

**STATE OF WISCONSIN  
COSMETOLOGY EXAMINING BOARD**

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**IN THE MATTER OF RULEMAKING :  
PROCEEDINGS BEFORE THE : REPORT TO THE LEGISLATURE  
COSMETOLOGY EXAMINING BOARD : CR 20-025**

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**I. THE PROPOSED RULE:**

The proposed rule, including the analysis and text, is attached.

**II. REFERENCE TO APPLICABLE FORMS: N/A**

**III. FISCAL ESTIMATE AND EIA:**

The Fiscal Estimate and EIA is attached.

**IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:**

The proposed rule is drafted to implement recent statutory changes, including 2017 Wisconsin Act 81, 2017 Wisconsin Act 82, and 2019 Wisconsin Act 143. The draft also incorporates changes to safety and sanitary provisions in ch. Cos 4, particularly in regards to blood-borne pathogen exposure protocol, to bring them into conformity with current industry standards.

**V. SUMMARY OF PUBLIC COMMENTS AND THE BOARD'S RESPONSES, EXPLANATION OF MODIFICATIONS TO PROPOSED RULES PROMPTED BY PUBLIC COMMENTS:**

*The Cosmetology Examining Board held a public hearing on August 17, 2020. The following people either testified at the hearing, or submitted written comments:*

David Hagemeyer, Small Business Owner  
Amy Foster, Small Business Owner

*The Cosmetology Examining Board summarizes the comments received either by hearing testimony or by written submission as follows:*

Mr. Hagemeyer commented on the following:

- Expressed concern that proposed s. Cos 2.046 (1) (a) would allow employees to practice under the establishment's license without the permission of the owner, possibly incurring damage to the reputation of the establishment, or liability for injuries.

- Pointed out the language within s. Cos 2.06 (5) that an establishment manager have “direct authority over the operations of the establishment” is too broad, and could possibly be interpreted as allowing the manager control over all aspects of a business, such as personnel decisions, negotiating with and selecting vendors, performing payroll, and repairing salon equipment.
- Finally, Mr. Hagemeyer expressed opposition to language in s. Cos 8.02 (1) regarding the ability of reciprocal license applicants to obtain a credential if there is a reciprocal agreement with the state, stating that a reciprocity agreement should not be required with the other state in order to issue a reciprocal license.

Ms. Foster stated opposition to requiring that an individual who seeks to practice exclusively outside of an establishment should have to be affiliated with a licensed establishment.

***The Cosmetology Examining Board explains modifications to its rule-making proposal prompted by public comments as follows:***

The Cosmetology Examining Board made the following changes in response to comments received at the public hearing:

- Cos 2.06 (5) is revised to require that the establishment manager ensure the “establishment operates in compliance with state statutes and administrative rules.” This language more closely mirrors the statutory language found in s. 454.08 (6), Stats. relating to establishment managers, as opposed to requiring the manager have “direct authority over the operations of the establishment.”

The Cosmetology Examining Board declined to make the following changes:

- The board will not revise s. Cos 2.046 (1) (a) as the statute on which the rule is based, s. 454.08 (1) (ar), Stats., does not require the practitioner to have the permission of the establishment owner in order to practice outside of the establishment.
- The board will not revise s. Cos 8.02 (1) as the text relating to reciprocal credentials in that provision mirrors the requirements in s. 454.13, Stats.
- The board will not revise its rules to allow a practitioner to practice outside of a licensed establishment without owning, managing, being employed by or affiliated with a licensed establishment. Section 454.08 (1) (ar) 1., Stats. requires the licensee to either own, manage, be employed by, or affiliated with, a licensed establishment in order to practice outside of a licensed establishment.

**VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:**

**Comment:** 1b.

**Response:** The Cosmetology Examining Board rejects this comment as ch. Cos 11 has already been repealed by CR 18-031.

**Comment:** 5a.

**Response:** The Cosmetology Examining Board will consider defining chemical process in a future rule project after more extensive research and consideration of whether a definition is needed, and what that language should look like, if necessary.

**Comment:** 5b.

**Response:** The Cosmetology Examining Board will retain the requirement in s. Cos 4.05 (2) (b) that the licensee excuse him or herself from the patron in the event of an exposure to blood as this is specifically included in the National-Interstate Council of State Boards (NIC) guidelines for exposure to bloodborne pathogens.

All of the remaining recommendations suggested in the Clearinghouse Report have been accepted in whole.

**VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS: N/A**

STATE OF WISCONSIN  
COSMETOLOGY EXAMINING BOARD

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IN THE MATTER OF RULE-MAKING	:	NOTICE OF TIME PERIOD
PROCEEDINGS BEFORE THE	:	FOR COMMENTS FOR THE
COSMETOLOGY EXAMINING BOARD	:	ECONOMIC IMPACT ANALYSIS
	:	(CLEARINGHOUSE RULE 20-025)

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PROPOSED ORDER

An order of the Cosmetology Examining Board to amend Cos 2.03 (8) (intro.), 2.06 (5), 3.01 (1), 4.01 (1) and (3r), and 4.05 (1); to repeal and recreate Cos 2.045 and 8.02; and to create 2.046, 2.09, 4.04 (3), 4.045, 5.015, 8.005 (title), (intro.), (1), (2) and (3), and 8.01 (note); relating to cosmetology licensure and practice outside of a licensed establishment.

Analysis prepared by the Department of Safety and Professional Services.

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ANALYSIS

**Statutes interpreted:** Subch. I of ch. 454, Stats.

**Statutory authority:** Sections 15.08 (5) (b), 227.11 (2) (a), and 454.08 (1) (ag), Stats.

**Explanation of board authority:**

Section 15.08 (5) (b), Stats., provides that an examining board, “shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains. . .”

Section 227.11 (2) (a), Stats., states that an agency, “may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.” This section allows an agency to promulgate administrative rules which interpret the statutes it enforces or administers if the proposed rule does not exceed proper interpretation of the statute.

Section 454.08 (1) (ag), Stats., provides that “[t]he examining board shall promulgate rules permitting the practice of electrology outside of a licensed establishment,” and that, [t]he examining board shall promulgate rules permitting the use of a chemical process in the practice of cosmetology, aesthetics, or manicuring outside of a licensed establishment, except that the examining board may not promulgate any rule that restricts the use of a chemical process in cutting or styling hair in the practice of cosmetology or applying cosmetics, oils, lotions, clay, creams, antiseptics, powders, or tonics in the practice of aesthetics.”

Section 454.15 (2) (c) provides that “[s]ubject to the rules promulgated under s. 440.03 (1) and this subchapter, the examining board may revoke, limit, suspend, or refuse to issue or renew, in accordance with the severity of the violation, a license or permit issued under this subchapter or reprimand the holder of a license or permit issued under this subchapter if it finds that the holder or applicant has done any of the following...

(c) Engaged in conduct in the practice of...cosmetology, aesthetics, electrology, or manicuring that evidences a lack of knowledge or ability to apply professional principles or skills.”

**Related statute or rule:** None.

**Plain language analysis:**

The Cosmetology Examining Board rules are revised as necessary to make the rules consistent with recent statutory changes, including to reflect that tanning, tattooing, and body piercing are now regulated by DSPS rather than DHS. The board also revises its health and safety requirements under ch. Cos 4 to reflect current blood-borne pathogen best practices and to provide that credo razors and pumice stones may not be used.

Additionally, the rules are revised to provide that although the board will no longer require continuing education for renewal of a license generally, it may require continuing education for a licensee as a part of a disciplinary process to ensure competency.

The required 4,000 hours of experience for applicants seeking a reciprocal credential is replaced with a one-hour course on Wisconsin statutes and administrative rules that apply to the applicant’s practice. Additionally, a provision is added to reflect that service members, former service members, and their spouses may receive a reciprocal credential if they have a license in good standing in another jurisdiction that authorizes the professional practice authorized by the board credential the applicant is seeking and pay the required application fee.

The rule project also creates provisions to allow for the practice of cosmetology, aesthetics, and manicuring outside of a licensed establishment so long as the practitioner is employed at a licensed establishment, complies with professional practice and sanitary standards, displays their license to practice, and does not use a chemical process unless it is to style or cut hair, or apply cosmetics, oils, lotions, clay, creams, antiseptics, powders, or tonics in the practice of aesthetics. Electrologists may practice outside of an establishment so long as they comply with professional practice and sanitary standards.

Finally, the rule project updates the code to eliminate the cosmetologist, aesthetician, electrologist, and manicurist manager licenses.

**Summary of, and comparison with, existing or proposed federal regulation:**

There are no existing or proposed federal requirements.

**Comparison with rules in adjacent states:**

**Illinois:**

Illinois requires 14 hours of continuing education before renewing a cosmetology license and 10 hours to renew either a nail technician or an esthetician license (225 ILCS 410/3-7, 410/3A-6, and 410/3C-8). Illinois also offers separate cosmetology, nail technician, and esthetician instructor licenses (225 ILCS 410/3-4, 410/3A-3, and 410/3C-3).

Mobile establishments are permissible so long as the salon owner/operator registers with the state (225 ILCS 410/3D-5). It does not appear that a separate license is required to manage an establishment, however, if the owner is not a licensee they must employ a licensed practitioner to operate the establishment (225 ILCS 410/3D-5 (b)). Administrative rules do require practitioners to maintain supplies of disinfectants and other sanitary standards. There do not appear to be sanitary standards specific to mobile salons, nor a ban on the use of pumice, credo razors or chemical processes (68 Ill. Admin. Code § 1175.115).

Illinois state law does have a process allowing for expedited issuance of reciprocal credentials for active service members, their spouses, and those who were discharged from the service within the last two years. An applicant must show that they have a credential in good standing in another jurisdiction that is substantially equivalent to the Illinois credential sought, and must submit all required fees and application documents. The credential must be issued within 60 days of receipt of a completed application (20 ILCS 5/5-715). These requirements are essentially identical to the regular Illinois reciprocity application requirements found in the administrative rules, except a typical application is not expedited (68 IL. Admin. Code §1175.420).

**Iowa:** Iowa does not allow the practice of any of the professions regulated by the cosmetology board outside of a licensed salon or school, unless the client's physical or mental disability prevents the client from seeking services at a salon or school (IA Admin Code § 65.2 (33)). Professions regulated by the cosmetology board are required to complete 6 hours of continuing education each biennium (IA Admin Code § 64.2(2)). Iowa does prohibit the use of certain products or techniques, including but not limited to the use of animals or substances banned or determined to be hazardous by the FDA, however it does not specifically ban the use of pumice or credo razors (IA Admin Code § 63.18). Iowa law does require cosmetology arts instructors to be licensed both as practitioners and as instructors (IA Stats. §157.8 (3) (c)). Iowa does not appear to require an establishment manager license to manage an establishment.

Reciprocal licenses may be granted by the board if the applicant has held their license in another state for at least 12 of the last 24 months, pays the required licensure fee, and passes either a state or national exam depending on when the individual completed cosmetology school (IA Admin Code § 60.7). Iowa requires the board to expedite reciprocal license applications for veterans as defined under Iowa law, as long as the board determines the individual is licensed in another jurisdiction and the requirements to obtain that license are substantially equivalent to the requirements to obtain the license in Iowa. If the requirements are not substantially equivalent, the applicant may receive a provisional license to allow practice while meeting remaining requirements for equivalency (IA Stats. § 272C.4 (12)).

**Michigan:** The state of Michigan requires 1,500 hours of training and a two-year apprenticeship for a cosmetology license with an additional 500 hours for an instructor license. Fewer training hours are required for estheticians, electrologists, and nail technicians (MI Admin. Code R338.2163c.). Michigan does not require continuing education for license renewal. Michigan does appear to allow the use of pumice stones, so long as they are used only on one client and discarded (MI Admin. Code R 338.2179c (c)). The practice of cosmetology board licensed professions outside of an establishment is prohibited unless it is performed on-site for a participant in an event, or is done in a nursing home, old-age home,

adult foster care facility, or a hospital (MI Stats. § 339.1217). Michigan statute does require the cosmetology board to promulgate rules for mobile salons, however these do not appear to be in effect at this time.

Michigan law requires the board to issue a reciprocal credential if the applicant is at least 17, is of good moral character, has a license in good standing in another jurisdiction, and the requirements to obtain the license in the other jurisdiction are substantially equal to Michigan requirements (MI Stats. § 339.1211). Michigan law does allow for a temporary credential to be issued to active duty military and spouses if they hold a credential in good standing that allows for the practice of the profession they are seeking licensure for. This temporary credential is good for at least 6 months and can be extended if the person needs more time to meet licensing requirements (MI Stats. § 339.213).

**Minnesota:** Minnesota requires eight hours of continuing education in the three years prior to renewing a license, and must include one hour in state statutes and administrative rules relevant to their practice, three hours in OSHA standards applicable to cosmetology, and four hours combined in any of product chemistry and chemical interaction, proper use and maintenance of machines and instruments, business management, professional ethics, human relations, or techniques relevant to the type of license held (MN Stats. § 155A.271 (1)). Minnesota does not appear to have a special license for cosmetology school instructors.

Minnesota provides temporary certification for the practice of cosmetology for service members, their spouses, and service members discharged within the last two years. Applicants must show documentation of service member, discharged service member, or spouse of a service member or former service member status, evidence of licensure as a cosmetologist, esthetician, advanced practice esthetician, nail technician, eyelash technician, salon manager, school manager, or instructor in another state, and payment of application fees (MN Admin. Code § 2105.0184).

Generally, to obtain a permanent reciprocal license in Minnesota an applicant must show that they are at least 17 years old, have experience of 1,550 hours for a cosmetologist, 600 hours for an esthetician, 350 hours for a nail technician, and 38 hours for an eyelash technician. The applicant must present a certification from their state examining board confirming licensure that is no more than 90 days old, evidence of passage of board approved practical and theory examinations, evidence of passage of a Minnesota specific statutes and rules examination within the last year, and payment of all required fees (MN Admin. Code § 2105.0183).

A salon must employ a licensed salon manager. Practice is allowed outside of a licensed salon if the practitioner has obtained a “homebound” or “special services” license under MN Admin. Code § 2105.0410 (3). Mobile salons are licensed, and must meet the same facility, safety, infection control, and scope of services requirements as typical licensed establishments (MN Admin. Code § 2105.0395).

### **Summary of factual data and analytical methodologies:**

The Cosmetology Examining Board developed the proposed order after a careful review of the statutory changes and requirements.

**Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:**

This rule was posted on the department's website for public comment on the economic impact of the proposed rule, including how this proposed rule may affect businesses, local government units, and individuals, for a period of 14 days. No comments were received.

**Fiscal Estimate and Economic Impact Analysis:**

Attached.

**Effect on small business:**

None.

**Agency contact person:**

Jon Derenne, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-266-0955; email at DSPSAdminRules@wisconsin.gov.

**Place where comments are to be submitted and deadline for submission:**

Comments may be submitted to Jon Derenne, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before the public hearing to be held at 9:30 AM on August 17, 2020 to be included in the record of rule-making proceedings.

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TEXT OF RULE

SECTION 1. Cos. 2.03 (8) (intro.) is amended to read:

**Cos. 2.03 (8) Licensees** A licensee may not provide the following services unless both the licensee and the establishment are properly licensed by the department of ~~health~~ safety and professional services:

SECTION 2. Cos 2.045 is repealed and recreated to read:

**Cos 2.045 Personal care services for persons in hospitals, nursing homes, and correctional institutions.** A licensee may provide any personal care services, subject to all practice standards set forth in this chapter, to persons who are in hospitals, nursing homes, or correctional institutions, regardless of whether it is done in a designated area or in the personal room of an inmate, patient, or infirm person.

SECTION 3. Cos 2.046 is created to read:

**Cos 2.046 Personal care services outside of a licensed establishment generally.** Other than personal care services provided under s. Cos. 2.045, an appropriately credentialed licensee may provide services outside of a licensed establishment as follows:

(1) Aesthetics, cosmetology, and manicuring services may be provided outside of a licensed establishment if all the following are true:

(a) The licensee owns, manages, is employed by, or affiliated with an establishment that is licensed to provide services under s. 454.08 (2), Stats.

(b) The licensee brings to the outside service location their active license certificate, or a copy, provided to them under s. 454.06 (7), Stats.

(c) The licensee complies with all practice standards provided in this chapter when providing personal care services outside of a licensed establishment.

(d) The licensee complies with all sanitation and safety precautions regarding the use of chemical processes provided in ch. Cos 4.

(e) The services provided do not involve the use of a chemical process, with the following exceptions:

1. A licensee practicing aesthetics or cosmetology outside of a licensed establishment may apply cosmetics, oils, lotions, clay, creams, antiseptics, powders, or tonics.

2. A licensee practicing cosmetology outside of a licensed establishment may use cleansing, styling, and finishing products for the purpose of cutting or styling hair.

(2) Electrology services may be provided outside of a licensed establishment if all the following are true:

(a) The licensee complies with all practice standards provided in this chapter when providing personal care services outside of a licensed establishment.

(b) The licensee complies with all sanitation and safety precautions provided in ch. Cos 4.

SECTION 4. Cos 2.06 (5) is amended to read:

**Cos. 2.06 (5)** In the case of an owner of a cosmetology establishment who is not a licensed cosmetologist, employ a cosmetology at least one licensed cosmetologist to act as a full-time manager who shall have direct authority over the operations of the establishment ensure that the establishment operates in compliance with state statutes and administrative rules. ~~If the cosmetology manager of an establishment leaves employment or becomes otherwise unavailable, an owner may continue to operate the establishment for no more than 90 days without a cosmetology manager. The owner shall notify the board that the cosmetology manager is no longer employed or has become otherwise unavailable within 10 days following the cosmetology manager's last day of employment.~~

SECTION 5. Cos 2.09 is created to read:

**Cos 2.09 Continuing education.** To ensure competency, the board may require specific remedial continuing education requirements for any licensee as part of a disciplinary process.

SECTION 6. Cos 3.01 (1) is amended to read:

**Cos 3.01 (1)** Cosmetology, aesthetics, electrology, and manicuring shall not be practiced outside the confines of a licensed establishment except as provided in ~~s.s.~~ Cos 2.045 and 2.046. Establishments, including floors, walls, ceilings, furniture, equipment, tools, utensils and instruments, shall at all times be in good repair and maintained in an orderly and sanitary condition.

SECTION 7. Cos 4.01 (1) and (3r) are amended to read:

**Cos 4.01 (1)** All areas of an establishment, or the area of practice outside of an establishment in accordance with the applicable standards, and the equipment, tools, and implements used by licensees ~~for services in an establishment,~~ shall be maintained in a clean, sanitary, and safe condition.

**(3r)** All items designed to be disposed of after a single use including orangewood sticks, cotton, gauze, neck strips, nail wipes, tissues, sponges, paper towels, wooden applicators and spatulas, emery boards, buffer blocks, ~~pumice stones,~~ sanding bands or sleeves, and disposable nail bits shall be disposed of after each use.

SECTION 8. Cos 4.04 (3) and 4.045 are created to read:

**Cos 4.04 (3)** Licensees providing services outside of an establishment shall have available with them at least one of the antiseptics listed in s. Cos 4.05 and have a reasonable supply of bandages and disposable gloves.

**Cos 4.045 Prohibited materials.** Cosmetologists, aestheticians, electrologists, or manicurists may not use pumice stones or credo razors when providing services.

SECTION 9. Cos 4.05 is repealed and recreated to read:

**Cos 4.05 Procedure for exposure to blood.**

**(1)** In the case of any patron injury, such as a scissors cut, razor cut, needle stick, laceration or other exposure to blood, broken skin, or a mucous membrane, the licensee shall do all of the following:

- (a)** Stop service.
- (b)** Put gloves on hands.
- (c)** Assist the client with rinsing the exposed area using soap and water. Pat dry with a towel.
- (d)** Provide the patron with disinfectant such as iodine, 70% isopropyl alcohol, or 6% stabilized hydrogen peroxide or equivalent.
- (e)** Provide the patron with an adhesive bandage if appropriate.
- (f)** Dispose of single use items in the trash container and clean and disinfect all implements.
- (g)** Clean and disinfect the workstation.
- (h)** Remove gloves and wash hands before resuming service.

**(2)** In the case of any licensee injury that may expose a patron to blood, broken skin, or a mucous membrane, the licensee shall do all of the following:

- (a)** Stop service.
- (b)** Explain the situation to the patron.
- (c)** Rinse the area with soap and water.

- (d) Apply disinfectant such as iodine, 70% isopropyl alcohol, or 6% stabilized hydrogen peroxide or equivalent.
- (e) Apply an adhesive bandage.
- (f) Dispose of single use items in the trash container.
- (g) Put gloves on hands.
- (h) Clean and disinfect all implements and clean and disinfect the workstation.
- (i) Replace gloves and return to service.

(3) A licensed establishment shall post a written protocol describing the procedure for unintentional occupational exposure to bodily fluids described in subs. (1) and (2). The protocol shall be posted in a place conspicuous to licensees.

SECTION 10. Cos 5.015 is created to read:

**Cos 5.015 Persons providing practical instruction in schools and specialty schools.** No person may use the title, “Wisconsin certified cosmetologist, aesthetician, electrologist, or manicurist instructor,” or use any title that implies the person is a Wisconsin certified instructor, or represents the person to be a Wisconsin certified instructor under this chapter unless the person holds a current license in cosmetology, aesthetics, electrology, or manicuring and meet the requirements under s. 440.63 (3), Stats.

SECTION 11. Cos 8.005 (title), (intro.), (1), (2) and (3) are created to read:

**Cos 8.005 Definitions.** For the purposes of ch. Cos 8:

- (1) “Former service member” has the meaning provided in s. 440.09 (1) (a), Stats.
- (2) “Service member” has the meaning provided in s. 440.09 (1) (b), Stats.
- (3) “Spouse” has the meaning provided in s. 440.09 (1) (c), Stats.

SECTION 12. Cos 8.01 (Note) is created to read:

**Cos 8.01 (Note)** An individual may apply to the Department of Safety and Professional Services for a determination of whether the individual would be disqualified from obtaining the credential due to a criminal conviction. Application forms are available on the department's website at [dsps.wi.gov](http://dsps.wi.gov), or by request from the Department of Safety and Professional Services, P. O. Box 8935, Madison, Wisconsin 53708, or call (608) 266-2112.

SECTION 13. Cos 8.02 is repealed and recreated to read:

**Cos 8.02 Licensing requirement without examination.** The board may grant a license to practice cosmetology, aesthetics, electrology, or manicuring without examination to a licensee of another state provided that one of the following conditions are met:

- (1) The board has entered into a written reciprocal agreement with the licensing authority of another state, where the education and services practiced are substantially equivalent to those in Wisconsin, in accordance with s. 454.13 (2), Stats.
- (2) The applicant has completed all of the following requirements:
  - (a) The applicant holds a current license in good standing in another jurisdiction.
  - (b) The applicant pays the appropriate fee as indicated in s. 440.05, Stats.
  - (c) The applicant completes a board approved one-hour course regarding Wisconsin statutes and administrative code applicable to their practice.

**(3)** A service member, former service member, or spouse of a service member or former service member who resides in this state, shall be granted a license issued under s. 454.06, Stats., if the individual meets all the following requirements:

- (a)** The individual applies for a reciprocal credential on a form prescribed by the board.
- (b)** The individual pays the fee specified under s. 440.05 (2).
- (c)** The individual holds a license, certification, registration, or permit that was granted by a governmental authority in a jurisdiction outside this state that qualifies the individual to perform the acts authorized under the appropriate credential granted by the board.
- (d)** The individual is in good standing with the governmental authorities in every jurisdiction outside this state that have granted the individual a license, certification, registration, or permit that qualifies the individual to perform acts authorized under the appropriate credential granted by the board.

SECTION 14. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

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(END OF TEXT OF RULE)  
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This Proposed Order of the Cosmetology Examining Board is approved for submission to the Governor and Legislature.

Dated August 19, 2020



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Chairperson

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<b>1. Type of Estimate and Analysis</b> <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	<b>2. Date</b> July 14, 2020
<b>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable)</b> Cos 1 to 11	
<b>4. Subject</b> Licensure and practice outside of a licensed establishment	
<b>5. Fund Sources Affected</b> <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	<b>6. Chapter 20, Stats. Appropriations Affected</b> 20.165(1)(g0)
<b>7. Fiscal Effect of Implementing the Rule</b> <input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget	
<b>8. The Rule Will Impact the Following (Check All That Apply)</b> <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses <b>(if checked, complete Attachment A)</b>	
<b>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1).</b> \$0	
<b>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>11. Policy Problem Addressed by the Rule</b> These rules are necessary to implement recent legislative changes to the licensing and practice requirements of the professions regulated by the Cosmetology Examining Board, including the elimination of continuing education and the creation of rules allowing practice outside of a licensed establishment. The rules will also revise the sanitation and safety rules administered by the board to take into account practice outside of a licensed establishment and for greater clarity to stakeholders.	
<b>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments.</b> The rule draft was posted on the department's website for 14 days to solicit economic impact comments. No comments were received.	
<b>13. Identify the Local Governmental Units that Participated in the Development of this EIA.</b> The department posted the rule draft on its website for 14 days to solicit economic impact comments from local governmental units. No comments were received.	
<b>14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)</b> None.	
<b>15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule</b> The benefits of implementing the rule will be to implement the statutory directive to promulgate rules allowing practice outside of an establishment, as well as to provide greater clarity to stakeholders by ensuring the board's rules are not in conflict with current statutory requirements.	
<b>16. Long Range Implications of Implementing the Rule</b> The long range implications of implementing the rule will be to provide guidance relating to practice outside of an establishment as required by statute and to provide stakeholders with administrative rules that accurately reflect and complement state statutes.	
<b>17. Compare With Approaches Being Used by Federal Government</b>	

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

None.

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18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois:

Illinois requires 14 hours of continuing education before renewing a cosmetology license and 10 hours to renew either a nail technician or an esthetician license (225 ILCS 410/3-7, 410/3A-6, and 410/3C-8). Illinois also offers separate cosmetology, nail technician, and esthetician instructor licenses (225 ILCS 410/3-4, 410/3A-3, and 410/3C-3).

Mobile establishments are permissible so long as the salon owner/operator registers with the state (225 ILCS 410/3D-5). It does not appear that a separate license is required to manage an establishment, however, if the owner is not a licensee they must employ a licensed practitioner to operate the establishment (225 ILCS 410/3D-5 (b)). Administrative rules do require practitioners to maintain supplies of disinfectants and other sanitary standards. There do not appear to be sanitary standards specific to mobile salons, nor a ban on the use of pumice, credo razors or chemical processes (68 Ill. Admin. Code § 1175.115).

Illinois state law does have a process allowing for expedited issuance of reciprocal credentials for active service members, their spouses, and those who were discharged from the service within the last two years. An applicant must show that they have a credential in good standing in another jurisdiction that is substantially equivalent to the Illinois credential sought, and must submit all required fees and application documents. The credential must be issued within 60 days of receipt of a completed application (20 ILCS 5/5-715). These requirements are essentially identical to the regular Illinois reciprocity application requirements found in the administrative rules, except a typical application is not expedited (68 IL. Admin. Code §1175.420).

Iowa: Iowa does not allow the practice of any of the professions regulated by the cosmetology board outside of a licensed salon or school, unless the client's physical or mental disability prevents the client from seeking services at a salon or school (IA Admin Code § 65.2 (33)). Professions regulated by the cosmetology board are required to complete 6 hours of continuing education each biennium (IA Admin Code § 64.2(2)). Iowa does prohibit the use of certain products or techniques, including but not limited to the use of animals or substances banned or determined to be hazardous by the FDA, however it does not specifically ban the use of pumice or credo razors (IA Admin Code § 63.18). Iowa law does require cosmetology arts instructors to be licensed both as practitioners and as instructors (IA Stats. §157.8 (3) (c)). Iowa does not appear to require an establishment manager license to manage an establishment.

Reciprocal licenses may be granted by the board if the applicant has held their license in another state for at least 12 of the last 24 months, pays the required licensure fee, and passes either a state or national exam depending on when the individual completed cosmetology school (IA Admin Code § 60.7). Iowa requires the board to expedite reciprocal license applications for veterans as defined under Iowa law, as long as the board determines the individual is licensed in another jurisdiction and the requirements to obtain that license are substantially equivalent to the requirements to obtain the license in Iowa. If the requirements are not substantially equivalent, the applicant may receive a provisional license to allow practice while meeting remaining requirements for equivalency (IA Stats. § 272C.4 (12)).

Michigan: The state of Michigan requires 1,500 hours of training and a two-year apprenticeship for a cosmetology license with an additional 500 hours for an instructor license. Fewer training hours are required for estheticians, electrologists, and nail technicians (MI Admin. Code R338.2163c.). Michigan does not require continuing education for license renewal. Michigan does appear to allow the use of pumice stones, so long as they are used only on one client and discarded (MI Admin. Code R 338.2179c (c)). The practice of cosmetology board licensed professions outside of an establishment is prohibited unless it is performed on-site for a participant in an event, or is done in a nursing home, old-

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## **ADMINISTRATIVE RULES**

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age home, adult foster care facility, or a hospital (MI Stats. § 339.1217). Michigan statute does require the cosmetology board to promulgate rules for mobile salons, however these do not appear to be in effect at this time.

Michigan law requires the board to issue a reciprocal credential if the applicant is at least 17, is of good moral character, has a license in good standing in another jurisdiction, and the requirements to obtain the license in the other jurisdiction are substantially equal to Michigan requirements (MI Stats. § 339.1211). Michigan law does allow for a temporary credential to be issued to active duty military and spouses if they hold a credential in good standing that allows for the practice of the profession they are seeking licensure for. This temporary credential is good for at least 6 months and can be extended if the person needs more time to meet licensing requirements (MI Stats. § 339.213).

Minnesota: Minnesota requires eight hours of continuing education in the three years prior to renewing a license, and must include one hour in state statutes and administrative rules relevant to their practice, three hours in OSHA standards applicable to cosmetology, and four hours combined in any of product chemistry and chemical interaction, proper use and maintenance of machines and instruments, business management, professional ethics, human relations, or techniques relevant to the type of license held (MN Stats. § 155A.271 (1)). Minnesota does not appear to have a special license for cosmetology school instructors.

Minnesota provides temporary certification for the practice of cosmetology for service members, their spouses, and service members discharged within the last two years. Applicants must show documentation of service member, discharged service member, or spouse of a service member or former service member status, evidence of licensure as a cosmetologist, esthetician, advanced practice esthetician, nail technician, eyelash technician, salon manager, school manager, or instructor in another state, and payment of application fees (MN Admin. Code § 2105.0184).

Generally, to obtain a permanent reciprocal license in Minnesota an applicant must show that they are at least 17 years old, have experience of 1,550 hours for a cosmetologist, 600 hours for an esthetician, 350 hours for a nail technician, and 38 hours for an eyelash technician. The applicant must present a certification from their state examining board confirming licensure that is no more than 90 days old, evidence of passage of board approved practical and theory examinations, evidence of passage of a Minnesota specific statutes and rules examination within the last year, and payment of all required fees (MN Admin. Code § 2105.0183).

A salon must employ a licensed salon manager. Practice is allowed outside of a licensed salon if the practitioner has obtained a “homebound” or “special services” license under MN Admin. Code § 2105.0410 (3). Mobile salons are licensed, and must meet the same facility, safety, infection control, and scope of services requirements as typical licensed establishments (MN Admin. Code § 2105.0395).

19. Contact Name Jon Derenne, Administrative Rules Coordinator	20. Contact Phone Number (608) 266-0955
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**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

**ATTACHMENT A**

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

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5. Describe the Rule's Enforcement Provisions

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes    No
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