

Clearinghouse Rule 24-088
STATE OF WISCONSIN
COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF RULEMAKING	:	PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE	:	COSMETOLOGY
COSMETOLOGY	:	EXAMINING BOARD
EXAMINING BOARD	:	ADOPTING RULES
	:	(CLEARINGHOUSE RULE)

PROPOSED ORDER

An order of the Cosmetology Examining Board to **amend** Cos 3.01 (11), Cos 3.04 (2), Cos 3.06 (2); and to **create** Cos 1.01 (11t), Cos 3.01 (2), Cos 3.04 (2m), and Cos 4.11 relating to Mobile Establishments.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Sections 454.08 (1) (ag) 1. and 2., and 454.08 (4), Stats.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) (a), 454.08 (1) (ag) 1. and 2., and 454.08 (4), Stats.

Explanation of agency authority:

Section 15.08 (5) (b), Stats., provides that each examining board “[s]hall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.”

Section 227.11 (2) (a), Stats., provides that “Each 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.”

Section 454.08 (1) (ag) 1., Stats.: “The examining board shall promulgate rules permitting the practice of electrology outside of a licensed establishment.”

Section 454.08 (1) (ag) 2., Stats.: “The 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 454.08 (4), Stats., states that “[t]he examining board shall, by rule, establish minimum standards concerning the maintenance, equipment, plans, and specifications for licensed establishments as they relate to the public health and safety.”

Related statute or rule:

None.

Plain language analysis:

The proposed rule creates new regulations to allow mobile cosmetology establishments in the state of Wisconsin. It creates a definition for mobile establishments and specifies that mobile establishments are held to the same standards of licensing, inspections, sanitation, and safety as fixed establishments. All services provided through a mobile establishment are held to the same standards of practice and professional conduct in chapter Cos 2. It also sets additional regulations for mobile establishments specifically.

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

None.

Comparison with rules in adjacent states:

Illinois:

Rules of the Illinois Department of Financial and Professional Regulation allow for mobile establishments in Illinois [68 Ill. Adm. Code 1175.1300]. Cosmetology, nail technology, hair braiding or esthetics salons and barber shops are allowed to be in the form of a mobile salon or shop, and are subject to the same regulations as those in buildings.

Iowa:

Iowa statute allows for mobile cosmetology establishments [Chapter 157, Iowa Code]. “Establishment” is defined as a fixed location or a location that is readily movable where one or more persons engage in the practice of barbering and cosmetology arts and sciences, including but not limited to a retail establishment. All establishments are subject to the same regulations for licensure, safety, and sanitation. Rules of Iowa’s Public Health Department, Professional Licensure Division further specify licensing and sanitation requirements [645 IAC 61].

Michigan:

Michigan statutes allow for mobile salons and the performance of cosmetology services in mobile salons [MCL 339.1203]. Rules of the Michigan Department of Licensing and Regulatory Affairs require an establishment license for mobile salons in the same way as those in a building [Mich Admin Code, R 338.2126a]. One additional application requirement for mobile salons is that they provide photographs demonstrating compliance with safety and sanitation requirements upon application for an establishment license.

Minnesota:

Minnesota statutes allow for mobile salons to provide cosmetology services [Minnesota Statutes, Chapter 155A.29]. They are subject to the same minimum requirements as other salons in Minnesota. Minnesota rules provide for further regulations on mobile salons [Minnesota Rules, Chapter 2105.0395]. They specify that a license can only apply to one vehicle or mobile structure and cannot be transferred. All services must be provided inside the interior of the vehicle or structure. The mobile salon must be equipped with a functioning cell phone or Voice over Internet Protocol. The mobile salon must have working alarms for carbon monoxide, smoke, and combustible gas, either as single alarms or combined alarms. The mobile salon must have a self-contained, potable water supply in holding tanks, a wastewater tank or gray water tank, and a restroom. Services may not be provided unless the mobile salon is parked with the engine off, stable, and leveled. The mobile salon must have a ventilation system sufficient to provide fresh air in the salon.

Summary of factual data and analytical methodologies:

The proposed rules were developed by the board conducting a review of the provisions of chs. Cos 1, 2, 3, and 4, reviewing regulations on mobile establishments from other states, and determining how best to regulate mobile establishments in Wisconsin.

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

The proposed rules were posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis are attached.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Jennifer.Garrett@wisconsin.gov or phone at 608-266-2112.

Agency contact person:

Jake Pelegrin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8306; telephone 608-267-0989; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Jake Pelegrin, 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 included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Cos 1.01 (11t) is created to read:

Cos 1.01 (11t) “Mobile establishment” means an establishment providing cosmetology, aesthetics, electrology, or manicuring services located in a mobile vehicle or mobile structure.

SECTION 2. Cos 3.01 (2) is created to read:

Cos 3.01 (2) Mobile establishments shall be licensed as establishments under the requirements of this chapter. Mobile establishments are subject to all of the following requirements:

(a) The establishment shall meet the requirements of this chapter and ch. Cos 4, including requirements related to establishments, inspections, sanitation, and safety. All services provided through a mobile establishment shall meet the standards of practice and professional conduct under ch. Cos 2.

(b) A mobile establishment license is valid for a specific vehicle or mobile structure and may not be transferred to a different vehicle or mobile structure.

(c) The mobile establishment’s name as shown on the license shall be visibly displayed and clearly legible on at least one exterior side of the mobile establishment.

SECTION 3. Cos 3.01 (11) is amended to read:

Cos 3.01 (11) Where an establishment is located in the same building a residence, the business and living quarters shall be separate. A mobile establishment may not be located in a vehicle or mobile structure that also contains a residence.

SECTION 4. Cos 3.04 (2) is amended to read:

Cos 3.04 (2) ~~The~~ Except as provided in sub. (2m), the board shall require identification of the owner, business address, cosmetology manager, type of business, and a copy of the floor plan showing dimensions and required equipment, in addition to other information which may be needed to approve the issuance of a license.

SECTION 5. Cos 3.04 (2m) is created to read:

Cos 3.04 (2m) Mobile establishments shall provide both a mailing address at which board correspondence may be received and the address of the physical location where the mobile establishment is parked when not in service. Mobile establishments shall also provide a description of the vehicle or mobile structure to be used as the mobile establishment, photographs of the interior and exterior, and the vehicle registration of the mobile establishment.

SECTION 6. Cos 3.06 (2) is amended to read:

Cos 3.06 (2) Change of location of any establishment, except mobile establishments, constitutes the creation of a new establishment and requires submission of an application for a new establishment license. Relocation of a leased chair or booth which is licensed as an establishment and housed within a lessor establishment requires only written notification to the department identifying the change of chair or booth.

SECTION 7. Cos 4.11 is created to read:

Cos 4.11 Mobile Establishments. In addition to the requirements of this chapter, mobile establishments shall comply with the following requirements:

- (1) Services shall not be provided unless the mobile establishment is parked, with the engine off, stable, and level.
- (2) All services shall be provided inside the interior of the vehicle or structure.
- (3) Carpeting is permitted only within driving or cab areas.
- (4) All hazardous substances in the mobile establishment shall be stored upright in secured cabinets when the mobile establishment is moving.
- (5) All moving parts, including slide outs and steps, shall be in good working order.

SECTION 8. 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.

(END OF TEXT OF RULE)

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