the many physical requirements related to the safety of the students and the school environment. The Board does not believe the intent of this provision is contradicted by the proposed rule provision allowing a maximum of 4% of the instructional time to take place in a field trip accompanied by instructors.

2110.0500 Subpart 3. Guest presenters: This proposed rule provides that school may use guest presenters up to one percent of the total curriculum hours, which is a slight change from current rule *2110.0370, Subp.3* (proposed for repeal) which provides that guest presenters and field trips together may be used for a maximum of three percent of the total required hours. It is reasonable to separate out guest presenters and field trips to make it simpler for both the school and the board to track the hours used for these activities. The Board's reasoning for the specific number of hours to be spent on optional activities is addressed above under Subpart 2.

The proposed rule also clarifies that if the licensed instructor for the course is not present, then the guest presenter is acting as a substitute instructor, subject to the provisions of part 2110.0630. The proposed rule is reasonable and necessary because the current rules have not addressed any difference between a guest

presenter and a substitute instructor, and the proposed rule clarifies what standards must be met. The clarification provides transparency for the school, and aids the Board in administering the rules.

2110.0500 Subpart 4. Unregulated services: This proposed rule simply moves current rule language contained in the rule part titled "curriculum approval" to its own section to make it easier to locate. It is reasonable to limit the amount of time spent on unregulated services to ensure that students are adequately trained by ensuring that proper time is allocated to the teaching of required curriculum.

2110.0510 Cosmetologist Training:

Item A: This proposed rule amendment simplifies the language, and makes no change in the requirements for cosmetologist training.

Item B and Item C: The proposed rules amendments reorders the current language, so that the current Item B is re-lettered as "C", and the current Item C is re-lettered as "B".

Item B: The language is simplified, and the list of areas of instruction is expanded to add "skin care" and "waxing", necessary to update the esthetics portion of the cosmetology curriculum. Skin care and waxing are already part of the cosmetology curriculums approved by the Board, and adding the words simply updates the rule language so that it is consistent with school practice.

Item C: The words "theory of" is added to the areas of study listed to make it clear that these are theory course subjects and do not involve any clinical practice. The topic of student orientation is added to clarify that the schools may include orientation in the number of hours for the approved curriculum. A clarification is made regarding "elementary service skills", to make it clear that that the first 240 hours of study do not involve any clinical practice. These clarifications are needed and reasonable as some schools have interpreted elementary service skills to mean that the student may provide services in the clinic to clients, and the intent of the rule has been to ensure that students have the proper and necessary theoretical background before attempting to provide services to clients.

Item D: The proposed rule amendment here is limited to minor changes to update the language, and to updating the esthetic clinical exercise requirements. The current rule provision for esthetic training, which is part of the cosmetology curriculum, requires 200 hours on clinical exercises defined as facials and makeup. The Board determined, with the support of the appointed esthetics task force, that the 200 hours devoted to esthetic clinical exercises provided sufficient time to include 60 facials, 40 makeup applications, 20 facial waxes and 20 body waxes for a total of 140 service exercises. Because waxing services use both soft and hard waxes, it was determined that it was important for students to be trained in both soft and hard waxes because the application and removal method involves different techniques. Waxing is included in the cosmetology curriculum and textbooks, and this change brings the rule up to date with what is actually being taught in schools.

A cosmetology school protested the addition of the 80 service exercises because the school felt it would be a hardship on the students to learn both kinds of wax applications, because the school believed it wasn't necessary for students to learn to use both soft and hard waxing skills, and because the school does not currently stock both soft and hard waxes.

The Board also heard from salons specializing in waxing services who reported that new graduates were not properly trained in waxing services, and were not qualified to perform those common and basic esthetic services.

Hair removal in the form of waxing is a significant part of today's typical esthetic practices, and improperly performed can cause burns, tears, and abrasions, and has the potential of serious infection. It is appropriate to ensure that students have sufficient training and experience in both soft and hard waxing services to be able to safely perform the service, and it is in the interest of protecting the public's health and safety that the waxing service quotas are increased.

Item E and Item F: The proposed rule amendments are limited to minor word changes to update the language and do not involve any new requirements or changes in curriculum.

2110.0520 Esthetician training:

Item A: This proposed rule amendment is limited to a minor word change to update the language.

Item B: This proposed rule amendment involves minor editing to update the language and clarifies the first 120 hours of instruction. The amendment adds the words "theory of" to the areas of study listed to make it clear that these are theory course subjects and do not involve any clinical practice. The topic of student orientation is added to clarify that the schools may include orientation in the number of hours for the approved curriculum. A clarification is made regarding "elementary service skills", to make it clear that that the first 120 hours of study do not involve any clinical practice. These clarifications are needed and reasonable as some schools have interpreted elementary service skills to mean that the student may provide services in the clinic to clients, and the intent of the rule has been to ensure that students have the proper and necessary theoretical background before attempting to provide services to clients.

Item C: This proposed rule amendment simplifies the language and adds waxing as an area that must be addressed in instruction. This change brings the updates the rule language so that it is consistent with the esthetic curriculums approved by the Board. As noted earlier, waxing services are an important part of today's esthetic practice and must be addressed in training to ensure safe procedures.

Item D: This proposed rule amendment is limited to a minor word change to update the language, and updates the language regarding how many clinical services are required, consistent with the changes discussed above regarding Item D in part 2110.0510.

Item E: This proposed rule amendment replaces the current language which refers the reader to a different rule citation with the actual language in the citation to make it easier for the reader. It does not represent any change in requirements.

2110.0530 Nail technician training:

Item A: No changes are proposed in this rule item.

Item B: This proposed rule amendment involves minor editing to update the language and clarification of the first 50 hours of instruction. The amendment adds the words "theory of" to the areas of study listed to make it clear that these are theory course subjects and do not involve any clinical practice. The topic of student orientation is added to clarify that the schools may include orientation in the number of hours for the approved curriculum. A clarification is made regarding "elementary service skills", to make it clear that that the first 50 hours of study do not involve any clinical practice. These clarifications are needed and reasonable as some schools have interpreted elementary service skills to mean that the student may provide services in the clinic to clients, and the intent of the rule has been to ensure that students have the proper and necessary theoretical background before attempting to provide services to clients.

Items C and D: These proposed rule amendment are limited to minor word changes necessary to update the language.

Item E: This proposed rule amendment replaces the language referring the reader to a different rule citation with the actual language of the citation to make it easier for the reader. It does not represent any change in requirements.

2110.0540 Refresher courses: This rule is proposed for repeal as proposed amendments to chapter 2105 remove refresher course requirements from licensing requirements. Refresher courses were intended to ensure that licensees without recent work experience were competent to resume working as a licensee, and have been replaced by CE courses, testing requirements, or in some cases, by a skills course. Because refresher courses are no longer required by the Board, rules on refresher courses are unnecessary and are proposed for repeal.

2110.0545 Skills courses: Under proposed rules, a skills course is required when a student has not become licensed within 5 years of completing training, when an out-of-state applicant has an expired license, or when an applicant has completed training in a different country.

Item A: This proposed rule limits the skills course to in-person courses, because the skills course requires the student to demonstrate a minimal level of knowledge and skill by physically performing specific services related to the license being sought. A provider must be in very close proximity to the demonstrated service in order to assess whether the standards of the skill test have been met.

Item B: This proposed item describes a specific sequence of first administering the skills test, and then providing any remedial training and skill testing if necessary. It establishes that the provider must use the Board approved test, test form, and scoring which is reasonable to ensure the test complies with Board requirements, and is consistently administered. It is reasonable to require that the skills test be administered to the student first so that the only training provided is based on the need of the student, and so that unnecessary costs of time and money are not incurred by the student.

Item C: This proposed rule establishes that the skills course must be taught by an instructor licensed in the area of skill being tested and taught. The skills course is based on the training curriculum for each type of license, and licensed instructors have the knowledge base to assess the testing results and to provide the remedial training based on current curriculums. For this reason, the Board finds that presenters who are not licensed instructors are not qualified to administer the skills test and the remedial training.

Item D: This proposed rule clarifies that cosmetology schools do not require Board approval to offer a skills course. Because cosmetology school already administer a skills test as part of the training provided, schools have the necessary materials, curriculum, equipment, and experience in skills courses. Providers who are not licensed cosmetology schools are referred to part 2105.0187 which contains provisions for those providers.

Item E: This proposed rule establishes that the school must the provide attendees with a course certificate and must retain records of the attendee for 5 years. It is reasonable to establish in rule requirements for record-keeping in the event of an audit of the application of a licensee.

2110.0550 Credit towards another license: This proposed rule amendment consists of minor editing to clarify the language and does not change any requirement.

2110.0560 Additional Licenses: This rule is proposed for repeal. The rule prohibits licensed estheticians and licensed nail technicians who have enrolled in a cosmetology program from providing esthetic or nail services in a school clinic. Such individuals may wish to update their skills, and it is not reasonable to prohibit them from the benefit of the full cosmetology program in which they are enrolled. This rule was declared obsolete by the Board in the 2010 Annual Report on Obsolete, Unnecessary, or Duplicative Rules, as required by Minnesota Statutes, section 14.05, Subdivision 5.

2110.0570 Continuing Education Credit Classes: This rule is proposed for repeal because it is outdated after the 2015 legislative changes, and because it is replaced by part 2105.

2110.0600 Responsibility: This proposed rule amendment addresses confusion stemming from the current rule language, which states that the school owner and manager must ensure compliance with certain rule parts. The rule parts cited represent only a portion of the rules on schools, and could inexplicably appear to exempt the owner and manager from complying with rule parts related to maintaining school licenses, operating the school, curriculum requirements, and with other rules. This is inconsistent with current rule 2110.0620 which states that managers must ensure that all personnel and students must comply with the entire chapter. The rule amendment clarifies that the school owner and the designated school manager are responsible for the school at all times, and that they must ensure that the school, instructors, and students are in compliance with the rules and statute regulating cosmetology.

2110.0610 School Identification: This proposed rule amendment updates the language and does not add any new requirements.

2110.0620 Manager: This rule is proposed for repeal because it is replaced by part 2110.0625 for reasons of better organization. Any changes in the substance of the rules are addressed in the section below on 2110.0625 Designated School Manager.

2110.0625 Designated School Manager:

Item A: This proposed rule replaces part *2110.0620* which is proposed for repeal because of the extensive proposed amendments. It provides that the school must register a designated licensed school manager (DSM), and that the school and the DSM are responsible for ensuring that the school, instructors, and students are in compliance with the chapter and the statute. It is reasonable to establish clear responsibility for compliance with law and rule, and the rule is consistent with statutory and rule provisions for inspection penalties for non-compliance as identified in 2110.0125. It is reasonable to require the school to identify the DSM by registering the DSM with the Board to ensure the parties responsible for the school's compliance are on record.

Item B: This proposed rule requires the DSM to acknowledge the responsibility of the position in writing. This is a reasonable and necessary rule to avoid questions of whether any particular individual was knowingly serving as the school manager, and provides transparency for the DSM, so that the DSM is aware of the responsibilities of the manager.

Item C: This proposed rule clarifies that a school manager can't be responsible for more than one school at a time. This is reasonable in recognition of the complexity and extent of the responsibility of the DSM.

Item D: This proposed rule addresses the situation when a DSM in a complaint denies responsibility for the school involved because the DSM claims not to be the DSM any longer, or asserts they are no longer the DSM in the face of an inspection penalty. School managers often also hold an instructor license and often also serve as an instructor at the school. Therefore, the mere fact that the individual continues to be employed by the school does not establish whether or not the

individual was serving as the DSM. The proposed rule requires a DSM to notify the Board if the DSM is no longer serving as the DSM, and clarifies that the DSM retains compliance responsibility for the salon and practitioners in the salon unless the DSM has otherwise notified the Board.

Item E: This proposed rule simply clarifies a common question on whether or not the DSM has to be present at the school when classes are being taught. It is not reasonable or necessary for the DSM to be present at all times. It is reasonable and necessary to establish that the DSM remains responsible for the school even if temporarily away from the school.

2110.0630 Instructors:

Item A: The proposed rule amendments in this item are limited to updating and simplifying the language and do not change any of the requirements.

Item A(1): The proposed rule amendment clarifies what the term "30 days in a year" means by stating it is "30 full or partial calendar days in 12 consecutive months". It is reasonable and necessary to establish how the thirty days are calculated so that a school understands the requirements, and so that the Board can clearly answer questions about the application of the rule.

The proposed rule amendment also establishes a criteria for who may serve as an unlicensed substitute instructor, by requiring that person to hold a salon manager license. This is reasonable and necessary, as in recent years some cosmetology schools have utilized students and brand new graduates as substitute instructors. Such individuals lack the experience, training, background, and license to successfully and safely instruct students. While a small school may find the requirement that a substitute instructor must have a salon manager license challenging, the potential absence of employees is a universal problem for small businesses such as retail establishments, service industries, restaurants, etc. where the sudden and unexpected absence of one employee has a significant negative affect on the business. The solution is not to allow schools to use any unqualified person as an instructor. 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.

Item A(2): This proposed rule amendment requires the DSM to email the Board each day an unlicensed substitute instructor is present and to report the number of days in the past 12 months that a substitute has been used. This 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 months, 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. The rule would enable schools to be acutely aware of how often an unlicensed substitute has been used, and would alert the Board to schools where student training may be in jeopardy. The requirement to send an email is not unduly burdensome and has no realistic cost associated other than a few minutes of time.

Item A(3): This proposed rule requires the DSM to email the Board each day when the school fails to meet the instructor quota because licensed instructors or a substitute(s) with a salon manager license are not present. Current rule (2110.0630, Item A (2) requires the school to notify the Board within 10 days. It is needed and reasonable require daily reporting to assist both the school and the Board in avoiding situations where the school has used unlicensed instructors for months, and where the students, whose tuition can run more than twenty thousand dollars for a cosmetology program, may lose credit for the hours of training

completed. The rule would alert the Board to schools where student training may be in jeopardy. The requirement to send an email is not unduly burdensome and has no realistic cost associated other than a few minutes of time.

Item B: This proposed rule amendment includes minor editing to simplify the language, and establishes a provision that schools, instead of the Board, will notify students when a decision has been made that student hours accrued during a period of non-compliance are not accepted by the Board.

Item C: This proposed rule amendment simplifies the language and clarifies that the current requirement that instructors do not have any non-instructional duties applies only during class or clinic time. This eliminates confusion in schools over whether a part-time instructor may also be employed by the school to perform non-instructional duties.

Item D: This proposed rule requires schools to maintain instructor time and payroll records for 3 years. Employers are already required by state law to maintain payroll records, so this requirement is not unduly burdensome. The time period of three years represents the license cycle of a school, and will allow the auditing of a school to determine whether the school has complied with the rule requirements.

Item E: This proposed rule clarifies that instructors can only instruct in the area of their licensure. For example, a nail instructor could not teach a portion of the cosmetology curriculum related to trichology. This is a needed and reasonable to ensure that each instructor has the proper training in the subject area.

Item F: This proposed rule amendment includes minor editing of the current Item D which is re-lettered here as Item F, and removes the requirement that instructor badges be a certain color as the color requirement is not necessary. It remains appropriate that instructors wear identification providing their name, and the title "Instructor" so that students, the public, and the Board can easily identify whether an individual is an instructor.

2110.0640 Enrollment contracts: This proposed rule amendment makes minor changes to update the language.

Item A: This proposed rule amendment updates the language, adds "anticipated completion date" to the starting date required in the enrollment contract, and proposes for repeal obsolete language stating that the licensing examination is given only in English. Licensing exams are offered in English, Spanish, and Vietnamese. Individuals whose first language is not one of these languages may use interpreter services. The portion of the rule regarding English language was declared obsolete by the Board in the 2010 Annual Report on Obsolete, Unnecessary, or Duplicative Rules, as required by Minnesota Statutes, section 14.05, Subdivision

Item B: This proposed rule requirement includes a new requirement that the enrollment contract include the class schedule of days and hours, and updates the language for clarity.

Item C: This proposed rule requirement addresses the question of when a school may withhold a transcript of curriculum and hours completed by the student. It is intended to replace part 2110. 0700.

2110.0650 Refund Policy:

2110.0650 Subpart 1. Written Refund Policy: This proposed rule amendment contains only minor updates of the language for clarity.

Item A: This proposed rule amendment contains minor changes to update and simplify the language, and deletes a requirement regarding the font size used in the title of a required section explaining how to cancel the contract.

Item B: This proposed rule amendment contains only minor updates of the language for clarity.

Item C: This proposed rule amendment contains only minor updates of the language for clarity.

Item D: This proposed rule addresses exempts MNSCU schools whose cosmetology programs are licensed as cosmetology schools by the board from the requirements for tuition refund policies. MNSCU schools are bound by a refund policy established by the MNSCU Board of Trustees, pursuant to Minnesota Statutes, section 136F.06. The Board policies are based on the number of hours completed in the training program, the MNSCU policies are based on the number of business days that have passed since the semester began. Although the refund requirements are slightly different, both the MNSCU policy and the Board's requirements establish a clear and transparent policy as to what amount of tuition must be refunded when a student drops out of a program. Because the MNSCU policies meet the regulatory objective of the Board requirements for tuition refund policies, the proposed rule amendment exempts MNSCU schools from this rule part.

2110.0650 Subpart 2. Refund deductions: This proposed rule amendment retitles the part to more accurately describe the contents, and adds a requirement that any deductions for the student kit, textbooks, and workbook must be clearly stated in the refund policy. It is reasonable to require the school to clearly explain any provision to deduct money from a refund of paid tuition in the actual refund policy, and this provides transparency for students and their guardians.

2110.0660 Student Regulations: This proposed rule amendment contains minor updates of the language for clarity, and removes a statement that the rules may include a reasonable dress code. Nothing in the rules prohibits a school from imposing a dress code, but it is unnecessary to identify a single potential provision in a school's regulations for students.

2110.0670 Student Records: This proposed amendment simply updates the language and does not impose any new requirements.

Item A: This proposed rule amendment contains minor updates of the language for clarity, and removes a provision that the records must be provided to the Board by mail, substituting that the records must be provided to the Board at the Board's request. This is a reasonable change to allow flexibility in the method of delivery of student records requested by the Board.

Item B: This proposed amendment simply updates the language and does not impose any new requirements.

Item C: This proposed amendment simply updates the language and does not impose any new requirements.

Item D: This proposed amendment updates the language and proposes an exception to the requirement that copies of student records must be provided to the student. The exception to the requirement is that the school is not required to provide copies of student records if the student has not met school requirements identified in the enrollment contract regarding tuition payments and transcripts. This is a reasonable requirement and typical of school programs.

Item E: This proposed amendment updates the language and proposes the same exception to the requirement that copies of student records must be provided to the student as in Item D. The exception to the requirement is that the school is not required to provide copies of student records if the student has not met school requirements identified in the enrollment contract regarding tuition payments and transcripts. This is a reasonable requirement and typical of school programs.

2110.0680 Certification of Student Hours:

Item A: This proposed amendment updates the language and adds a clarification that the student hours recorded must identify actual attendance hours and lunch breaks. The requirement is an existing requirement in current Item B, but is moved here for better organization. The requirement provides that adequate documentation exists regarding a student's attendance. Based on the experience of the Board in working with schools in recent years, not all schools interpret the current requirement to mean that records should indicate how many hours a student was present each day, and not just whether the student was present at some point during the day. This is a reasonable requirement, and necessary for the school to be able to identify whether or not the student has met the curriculum requirements.

Item B: This proposed new rule addresses the issue of how long a student hour is valid. It is not uncommon for a student to interrupt their training, and the current rules are silent on how long accrued hours are valid after an absence. The proposed rule establishes that earned hours are valid for a maximum of five years, and provides that a school may impose an earlier expiration date if it is included in the school enrollment agreement. Five years is consistent with the number of years that a student's completed training is accepted before becoming licensed as described in 2105.0145 Subpart 1, Item D (1). The proposed rule provides guidance for schools when students who partially completed some of the required training in the past approach the school for re-enrollment.

Item C: Current Item B is re-lettered as Item C. This proposed rule amendment updates language and removes unnecessary language. The provision that students must register on the time clock at the beginning and end of each day and each lunch break is moved to Item A. A provision that incorrect time cards may be corrected is removed, as the provision was moved to Item D. A provision regarding timecards being the property of the school is repealed, as are provisions related to students obtaining copies of time cards on the basis that the requirement is not necessary or needed. In current rule (see current Item C), students must be provided with a monthly report on the hours completed by the student.

Item D: Current Item D is proposed for repeal as the provision that corrections in time records must be signed by both the school and the student is contained in Item D (formerly lettered Item C).

Item D: Current Item C is re-lettered as Item D. This proposed rule amendment updates language and adds a provision that corrections of time records must be signed by the DSM and the student.

Item E: This proposed rule amendment corrects rule citations which are no longer accurate under this draft.

Item F: This proposed rule amendment updates the language and makes no substantive changes.

Item H: This rule is proposed for repeal because the provisions that students must be notified of circumstances under which training will be held during evening hours and Saturdays is addressed in new provisions in part 2110.0640, Item B.

2110.0690 Student deadline to become licensed: This rule part is retitled to better reflect the subject. The proposed rule amendment updates the language to reflect the extension of the deadline to become licensed from the current three years to five years, consistent with 2105.0145, Subpart 1, Item D (1). The reasons for the extension of the time period to become licensed are discussed under the rule-by-rule analysis of that part.

The proposed amendment repeals the provision that students not licensed within the three year time period must complete a reactivation course. There is no "reactivation" course in current law or rule, although the rule possibly could be referring to a refresher course as addressed in current rule *2105.0210 Subpart 3* (proposed for repeal). The skills course replaces the reactivation course in the proposed rule amendment, requiring that students who are not licensed within five years must complete a skills course in addition to meeting the current requirements for licensure. The skills course will ensure that the student has retained the necessary practical skills, and the current licensure requirements for testing (written theory; written practical; and written laws and rules) will ensure the student has retained critical knowledge from the training.

2110.0700 Transfer Students: This rule is proposed for repeal because it is unnecessary for the Board to become involved in the school's provision of transcripts for students who may wish to stop their training at a school and resume the training at a different school. The rule language relating to students who have "…made arrangements to pay all applicable tuition fees..." is unclear as to what might constitute an acceptable arrangement to pay tuition. Given the complexity of federal student loans, private student loans, and various tuition payment arrangements, the unclear language in current rule and the Board's lack of specific authority to regulate such matters, enforcing the current rule is likely to be difficult if not impossible, and could serve to embroil the Board in matters better addressed elsewhere.

The proposed rule amendment to part 2110.0640, Item C is intended to ensure that any conditions, including the payment of tuition, that must be met by a student before a transcript is issued to the student are clearly addressed in the enrollment contract. Disputes over the enforcement of an enrollment contract do not fall within the Board's regulatory authority.

2110.0705 Transfer Students:

2110.0705 Subpart 1. Transfers from another school or state:
This proposed new rule addresses the issue of transfer students from other schools because current rule is silent on this issue and there have been unresolved questions from schools and students. The proposed rule simply acknowledges that a school may accept transfer students, and requires the school to include in the student records all documentation regarding any transfer of credits, including transcripts and records from the original school. It also includes a requirement that any transfer records that are not in English must be translated using a Board-approved credentialing agency, with both the original record and translated record retained in the student files. Students from schools with less than the Minnesota required hours are required to apply to Minnesota licensed cosmetology schools as transfer students under 2105.0145, Item D (2) (ii).

2110.0705 Subpart 2. Practitioners from other countries applying as a transfer student for an evaluation: This proposed new rule addresses new rule provisions in part 2105.0183, Item A which creates a path to licensure for practitioners from other countries. Under current rule, a practitioner from another country where there is be no licensure, or no formal training, or where the training is an apprenticeship, must start over with training as a new student. Proposed rule requires such individuals to apply to a licensed cosmetology school as a transfer student for evaluation. The proposed rules in this part establish requirements related to such transfer student evaluations.

> **Item A:** This proposed rule lists the items that must be considered by the school in the evaluation and requires the school to include a skills course in the evaluation. This means that the student will be asked to demonstrate competency in the skills required of graduates of Minnesota-licensed

cosmetology schools. The proposed rules include a requirement that any records that are not in English must be translated using a Board-approved credentialing agency.

Item B: This proposed rule requires the school to identify any specific additional training necessary for the issuance of the course completion certificate based on the training requirements and the student's training and experience.

Item C: This proposed rule requires the school to 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 and 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.

2110.0720 Display of Licenses: This proposed rule amendment updates the language and makes no substantive changes.

2110.0730 Pre-enrollment disclosures: This proposed rule amendment updates the language and makes no substantive changes.

2110.0740 School Clinics: This proposed rule amendment includes the repeal of language referring to rule cites that are proposed for repeal because the language will no longer be accurate. The intent of the language is replaced by a new Item A, explaining which requirements in rules for salons must be met in school clinics.

Item A: This proposed new rule replaces the introductory paragraph of this part which is proposed for repeal as discussed above. The rule requires students and instructors to comply with all infection control requirements and salon prohibitions, and clarifies that instructors are responsible for ensuring that students comply with the infection control requirements. It is reasonable and necessary to institute the same infection controls rules that apply to salons, as the health and safety of the students, instructors, and clients of a school clinic must be protected just as the health and safety of practitioners and clients must be protected in a licensed salon.

Item B: Current Item A is re-lettered as Item B. This proposed rule amendment updates language and makes no change in rule requirements. It is necessary and reasonable to require that students have a theoretical grounding in the sciences of anatomy, dermatology, trichology and chemistry, infection control practices, sand safety procedures as described in part 2110.0510 before attempting to begin practicing cosmetology services by working on clients. Without the proper background training, the client's health and safety is at risk.

Item C: Current Item B is re-lettered as Item C. This proposed rule amendment updates language and makes no change in rule requirements. It is reasonable to prohibit schools from operating school clinics at locations other than schools. The purpose of a school clinic is to provide the opportunity for students to practice the provision of cosmetology services under the close supervision of instructors, who must supervise and review the student's approach to a service and the student's work before, during, and after the service is provided. Because school revenue generated by school clinics can be substantial for some schools, and because students are not compensated for the services provided in school clinics, there can be a financial incentive for schools to emphasize clinic services at the expense of theoretical classroom training. Attempting to staff a school clinic offsite with students may lead to interference with the student's studies. It is not in the best interests of the Board, students, or the public to allow school clinics to operate offsite from the school, and no reasonable argument to allow offsite operations has been provided.

In addition, it is appropriate that clients are clearly aware that they are receiving services from a student, as student provided services generally take a longer time to provide, and may not always have the desired outcome. It is more difficult for a consumer to mistake a school clinic for a salon when the clinic is on the school premises.

Item D: Current Item C is re-lettered as Item D. This proposed rule amendment updates language and makes no change in rule requirements. It is reasonable and necessary to require the posting of signage to alert consumers to the student status of those providing cosmetology services in the school clinic.

Item E: Current Item D is re-lettered as Item E. This proposed rule amendment updates language and makes no change in rule requirements. It is reasonable and necessary to clarify in rule that instructors are not to provide cosmetology services to clients, except as necessary to demonstrate to students. The instructor's focus must be on the students, and to allow instructors to serve clients would mean that the student's work would likely not receive the time and attention appropriate for a student practicing cosmetology services.

Item F: Current Item E is re-lettered as Item F. This proposed rule amendment updates language and makes no change in rule requirements. It is reasonable and necessary to ensure that students, by completing required hours of pre-clinical training, have the proper and necessary theoretical background before attempting to provide services to clients.

Item G: Current Item F is re-lettered as Item G. This proposed rule amendment updates language and makes no change in rule requirements. It is reasonable and necessary for the health and safety of the public, and for the student's learning, for services performed by students to be checked before, during, and after performance.

Item H: Current Item G is re-lettered as Item H. This proposed rule amendment updates language and makes no change in rule requirements. It is reasonable and necessary to require students to wear identification badges that establish that the person is a student. Such a designation assists all individuals in a school, including school staff, other students, instructors, and clients in the school clinic in identifying the student's status.

Item I: Current Item I is proposed for repeal because the provisions are repeated in the proposed new Item A. It also refers to a rule citation which is proposed for repeal.

Item I: Current Item H is re-lettered as Item I. This proposed rule amendment updates language and adds a provision that students and instructors may use alcohol-based hand rubs instead of washing hands before service to clients, unless the hands are visibly soiled or are not free of lotions or product. The use of hand rubs as an alternative to handwashing is provided in proposed rule 2105.0375, Subpart 2. Based on the recommendations of the Centers for Disease Control, the rule requires that the hand rub contain a minimum of 60% alcohol. Because the hand rub is less effective in the presence of debris, the rule clarifies that the hand rub can be used only when the hands are free of lotions, ointments, product, or visible soil. Product is a word used in the cosmetology industry to refer to any substance used to provide a cosmetology service, and encompasses hair coloring, gels, hair spray, wax, callous remover, serums, and other substances.

Item J: Current Item J is proposed for repeal because the provisions are repeated in the proposed new Item A. It also refers to a rule citation which is proposed for repeal.

Item J: Current Item L is re-lettered as Item J. This proposed rule amendment updates language and makes a minor change in rule requirements. The current rule allows schools to charge clients for the

cosmetology services received but appears to limit the cost to the costs of supplies, materials, and expenses occurred for the operation of the school. The proposed rule repeals the limitation, as the limitation appears unnecessary and would be difficult to enforce. The amount charged for a cosmetology service by a school is a business decision best left to the school, and it is not necessary for the Board to attempt to regulate the charges. A school which charges an excessive amount for the cosmetology services may find that attracting sufficient numbers of clients to the school clinic is difficult, and because the school must provide sufficient clients for the students to meet the required service quotas in rules describing cosmetology training (2110.2510), esthetician training (2110.2520) and nail technician training (2110.2530), and may find it necessary to reduce the charge. The Board can find no other potential negative outcome to students for excessive charges, and because it appears this outcome would be self-correcting, that portion of the rule provision is proposed for repeal.

Item K: Current Item J is proposed for repeal because the provisions are repeated in the proposed new Item A. It also refers to a rule citation which is proposed for repeal.

2110.0750 Penalties: The proposed amendment corrects an error in a statute citation. The current rule refers to Minnesota Statutes, chapter 45, which relates to the Department of Commerce which was last responsible for the regulation of cosmetology in the 1990's. The statutory provisions for enforcement are contained in Minnesota Statutes, chapter 155A, and the reference is corrected in the proposed amendment.

14. CONCLUSION

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

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

Signed on March 1, 2016 by Executive Director Gina Stauss