

# BOARD OF COSMETOLOGY

Five-year-review Report: A.A.C. Title 4, Chapter 10, Articles 1-4

February 2016

## Five-year-review Report

### A.A.C. Title 4. Professions and Occupations

#### Chapter 10. Board of Cosmetology

##### INTRODUCTION

The mission of the Board is to ensure the public health, welfare, and safety through education and enforcement of the cosmetology laws and rules by the regulation of salons, schools, and individuals who practice cosmetology. The Board issues licenses in 12 categories<sup>1</sup>.

Statute that generally authorizes the agency to make rules: A.R.S. § 32-504(A)(1)

1. Specific statute authorizing the rule:

R4-10-101: A.R.S. § 32-504(A)(1)

R4-10-102: A.R.S. § 32-507

R4-10-103: A.R.S. §§ 32-504(A)(2) and 32-507

R4-10-104: A.R.S. §§ 32-504(A)(3), 32-510, 32-511, and 32-512

R4-10-105: A.R.S. §§ 32-513 and 32-532

R4-10-106: A.R.S. § 41-1072

R4-10-107: A.R.S. § 32-517

R4-10-108: A.R.S. §§ 32-510, 32-511, 32-512, 32-514, 32-515, and 32-531

R4-10-110: A.R.S. § 32-518

R4-10-111: A.R.S. §§ 32-543 and 32-554

R4-10-112: A.R.S. § 32-541(B)

R4-10-113: A.R.S. § 32-541

R4-10-114: A.R.S. §§ 32-542, 32-562, 32-572, and 32-573

R4-10-115: A.R.S. § 41-1092.09

Table 1: A.R.S. § 41-1072

R4-10-201: A.R.S. §§ 32-551 and 32-564

R4-10-202: A.R.S. § 32-563

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<sup>1</sup> The twelve categories are: cosmetologist, nail technologist, aesthetician, cosmetology instructor, nail technology instructor, aesthetician instructor, cosmetology salon, nail technology salon, aesthetic salon, cosmetology school, nail technology school, and aesthetic school.

- R4-10-203: A.R.S. § 32-555
- R4-10-204: A.R.S. §§ 32-558, 32-560, and 32-561
- R4-10-205: A.R.S. § 32-555
- R4-10-206: A.R.S. § 32-555
- R4-10-207: A.R.S. § 32-555
- R4-10-208: A.R.S. § 32-555
- R4-10-209: A.R.S. § 32-553
- R4-10-301: A.R.S. § 32-531
- R4-10-302: A.R.S. § 32-531
- R4-10-303: A.R.S. § 32-510
- R4-10-304: A.R.S. § 32-511
- R4-10-305: A.R.S. § 32-512
- R4-10-306: A.R.S. §§ 32-510, 32-511, and 32-512
- R4-10-401: A.R.S. § 32-541
- R4-10-402: A.R.S. §§ 32-543, and 32-545
- R4-10-403: A.R.S. § 32-541
- R4-10-404: A.R.S. § 32-541
- R4-10-405: A.R.S. § 32-504(A)(1)

2. Objective of the rule including the purpose for the existence of the rule:

R4-10-101. Definitions: The objective of the rule is to define terms used in the rules in a manner that is not explained adequately by a dictionary definition. The definitions are designed to facilitate understanding by those who use the rules.

R4-10-102. Fees: The objective of the rule is to specify the fees that the Board charges for its licensing activities. This increases efficiency in the licensing process by enabling an applicant to submit the correct amount.

R4-10-103. Payment of Fees: The objective of the rule is to specify a required method of payment for agency services and a penalty payment for insufficient funds checks. This increases efficiency in the licensing process by enabling an applicant to submit payment in an acceptable form and avoid a penalty.

R4-10-104. Application for License by Examination: The objective of this rule is to specify the content of an application for a license by examination. This increases efficiency in the licensing process by enabling applicants to submit an administratively complete application.

R4-10-105. Application for License by Reciprocity: The objective of the rule is to specify the content of an application for a license by reciprocity. This increases efficiency in the licensing process by enabling applicants to submit an administratively complete application.

R4-10-106. Licensing Time-frames: The objective of this rule is to specify the time-frames within which the Board will act on a license application. This enables an applicant to anticipate when the Board-approval process will be completed.

R4-10-107. License Renewal: The objective of this rule is to specify the requirements for renewal of a license and the manner in which renewal application is made. This increases efficiency in the licensing process by enabling licensees to submit a timely and administratively complete renewal application and avoid having a license expire.

R4-10-108. Licensing Examinations: The objective of the rule is to prescribe the examination applicants are required to pass before being licensed, establish when the examination may be taken, and indicate materials that may be taken to the examination. This provides an applicant with necessary information regarding the examination qualification criteria.

R4-10-110. Reactivating an Inactive License: The objective of the rule is to specify the conditions under which and requirements to reactive an inactive license. This increases efficiency in the licensing process by enabling an individual with an inactive license to resume providing services to the public.

R4-10-111. Display of Licenses and Signs: The objective of the rule is to specify the notices that must be made to the public. This protects the public health and safety by

enabling members of the public to know whether a salon and personnel are licensed and required infection control and safety standards.

R4-10-112. Infection Control and Safety Standards: The objective of the rule is to establish infection control and safety standards. The standards are designed to protect public health and safety.

R4-10-113. Establishment Management: The objective of the rule is to establish the Board's expectations regarding the owner or manager of a salon or school. By providing clear expectations, the owner or manager of a salon or school is able to avoid disciplinary action.

R4-10-114. Disciplinary Action: The objective of the rule is to provide notice that a licensee is required to allow a representative of the Board to conduct an inspection of a salon or school. Conducting inspections is an important means by which the Board protects public health and safety.

R4-10-115. Rehearing or Review of Decision: The objective of this rule is to specify the procedures and standards for requesting a rehearing or review of a Board decision. This enables a licensee to know how to exhaust the licensee's administrative remedies before making application for judicial review under A.R.S. § 12-901.

Table 1. Time-frames (in days): The objective of this rule is to specify in table form the time frames within which the Board will act on a license application. This enables an applicant to anticipate when the Board-approval process will be completed.

R4-10-201. Application for School License; Renewal: The objective of the rule is to specify the requirements for submitting an application for an initial or renewal school license. This increases efficiency in the licensing process by enabling an applicant to submit a complete application and avoid the delays associated with an incomplete application.

R4-10-202. School Closure: The objective of the rule is to establish procedures to be followed when a school closes. This is designed to protect students from losing the investment made in attending the school.

R4-10-203. General School Requirements: The objective of the rule is to specify the minimum facilities, equipment, supplies, and materials required to operate a school. Clearly specified minimum requirements provide efficiencies in the licensing process by enabling a school applicant to prepare for licensure.

R4-10-204. School Records: The objective of the rule is to specify the records that a school must maintain regarding each student's participation and the information that must be transmitted to the Board as a monthly report verifying earned student hours. This is designed to protect students by ensuring they receive credit for participation at the school.

R4-10-205. Aesthetic School Requirements: The objective of the rule is to specify equipment necessary in a school of aesthetics and equipment that must be provided to each student. Clearly specified minimum requirements provide efficiencies in the licensing process by enabling a school applicant to prepare for licensure.

R4-10-206. Cosmetology School Requirements: The objective of the rule is to specify equipment necessary in a school of cosmetology and equipment that must be provided to each student. Clearly specified minimum requirements provide efficiencies in the licensing process by enabling a school applicant to prepare for licensure.

R4-10-207. Nail Technology School Requirements: The objective of the rule is to specify equipment necessary in a school of nail technology and equipment that must be provided to each student. Clearly specified minimum requirements provide efficiencies in the licensing process by enabling a school applicant to prepare for licensure.

R4-10-208. Combined School Requirements: The objective of the rule is to specify equipment necessary in a school that teaches aesthetics, cosmetology, and nail technology to

both students and instructors and equipment that must be provided to each student. Clearly specified minimum requirements provide efficiencies in the licensing process by enabling a school applicant to prepare for licensure.

R4-10-209. Demonstrators, Exclusions: The objective of the rule is to specify the limits on an individual who gives demonstrations in a licensed school. This protects students by limiting the teaching done by individuals who are not licensed instructors.

R4-10-301. Instructors; Licensed Individuals: The objective of the rule is to specify requirements for schools that provide professional development instruction for licensees. This protects licensees by having a record of their professional development and clearly distinguishing between education necessary for licensure and professional development.

R4-10-302. Instructor Curriculum Required Hours: The objective of the rule is to specify the hours of education required in a course for an instructor of aesthetics, cosmetology, and nail technology and to place limits on teaching done by student instructors. This increases efficiency in the licensing process by enabling individuals who wish to be an instructor to know the requirements for licensure.

R4-10-303. Aesthetics Curriculum Required 600 Hours: The objective of the rule is to specify the hours of education required in an aesthetics curriculum and place limits on remuneration for student services. This increases efficiency in the licensing process by enabling individuals who wish to be an aesthetician to know the requirements for licensure.

R4-10-304. Cosmetology Curriculum Required 1600 Hours: The objective of the rule is to specify the hours of education required in a cosmetology curriculum and place limits on remuneration for student services. This increases efficiency in the licensing process by enabling individuals who wish to be a cosmetologist to know the requirements for licensure.

R4-10-305. Nail Technology Curriculum Required 600 Hours: The objective of the rule is to specify the hours of education required in a nail technology curriculum and place limits on

remuneration for student services. This increases efficiency in the licensing process by enabling individuals who wish to be a nail technologist to know the requirements for licensure.

R4-10-306. Curricula Hours: The objective of the rule is to specify the number of hours in one discipline of study that may transfer to another discipline and to specify the number of hours that may be obtained in an alternative format or at an alternative location. This increases efficiency in the licensing process by enabling individuals to know the requirements for licensure.

R4-10-401. Application for a Salon License: The objective of the rule is to specify the requirements for submitting an application for a salon license. This increases efficiency in the licensing process by enabling an applicant to submit a complete application and avoid the delays associated with an incomplete application.

R4-10-402. Changes Affecting a Salon License: The objective of the rule is to specify the changes in a salon ownership or location that require a new application for salon licensure. The rule also specifies that the Board-issued license be publically posted. This protects the public by providing notice that the salon is properly licensed to operate in Arizona.

R4-10-403. Salon Requirements and Minimum Equipment: The objective of the rule is to specify the minimum equipment, materials, supplies, tools, and instruments required for the kind of services provided at a salon and to protect the public and employees. This protects the public by ensuring a salon is equipped to safely provide the advertised services.

R4-10-404. Mobile Services: The objective of the rule is to specify the requirements for providing mobile services. This protects the public by ensuring that mobile services comply with the same standards as services provided in a stationary salon.

R4-10-405. Shampoo Assistants: The objective of the rule is to specify the work that may be performed by an unlicensed individual working in a salon. This protects the public by ensuring that skilled work is performed by licensees.

3. Effectiveness of the rule in achieving the objective including a summary of any available data supporting the conclusion:

The Board concludes the rules are effective in achieving their objectives. The Board bases this conclusion on the fact that it is able to license and regulate individuals in the cosmetology industry while protecting public health and safety.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency:

The rules are consistent with applicable federal statutes. The applicable federal statutes are:

- 42 U.S.C. 7412: This establishes a list of hazardous air pollutants and is consistent with R4-10-112(M).
- 34 CFR Part 600: This establishes the rules and procedures used by the U.S.

Department of Education to determine whether an educational institution qualifies as an eligible institution and may apply to participate in programs authorized by the Higher Education Act of 1965. A school licensed by the Board under R4-10-201 is qualified.

There are some minor inconsistencies with state statutes.

- A.R.S. § 41-1080 requires that the Board not issue a license to an individual unless the individual's presence in the U.S. is authorized under federal law. The Board complies with this provision but the rules do not provide notice of the requirement.
- A.R.S. § 32-551(B) requires the Board to return an incomplete application for a school license to the applicant within 30 days. This is inconsistent with the Board's licensing time frames at R4-10-106. The Board's licensing time frames are consistent with A.R.S. § 41-1074 regarding an incomplete application. The problem arises from the fact that A.R.S. § 32-551(B) was enacted in 1984, many years before A.R.S. § 41-1074 was enacted. Legislative action is required to eliminate the inconsistency.
- R4-19-115(A) and (D) are inconsistent with the times specified in A.R.S. § 41-1092.09 and the rule incorrectly refers to a contested case rather than an appealable agency action.

The following are inconsistencies with current Board procedure:

- R4-10-101(26) references an examination given by the Board but the required examination is actually given by the contracted examination provider.
- R4-10-104(A)(1) requires the examination fee be submitted to the Board but the fee is actually submitted directly to the contracted examination provider.
- R4-10-108(E) indicates the Board shall notify applicants of the time and place for examination but this is actually done by the contracted examination provider.

The following are internal inconsistencies in the Board's rules:

- R4-10-106(B)(1)(a) and (C)(3), R4-10-108(A), and Table 1 reference Board approval to take an examination. However, by the Board's definition at R4-10-101(26), taking and passing an examination is part of the substantive review of an application for licensure rather than a separate approval.
- R4-10-204(E), which indicates a student "registers" for the Board examination is inconsistent with R4-10-104 and R4-10-106, which require applicants to apply for Board approval to take the examination.
- R4-10-306(H) refers to an approved course of instruction. However, the Board does not approve courses of instruction.

5. Agency enforcement policy including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement:

The Board enforces the rules either as written or, when there is an inconsistency with statute, in a manner consistent with statute.

6. Clarity, conciseness, and understandability of the rule:

The Board concluded the rules are generally clear, concise, and understandable. However, the following issues impair clarity:

- Contrary to current rule-writing standards, some of the rules are written in the passive voice and items in a list do not follow the lead language;
- The heading for R4-10-108 is incomplete because much of the Section deals with a pre-screening review of examination qualifications;
- The heading for R4-10-114 is inaccurate because the substance of the Section does not deal with disciplinary action;
- The word "unexpected" in R4-10-201(A)(5) should be "unexecuted;"

- The internal citation in R4-10-103(C)(2) is incorrect and use of the term “penalty” is inaccurate;
- The internal citation in R4-10-302(B) is incorrect.

7. Summary of written criticisms of the rule received by the agency with the past five years, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods, and, written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute or beyond the authority of the agency to enact, and the result of the litigation of administrative proceedings:

The Board received no written criticisms of the rules during the last five years, including analyses regarding whether the rules are based on valid scientific or reliable principles or methods.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule:

The Board currently licenses 73,363 individuals (62% cosmetologists; 20% nail technicians; 16% aestheticians; and 2% instructors). During the last year it received applications for licensure by examination from 2,659 and for licensure by reciprocity from 1,941 individuals. During the last year, the Board reactivated 729 licenses. There are currently 3,704 inactive licensees. The licensing examination, which consists of both written and practical parts, was taken by 2,839 individuals last year. Almost 89 percent of those taking the examination passed on the first taking. There are 1,865 salons and 79 schools licensed by the Board. The Board, which currently has 16 FTEs, collected \$3,297,000 in licensing fees last year and was appropriated \$1,807,700 for the current FY.

#### 1996 rulemaking

The only rules made in 1996 and not subsequently amended are R4-10-202 (School Closure) and R4-10-209 (Demonstrators, Exclusions). The EIS prepared in 1996 is not available. The Board believes these two Sections have minimal economic consequences. R4-10-202

imposes requirements necessary to protect students when a school closes. It requires the school to provide notice of closure and send student records to the Board for safe keeping. R4-10-209 also protects students by specifying the limited circumstances in which instruction may be provided by an unlicensed individual.

#### 1999 rulemaking

The following rules have not been amended since being made in 1999: R4-10-106 (Licensing Time-frames), R4-10-113 (Establishment Management), R4-10-114 (Disciplinary Action), R4-10-115 (Rehearing or Review of Decision), Table 1 (Time-frames), and R4-10-405 (Shampoo Assistants). The EIS prepared in 1999 is not available. The Board believes these Sections have minimal economic consequences. R4-10-106, R4-10-114, R4-10-115, and Table 1 simply provide information useful to an applicant or licensee is dealing with the Board. R4-10-113 imposes requirements regarding the responsibilities of the individual who manages a salon, school, or mobile service. These requirements are designed to protect the public. R4-10-405 addresses the limited services that can be provided by an unlicensed individual. This is to protect the public.

#### 2003 rulemaking

The only rule made in 2003 and not subsequently amended is R4-10-103 (Payment of Fees). The EIS prepared in 2003 is not available. The Board believes this Section has minimal economic consequences. This Section facilitates the licensing process by specifying the manner in which fees and charges are to be paid.

#### 2005 rulemaking

The following rules have not been amended since being made in 2005: R4-10-104 (Application for License by Examination), R4-10-207 (Nail Technology School Requirements), R4-10-208 (Combined School Requirements), R4-10-302 (Instructor Curriculum Required Hours), and R4-10-305 (Nail Technology Curriculum Required 600 Hours). The EIS prepared in 2005 is available. The Board believes these Sections have minimal economic consequences. The changes to all Sections except R4-10-302 were made

to be consistent with statutory changes. The amendment to R4-10-302 provided needed flexibility in the education of instructors.

#### 2006 rulemaking

The following rules have not been amended since being made in 2006: R4-10-101 (Definitions), R4-10-105 (Application for License by Reciprocity), R4-10-108 (Licensing Examination), R4-10-111 (Display of Licenses and Signs), R4-10-201 (Application for School License; Renewal), R4-10-203 (General School Requirements), R4-10-204 (School Records), R4-10-205 (Aesthetic School Requirements), R4-10-206 (Cosmetology School Requirements), R4-10-401 (Application for Salon License), R4-10-402 (Changes Affecting a Salon License), R4-10-403 (Salon Requirements and Minimum Equipment), and R4-10-404 (Mobile Services). The EIS prepared in 2006 is available. The Board believes these Sections have minimal economic consequences.

In addition to making the rules more clear, concise, and understandable and consistent with statutory changes, the Board created the option of a pre-screening for examination, eliminated the requirement that the practical examination use a live model, expanded the ability to reactivate a license after years of inactivity, and updated the requirements regarding school supplies.

#### 2008 rulemaking

The following rules have not been amended since being made in 2008: R4-20-112 (Infection Control and Safety Standards), R4-10-301 (Instruction; Licensed Individuals), R4-10-303 (Aesthetics Curriculum Required 600 Hours), R4-10-304 (Cosmetology Curriculum Required 1600 Hours), and R4-10-306 (Curricula Hours). The EIS prepared in 2008 is available. The Board believes these Sections have minimal economic consequences. In this rulemaking, the Board took steps to protect the public by updating provisions regarding cleanliness of spas and allowing licensees to provide invasive procedures, as allowed under law, if they had proper training and supervision.

#### 2015 rulemaking

The following rules were amended in 2015: R4-10-102 (Fees), R4-10-107(License Renewal), and R4-10-110 (Reactivating an Inactive License). The EIS prepared in 2015 is available. The Board believes these Sections have minimal economic consequences. The amendments made were in response to a statutory change requiring biennial rather than annual license renewal. The cost of licensure and renewal was not changed except that the cost for delinquent renewal was actually decreased minimally.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states:

No analysis has been submitted.

10. How the agency completed the course of action indicated in the agency's previous 5YRR:

In a five-year-review report approved by Council in October 2010, the Board indicated it would amend R4-10-115. It has yet to do so.

11. A determination after analysis that the probable benefits of the rule outweigh within this state the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

Most of the costs associated with licensing and regulating cosmetologists result from statute rather than rule. For example, it is statute that establishes the requirements for obtaining a license from the Board and requires cosmetologists to be licensed and renew the license biennially and pass a licensing examination. Statute requires that the Board fund its activities by charging fees. Statute establishes nine grounds for disciplinary action.

To protect public health and safety, the rules provide detail about necessary infection control and sanitation standards, as required by A.R.S. § 32-504(A)(1). To protect students, the rules impose curriculum and recordkeeping standards. The costs associated with these standards are a cost of doing business.

The Board believes the rules are the least burdensome possible to achieve the statutory responsibility of protecting the public.

12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law:

The rules are not more stringent than applicable federal law: 42 U.S.C. 7412 and 34 CFR Part 600.

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:

The only rules made after July 29, 2010, are R4-10-102 (Fees), R4-10-107(License Renewal), and R4-10-110 (Reactivating an Inactive License). All the licenses for which a fee is required under R4-10-102, including a license renewal or reactivation, comply with A.R.S. § 41-1037 because they are issued to qualified individuals or entities to conduct activities that are substantially similar in nature.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule or to make a new rule. If no issues are identified for a rule in the report, the agency may indicate that no action is necessary for the rule:

The Board intends to amend all of its rules by December 31, 2017.