

COVER SHEET FOR PROPOSED INTERIM RULE

Proposed Interim Rule Number _____

Rule Number Plc 1002.07

1. Agency Name & Address:

**Office of Professional Licensure & Certification
7 Eagle Square
Concord, NH 03301**

2. RSA Authority: RSA 310-A:1-d, II(h)(1)
3. Federal Authority: _____
4. Type of Action:
Adoption X
Amendment _____
Repeal _____
Readoption _____
Readoption w/amendment _____

5. Short Title: **Application Fees for Microblading Certificates**

6. Contact person for copies and questions:

Name: **Gretchen Hamel**
Address: **OPLC
7 Eagle Square
Concord, NH 03301**

Title: **Program Specialist IV**
Phone #: **Please contact by email:
Gretchen.R.Hamel1@opl.nh.gov**

****PLEASE ATTACH THE FOLLOWING**, numbered to correspond to the numbers on this sheet (a separate sheet is not required for every item):

7. An explanation of why the interim rule is necessary, including documentary evidence to prove that the agency is acting in accordance with RSA 541-A:19, I, and is not adopting an interim rule solely to avoid the time periods imposed in RSA 541-A.

8. A description of the people, enterprises, and government agencies affected by the rule.

9. The fiscal impact statement prepared by the Legislative Budget Assistant, if required by RSA 541-A:19, II. See Section 3.2 of Chapter 3 of the Drafting and Procedure Manual for Administrative Rules.

****PLEASE SUBMIT 2 COPIES OF THIS COVER SHEET** and all attachments along with 2 copies of the interim rule to the Office of Legislative Services, Administrative Rules. The rule must include an appendix containing the same information about statutes or federal regulations as in Item 10 of Appendix II-J.

****PLEASE SIGN THE FOLLOWING:**

I, the adopting authority,* hereby certify that the attached is an accurate statement explaining why an interim rule is necessary.

Date: December 15, 2021

Signature: 

Name: Lindsey B. Courtney

Title: Executive Director

*("Adopting authority" is the official empowered by statute to adopt the rule, or a member of the group of individuals empowered by statute to adopt the rule.)

7. An explanation of why the interim rule is necessary, including documentary evidence to prove that the agency is acting in accordance with RSA 541-A:19, I, and is not adopting an interim rule solely to avoid the time periods imposed in RSA 541-A.

The Proposed Interim Rule is needed to establish the application processing fees for microblading certificates under RSA 314-A:2, IV. The fees are currently established in a different Interim rule, Plc 405, based on the fee in RSA 314-A:2, II for Body Art licenses. The Office of Legislative Services, Administrative Rules staff asserted during the Interim rulemaking that RSA 314-A:2, II did not apply to microblading certification. After review, the OPLC agreed that the statute did not apply and so deleted that reference from the Initial Proposal for Plc 405, for which a Final Proposal is expected to be filed for review by the Joint Legislative Committee on Administrative Rules in January 2022. Instead, the regular rule will cite Plc 1002 for the application processing fees. While the OPLC is working to adopt all application-related fees as regular rules, the rules will not be in place prior to the adoption of Plc 405 (regular). If the Proposed Interim Rule is not adopted, the OPLC will not be able to charge a fee for initial or renewal applications for microblading certificates after the existing Interim Plc 405 is replaced with the regular rule, until such time as a rulemaking to adopt Plc 1002 is completed. The OPLC is thus proposing to adopt this Proposed Interim Rule under RSA 541-A:19, I(a) to implement the rulemaking authority relative to fees that was clarified by Laws of 2021, 91:81, effective July 1, 2021.

8. A description of the people, enterprises, and government agencies affected by the rule.

The Proposed Interim Rule, Plc 1002.07, directly affects currently-licensed cosmetologists and estheticians who wish to obtain a microblading certificate, and indirectly affects the State's budget, which will have to absorb a loss if the Interim rule is not adopted.

9. The fiscal impact statement prepared by the Legislative Budget Assistant, if required by RSA 541-A:19, II. See Section 3.2 of Chapter 3 of the Drafting and Procedure Manual for Administrative Rules.

FIS # 21:143, dated 12/10/2021

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

Not applicable as these are new interim rules.

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds.

3. Cost and benefits of the proposed rule(s):

The proposed rule establishes a microblading certificate initial and renewal fee in the amount of \$155 for a two-year duration. This amount is \$55 more than the \$100 that would be paid over two years under the Plc 1002 for application processing fees. The proposed increased fee amounts are anticipated to generate an amount not to exceed 125% of actual cost for providing the service pursuant to RSA 310-A:1-e. There will be additional revenue to the State to the extent such fees are collected and deposited into the office of professional licensure and certification fund.

A. To State general or State special funds:

There will be no direct impact on the State general fund, however after paying all costs and salaries associated with the Office, any remaining balance in the fund lapses to the general fund at the close of each biennium. There will be additional revenue to the office of professional licensure and certification fund from the proposed certification and renewal fees.

B. To State citizens and political subdivisions:

None.

C. To independently owned businesses:

None.

INTERIM RULEMAKING NOTICE FORM

Proposed Interim Rule Number 2021-11 Rule Number Plc 1002.07

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|--|--|----------|-----------------|-----------|-------|--------|-------|------------|-------|------------------------|-------|
| <p>1. Agency Name & Address:</p> <p style="text-align: center;">Office of Professional Licensure & Certification 7 Eagle Square Concord, NH 03301</p> <p>5. Filing Date: December 15, 2021</p> | <p>2. RSA Authority: <u>RSA 310-A:1-d, II(h)(1)</u></p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <table style="width: 100%;"><tr><td style="padding-left: 20px;">Adoption</td><td style="text-align: right;"><u>X</u></td></tr><tr><td style="padding-left: 20px;">Amendment</td><td style="text-align: right;">_____</td></tr><tr><td style="padding-left: 20px;">Repeal</td><td style="text-align: right;">_____</td></tr><tr><td style="padding-left: 20px;">Readoption</td><td style="text-align: right;">_____</td></tr><tr><td style="padding-left: 20px;">Readoption w/amendment</td><td style="text-align: right;">_____</td></tr></table> | Adoption | <u>X</u> | Amendment | _____ | Repeal | _____ | Readoption | _____ | Readoption w/amendment | _____ |
| Adoption | <u>X</u> | | | | | | | | | | |
| Amendment | _____ | | | | | | | | | | |
| Repeal | _____ | | | | | | | | | | |
| Readoption | _____ | | | | | | | | | | |
| Readoption w/amendment | _____ | | | | | | | | | | |

6. Short Title: **Application Fees for Microblading Certificates**

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

| | |
|---|---|
| Name: Gretchen Hamel | Title: Program Specialist IV |
| Address: OPLC 7 Eagle Square Concord, NH 03301 | Phone #: Please contact by email |
| | Fax #: [discontinued] |
| | E-mail: <u>Gretchen.R.Hamel1@opl.nh.gov</u> |

The rule can be reviewed on-line at <https://www.oplc.nh.gov/oplc-laws-and-rules> TYY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

8. Summary explaining the effect of the rule:

The Proposed Interim Rule establishes the application processing fees for microblading certificates under RSA 314-A:2, IV. The fees are currently established in a different interim rule, Plc 405, based on the fee in RSA 314-A:2, II for Body Art licenses. Staff of the Office of Legislative Services, Administrative Rules office, asserted during the interim rulemaking that RSA 314-A:2, II did not apply to microblading certification. After review, the OPLC agreed that the statute did not apply and so deleted that reference from the Initial Proposal for Plc 405, for which a Final Proposal is expected to be filed for review by the Joint Legislative Committee on Administrative Rules in January 2022. The regular rule will cite Plc 1002 for the application processing fees. While the OPLC is working to adopt all application-related fees as regular rules, the rules will not be in place prior to the adoption of Plc 405 (regular). If the Proposed Interim Rule is not adopted, the OPLC will not be able to charge a fee for initial or renewal applications for microblading certificates after the existing interim rule Plc 405 is replaced with the regular rule. The OPLC is thus proposing to adopt this Proposed Interim Rule under RSA 541-A:19, I(a) to implement the rulemaking authority relative to fees that was clarified by Laws of 2021, 91:81, effective July 1, 2021.

9. Listing of people, enterprises, and government agencies affected by the rule:

The Proposed Interim Rule, Plc 1002.07, directly affects currently-licensed cosmetologists and estheticians who wish to obtain a microblading certificate, and indirectly affects the State's budget, which will have to absorb a loss if the Proposed Interim Rule is not adopted.

10. Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement.

| Rule | State Statute Implemented |
|-------------|---------------------------|
| Plc 1002.07 | RSA 310-A:1-e, I(a) |

11. Summary of the effect upon the state if the rule were not adopted:

If the Proposed Interim Rule is not adopted, the OPLC will not be able to charge a fee for initial or renewal applications for microblading certificates after the existing interim rule Plc 405 is replaced with the regular rule, until such time as a rulemaking to adopt Plc 1002 is completed.

12. Proposed date of review by the Joint Legislative Committee on Administrative Rules:

January 21, 2022

13. The fiscal impact statement prepared by the Legislative Budget Assistant, if applicable.

FIS # 21:143 , dated 12/10/2021

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

Not applicable as these are new interim rules.

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds.

3. Cost and benefits of the proposed rule(s):

The proposed rule establishes a microblading certificate initial and renewal fee in the amount of \$155 for a two-year duration. This amount is \$55 more than the \$100 that would be paid over two years under the Plc 1002 for application processing fees. The proposed increased fee amounts are anticipated to generate an amount not to exceed 125% of actual cost for providing the service pursuant to RSA 310-A:1-e. There will be additional revenue to the State to the extent such fees are collected and deposited into the office of professional licensure and certification fund.

A. To State general or State special funds:

There will be no direct impact on the State general fund, however after paying all costs and salaries associated with the Office, any remaining balance in the fund lapses to the general fund at the close of each biennium. There will be additional revenue to the office of professional licensure and certification fund from the proposed certification and renewal fees.

B. To State citizens and political subdivisions:

None.

C. To independently owned businesses:

None.

Adopt Plc 1002.07 to read as follows:

Plc 1002.07 Application Fees for Microblading Certificates. The following application processing fees shall apply to microblading certificates under RSA 314-A:2, IV:

Table 1002.7 Application Fees for Microblading Certificates

| Category | Duration | Fee |
|--|----------|-------|
| Application processing: initial, renewal, or reinstatement of microblading certificate | 2 years | \$155 |

Appendix A: State Statutes Implemented

| Rule | State Statute Implemented |
|-------------|---------------------------|
| Plc 1002.07 | RSA 310-A:1-e, I |

Note to JLCAR: This rule is establishing the fee for microblading certificates at \$155. The FIS for this Interim Rule states that a comparison of the costs of the proposed rule to the existing rule is not applicable, however, this is not correct. Later, the FIS states that this proposed rule is \$55 more than the \$100 currently required. This also appears to be incorrect. Committee staff feel it is necessary to clarify the FIS and explain the current status for the fee for the Committee.

Currently, the OPLC has an effective rule for Plc 405 which was adopted through an interim rule proceeding. This rule states, in Plc 405.03(b)(2) and Plc 405.04(a)(2) that the fee for licensure for microblading is \$110 for a 2 year license or renewal. These rules are effective until 3-1-2022 or a regular rule is adopted. The OPLC started a regular rulemaking process for Plc 405 and that Final Proposal is 2021-109 which will be before JCLAR at its January meeting. In that rulemaking proceeding, the fees are not spelled out but rather the proposed rules cite to Plc 1002.07 contained in this proposed Interim Rule. What this means is that Plc 405 currently requires a fee of \$110 and this Interim Rule would require a fee of \$155. This is an increase of \$45. **The OPLC does have authority to increase their fees.** RSA 310-A:1-e, I requires the OPLC to set its fees at a rate that would provide for 125% of its operating costs. This amount is determined by averaging the OPLC's costs from the previous 2 years so the OPLC may need to increase fees from time to time to remain compliant with the statute. However, the FIS states that there is no change in cost from the previous rule, which is misleading as there is a \$45 increase from the current rule to this proposed rule. The current rule is a different numbered rule, and the fee will no longer exist in Plc 405 if these rules are adopted, but the fee does exist now and will continue to exist in Plc 1002 if these rules are adopted.