

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 11

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after print publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 444-2055.

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BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 6.6.507B, 6.6.507C, 6.6.507E,) PROPOSED AMENDMENT
6.6.511, and 6.6.511A pertaining to)
Medicare Supplements)

TO: All Concerned Persons

1. On July 1, 2015, at 10:00 a.m., the Commissioner of Securities and Insurance, Montana State Auditor, will hold a public hearing in the 2nd floor conference room, at the Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI), 840 Helena Ave., Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The CSI will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing, or need an alternative accessible format of this notice. If you require an accommodation, contact the CSI no later than 5:00 p.m., June 24, 2015, to advise us of the nature of the accommodation that you need. Please contact Darla Sautter, CSI, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3499; or e-mail dsautter@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

6.6.507B OPEN ENROLLMENT (1) through (3) remain the same.

(4) There shall be a one-time open enrollment from October 15, 2015, to December 7, 2015, for individuals who meet the following criteria:

(a) the individual became eligible and the individual's enrollment became effective for Medicare Part A and Medicare Part B by reason of disability, prior to October 18, 2013; and

(b) the individual did not apply for coverage from an issuer, or applied for coverage from an issuer and was denied.

AUTH: 33-1-313, 33-22-904, 33-22-905, MCA

IMP: 33-22-902, 33-22-904, MCA

6.6.507C GUARANTEED ISSUE FOR ELIGIBLE PERSONS (1) through (2)(g) remain the same.

(h) the individual, upon first becoming eligible for benefits under Medicare Part A and B is enrolled in the Qualified Medicare Beneficiary Program as defined in section 6408(d)(2) of the Federal Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, or full Medicaid (ARM 37.83.902), and no longer qualifies due to income or eligibility changes; or

~~(i) the individual, upon first becoming eligible for benefits under Medicare Part and B enrolls in the Montana Comprehensive Health Association and coverage under the Montana Comprehensive Health Association terminates; or~~

~~(j) remains the same, but is renumbered (i).~~

~~(3) and (3)(a) remain the same.~~

~~(i) the date the individual receives a notice of termination or cessation of some or all supplemental health benefits provided under an employee welfare benefit plan (or, if a notice is not received, notice that a claim has been denied because of such a termination or cessation); or~~

~~(ii) remains the same.~~

~~(iii) ends 63 days after either the applicable notice or the date that the applicable coverage terminates or ceases when notice is not sent;~~

~~(b) an individual described in (2)(b), (c), (e), (f), or (h), ~~(i), or (j)~~, whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends 63 days after the date the applicable coverage is terminated;~~

~~(c) through (ii) remain the same.~~

~~(d) an individual described in (2)(b), ~~(d)(ii)~~, (d)(iii), (e), or (f) who disenrolls voluntarily, the guaranteed issue period begins on the date that is 60 days before the effective date of the disenrollment and ends on the date that is 63 days after the effective date;~~

~~(e) an individual described in (2)(g), the guaranteed issue period begins on the date the individual receives notice pursuant to section 1882(v)(2)(B) of the Social Security Act from the Medicare supplement issuer during the 60 day period immediately preceding the initial Part D enrollment period and ends on the date that is 63 days after the effective date of the individual's coverage under Medicare Part D; ~~and~~~~

~~(f) an individual described in (2) but not described in the preceding provisions of the rule, the guaranteed issue period begins on the effective dates of disenrollment and ends on the day that is 63 days after the effective date; and~~

~~(g) an individual described in (2)(i), the guaranteed issue period begins on the date the individual is informed of the individual's eligibility for Medicare by reason of disability and ends 63 days after that date.~~

~~(4) through (5)(c)(ii) remain the same.~~

~~(d) an eligible person defined in (2)(f), (h), or (i), ~~or (j)~~ is entitled to the issuance of any Medicare supplement policy offered by any issuer;~~

~~(5)(e) through (6)(b) remain the same.~~

AUTH: 33-1-313, 33-22-904, 33-22-905, MCA

IMP: 33-22-902, 33-22-904, 33-22-905, MCA

6.6.507E STANDARD MEDICARE SUPPLEMENT BENEFIT PLANS FOR 2010 STANDARDIZED MEDICARE SUPPLEMENT BENEFIT PLAN POLICIES OR CERTIFICATES ISSUED WITH AN EFFECTIVE DATE FOR COVERAGE ON OR AFTER JUNE 1, 2010 (1) through (7)(e)(i) remain the same.

(ii) 100% of the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, 100% of the Medicare Part B excess charges, and

medically necessary emergency care in a foreign country, established in ARM 6.6.507D(4)(b).

(f) through (11) remain the same.

AUTH: 33-1-313, 33-22-904, 33-22-905, MCA

IMP: 33-15-303, 33-22-901, 33-22-902, 33-22-903, 33-22-904, 33-22-905, 33-22-909, 33-22-910, 33-22-911, 33-22-921, 33-22-922, 33-22-923, 33-22-924, MCA

6.6.511 SAMPLE FORMS OUTLINING COVERAGE (1) ~~The following amounts, as published in the Federal Register, for services furnished in the current calendar year under Medicare's hospital insurance program (Medicare Part A), must apply to the charts for 1990 Plans A through L for policies issued prior to June 2010 in (2)(b) through (m). In each chart, the rule cited in brackets as ARM [6.6.511(1)(a)], [6.6.511(1)(b)], [6.6.511(1)(c)], [6.6.511(1)(d)], [6.6.511(1)(e)], [6.6.511(1)(f)], [6.6.511(1)(g)], [6.6.511(1)(h)], [6.6.511(1)(i)], or [6.6.511(1)(j)], represents the dollar amount specified in the cited rule subsection. The issuer must replace each bracket and rule cite with the correct dollar amount contained in the cited rule subsection when the issuer prints the charts:~~

~~(a) inpatient hospital deductible = \$1068.00;~~

~~(b) benefit period = \$267.00;~~

~~(c) daily coinsurance amount for the 61st through 90th days of hospitalization in a coinsurance amount for lifetime reserve days = \$534.00;~~

~~(d) daily coinsurance amount for the 21st through 100th days of extended care services in a skilled nursing facility in a benefit period = \$133.50;~~

~~(e) 50% of inpatient hospital deductible = \$534.00;~~

~~(f) 75% of inpatient hospital deductible = \$801.00;~~

~~(g) 25% of inpatient hospital deductible = \$267.00;~~

~~(h) 50% of daily coinsurance amount for the 21st through 100th days of extended care services in a skilled nursing facility in a benefit period = \$66.75;~~

~~(i) 75% of daily coinsurance amount for the 21st through 100th days of extended care services in a skilled nursing facility in a benefit period = \$100.13; and~~

~~(j) 25% of daily coinsurance amount for the 21st through 100th days of extended care services in a skilled nursing facility in a benefit period = \$33.38.~~

~~(2) The following are sample forms of the outline of coverage for Medicare supplement policies.~~

~~(3) remains the same, but is renumbered (1).~~

AUTH: 33-1-313, 33-22-904, MCA

IMP: 33-15-303, 33-22-901, 33-22-902, 33-22-903, 33-22-904, 33-22-905, 33-22-906, 33-22-907, 33-22-908, 33-22-909, 33-22-910, 33-22-911, 33-22-921, 33-22-922, 33-22-923, 33-22-924, MCA

6.6.511A SAMPLE FORMS OUTLINING COVERAGE (1) ~~The following amounts, as published in the Federal Register, for services furnished in the current calendar year under Medicare's hospital insurance program (Medicare Part A), must apply to the charts for Plans A, B, C, D, F, and High Deductible Plan F, G, K, L, M,~~

and N, issued on or after June 1, 2010, in (2)(b) through (m). In each chart, the rule cited in brackets as ARM [6.6.511A(1)(a)], [6.6.511A(1)(b)], [6.6.511A(1)(c)], [6.6.511A(1)(d)], [6.6.511A(1)(e)], [6.6.511A(1)(f)], [6.6.511A(1)(g)], [6.6.511A(1)(h)], [6.6.511A(1)(i)], or [6.6.511A(1)(j)], represents the dollar amount specified in the cited rule subsection. The issuer must replace each bracket and rule cite with the correct dollar amount contained in the cited rule subsection when the issuer prints the charts:

- (a) inpatient hospital deductible = \$1068.00;
 - (b) daily coinsurance amount for the 61st through 90th days of hospitalization in a benefit period = \$267.00;
 - (c) daily coinsurance amount for lifetime reserve days = \$534.00;
 - (d) daily coinsurance amount for the 21st through 100th days of extended care services in a skilled nursing facility in a benefit period = \$133.50;
 - (e) 50% of inpatient hospital deductible = \$534.00;
 - (f) 75% of inpatient hospital deductible = \$801.00;
 - (g) 25% of inpatient hospital deductible = \$267.00;
 - (h) 50% of daily coinsurance amount for the 21st through 100th days of extended care services in a skilled nursing facility in a benefit period = \$66.75;
 - (i) 75% of daily coinsurance amount for the 21st through 100th days of extended care services in a skilled nursing facility in a benefit period = \$100.13; and
 - (j) 25% of daily coinsurance amount for the 21st through 100th days of extended care services in a skilled nursing facility in a benefit period = \$33.38.
- (2) The following are sample forms of the outline of coverage for Medicare supplement policies:
- (3) remains the same but is renumbered (1).

AUTH: 33-1-313, 33-22-904, MCA

IMP: 33-15-303, 33-22-901, 33-22-902, 33-22-903, 33-22-904, 33-22-905, 33-22-906, 33-22-907, 33-22-908, 33-22-909, 33-22-910, 33-22-911, 33-22-921, 33-22-922, 33-22-924, MCA

4. STATEMENT OF REASONABLE NECESSITY: The Commissioner of Securities and Insurance, Montana State Auditor, Monica J. Lindeen, (commissioner) is the statewide elected official responsible for administering the Montana Insurance Code and regulating the business of insurance.

The Commissioner is a member, and President of the National Association of Insurance Commissioners (NAIC). The NAIC is an organization of insurance regulators from the 50 states, the District of Columbia, and the U.S. Territories. The NAIC provides a forum for the development of uniform policy and regulation when uniformity is appropriate.

The additional subsection to ARM 6.6.507B is reasonably necessary because the 2013 amendments to the Open Enrollment period created a donut hole wherein persons of the same class (on Medicare because of disability) were treated disparately depending on when Medicare recognized their disability. This gives all persons who did not, or could not, obtain coverage previously a one-time opportunity

to receive benefits that those who became eligible for Medicare after the rule update would receive. The rule intentionally excludes persons who obtained coverage but then dropped it. The date period is set to coincide with the open enrollment period for Medicare set by CMS.

Changes to ARM 6.6.508(2), (3)(b), and (4)(d) are reasonably necessary because (2)(i) applies to individuals formerly covered under the Montana Comprehensive Health Association, which no longer exists. These subsections were modified to eliminate obsolete references to this program.

The change to ARM 6.6.507C(3)(a)(i) is reasonably necessary because (2)(a) and (3)(a) allow for guaranteed issue where existing group coverage ceases, whether or not the coverage is supplemental or primary to the group coverage. The rule amendment makes (3)(a)(i) consistent with those subsections. Similarly, adding the term "employee welfare benefit plan" is reasonably necessary to clarify what type of coverage is being addressed.

The change to ARM 6.6.507C(3)(a)(iii) is reasonably necessary to provide a time period for ending guaranteed issue periods when notice has not been sent out by the carrier.

A second change to ARM 6.6.507C(3)(b) is reasonably necessary because the reference to the former (2)(j) is inaccurate. Subsection (3)(b) refers to involuntary termination of coverage, whereas (2)(j) contemplates eligibility by reason of disability - not involuntary termination. Therefore, this errant reference to (2)(j) was eliminated and (3)(g) was also created to address eligibility by reason of disability under the former (2)(j) now (2)(i).

The change to ARM 6.6.507C(3)(d) is reasonably necessary because the reference to (2)(d)(ii) is inaccurate. That section refers to an involuntary termination of coverage, whereas (3)(d) discusses what happens when there is a voluntary cessation of coverage.

The change to ARM 6.6.507E(7)(e)(ii) is reasonably necessary so that the High Deductible Plan F and Regular Plan F charges are identical for Medicare Part A and Medicare Part B. The language is already present in the High Deductible Plan F, so that subsection does not need to be changed. This is also consistent with the NAIC model rules.

The changes to ARM 6.6.511 and 6.6.511A striking the language of the sample forms are reasonably necessary because the adoption of the NAIC model act regarding payment tables obviates the need for the sample forms addressing those same tables. Persons needing payment tables can obtain the information from the NAIC's model rules.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions either orally or in writing at the hearing. Written

data, views, or arguments may also be submitted to Brett O'Neil, Attorney, Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-2040; fax (406) 444-3499; or e-mail bo'neil@mt.gov, and must be received no later than 5:00 p.m., July 9, 2015.

6. Brett O'Neil, Attorney, has been designated to preside over and conduct this hearing.

7. The CSI maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Such written request may be mailed or delivered to Darla Sautter, Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-2726; fax (406) 444-3499; or e-mail dsautter@mt.gov, or may be made by completing a request form at any rules hearing held by the CSI.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods due to system maintenance or technical problems.

9. Pursuant to 2-4-302, MCA, the bill sponsor contact requirements do not apply.

10. The proposed rule amendments do not significantly and directly impact small businesses; therefore, the requirements of 2-4-111, MCA, do not apply.

/s/ Nick Mazanec
Nick Mazanec
Rule Reviewer

/s/ Jesse Laslovich
Jesse Laslovich
Chief Legal Counsel

Certified to the Secretary of State June 1, 2015.

BEFORE THE OFFICE OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of soliciting applications) NOTICE OF NEGOTIATED
for membership on a negotiated) RULEMAKING
rulemaking committee to develop K-)
12 arts content standards and)
performance indicators)

TO: All Concerned Persons

1. The Office of Public Instruction intends to establish the negotiated rulemaking committee to develop and amend Board of Public Education rules relating to K-12 content standards and performance indicators for Arts and to consult on the preparation of an economic impact statement. This negotiated rulemaking process is required by 20-7-101, MCA, for any rules relating to standards of accreditation.

2. The proposed rules will establish K-12 grade level content and performance standards for the arts.

3. Interests that are likely to be significantly affected by the proposed rules are those related to Montana K-12 public schools of all sizes.

4. The individuals proposed to represent state agencies on the negotiated rulemaking committee are: Jael Prezeau, Office of Public Instruction, Content Standards and Instruction Division Administrator; Ann Gilkey, Office of Public Instruction, Legal Counsel; Peter Donovan, Board of Public Education, Executive Director; and Emily Kohring, Montana Arts Council, Director of Arts Education.

5. The agency is seeking applications from interested parties to serve on the committee. The agency will seek individuals likely to be significantly affected by the proposed rules, including individuals from the following groups: school district trustees, K-12 school administrators, K-12 teachers, higher education faculty, school business officials, parents, and taxpayers. Members of the committee will be selected based on the following criteria:

- cultural diversity
- geography
- arts content experience
- district and school size
- grade levels served

6. The proposed working schedule for the negotiated rulemaking committee is as follows:

(a) On June 11, 2015, this notice will be published in the Montana Administrative Register (MAR). The notice will also be mailed to persons known to the agency to have an interest in this matter.

(b) Applications for membership on the negotiated rulemaking committee must be received no later than July 11, 2015. After receipt and consideration of the comments and applications, the agency will establish a negotiated rulemaking committee no later than July 24, 2015. The members selected to serve on the committee must be able to adequately represent the interests of the persons that will be significantly affected by the proposed rules. The committee members will be notified in writing of their selection and receive an information packet.

(c) The negotiated rulemaking committee will convene its first meeting on August 26, 2015. Teleconferencing and e-mail correspondence will be utilized as much as possible. The initial meeting will convene at 10:00 a.m., in the conference room, at the Holiday Inn Express, Helena, Montana. The committee will begin with an initial draft of amendments to current Board of Public Education content standards and performance indicators for Arts at this meeting.

(d) If the negotiated rulemaking committee is successful in achieving a consensus on the proposed rules, the committee will transmit a report to the agency specifying the areas in which the committee has reached a consensus and the issues that remain unresolved.

(e) Thereafter the superintendent will develop recommendations and present them to the Board of Public Education for formal rulemaking.

7. Any individual or entity interested in applying for or nominating another person for membership on the committee must submit the following information in writing to Jael Prezeau, jprezeau@mt.gov, Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620, no later than July 11, 2015:

(a) the person's name or the nominee's name, address, and contact information including telephone or e-mail address;

(b) evidence that the person or nominee represents any of the specific criteria of interest groups listed above;

(c) the name of the school district in which the nominee lives or works, and the relationship of the person or nominee to it;

(d) a commitment that the person or nominee will be able to participate in the negotiated rulemaking process as contemplated in paragraph 6 and will actively participate in good faith in the development of the rules under consideration; and

(e) the ability of the person or nominee to cover committee participation costs (such as telephone calls, travel, and per diem expenses).

8. Interested parties may submit their views and comments concerning the proposed negotiated rulemaking process to Beverly Marlow, Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620, faxed to (406) 444-2893, or electronic mail to bemarlow@mt.gov no later than July 11, 2015.

9. Initially, the agency proposes to limit the size of the negotiated rulemaking committee to no more than fifteen persons. However, after receipt of comments and applications, the agency may determine that a smaller or larger number is necessary

to adequately represent the interests of the persons significantly affected by the proposed rules. The selected committee members may represent other parties or agencies that have a significant relationship with Montana schools.

10. The agency will make reasonable accommodations for persons with disabilities who wish to participate on the committee. If you require an accommodation, please advise the agency of the nature of the accommodation you need when applying for membership on the committee.

11. Please note the following concerning the process of negotiated rulemaking:

(a) "Interest" for the purpose of this process means multiple parties that have similar points of view or that are likely to be affected in a similar manner in relationship to matters affected by the rule(s) (2-5-103(5), MCA).

(b) Negotiated rulemaking is not a substitute for the public notification and participation requirements of the Montana Administrative Procedure Act, and a consensus agreement by a negotiated rulemaking committee may be modified by an agency as a result of the subsequent rulemaking process (2-5-102, MCA).

12. The specific grant of rulemaking authority authorizing the Board of Public Education to adopt the proposed rules is found in 20-7-101, MCA. The proposed rules will implement Title 20, chapter 7, part 1, MCA.

/s/ Ann Gilkey
Ann Gilkey
Rule Reviewer

/s/ Denise Juneau
Denise Juneau, Superintendent
Office of Public Instruction

Certified to the Secretary of State June 1, 2015.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 10.57.102, 10.57.216,) PROPOSED AMENDMENT
10.57.410 through 10.57.417,)
10.57.424, 10.57.428 through)
10.57.430, 10.57.433, and 10.57.437)
pertaining to educator licensure)

TO: All Concerned Persons

1. On July 8, 2015, at 10:30 a.m., the Board of Public Education will hold a public hearing in the Superintendent's conference room at the Office of Public Instruction, 1227 11th Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Board of Public Education will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Public Education no later than 5:00 p.m. on July 6, 2015, to advise us of the nature of the accommodation that you need. Please contact Peter Donovan, Executive Secretary, 46 North Last Chance Gulch, P.O. Box 200601, Helena, Montana, 59620-0601; telephone (406) 444-0302; fax (406) 444-0847; or e-mail pdonovan@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

10.57.102 DEFINITIONS The following definitions apply to this chapter.

(1) through (8)(d) remain the same.

(e) K-12 (~~content-specific as delineated in ARM 10.57.412~~); and

(f) through (12) remain the same.

(13) "Year of administrative experience" means employment at any level within a state accredited ~~K~~ P-12 school system, or in an educational institution specified in 20-9-707, MCA, as a licensed administrator of at least .5 full-time employee (FTE) for at least 1080 hours or 180 school days or a 1.0 FTE for at least 540 hours or 90 school days. Experience gained prior to eligibility for initial licensure is not considered. Experience as a County Superintendent may be considered as "administrative" experience with evidence of the following:

(a) and (b) remain the same.

(14) "Year of teaching experience" means employment at any level within a state accredited ~~K~~ P-12 school system, or in an educational institution specified in 20-9-707, MCA, as licensed instructional staff of at least .5 FTE during a school fiscal year for at least 1080 hours or 180 school days or a 1.0 FTE for at least 540 hours or 90 school days. Experience gained prior to eligibility for initial licensure is not considered.

AUTH: 20-4-102, MCA
IMP: 20-4-106, MCA

10.57.216 APPROVED RENEWAL ACTIVITY (1) Organizations wishing to offer professional development activities for the award of renewal units must receive approval from the Superintendent of Public Instruction prior to offering activities. Status as a an approved provider will ~~be renewed July 1 of each year~~ continue as long as the provider is in compliance with (2).

(2) through (2)(b) remain the same.

(c) annually report the activities offered to the Superintendent of Public Instruction;

~~(d) be prepared to submit to an audit of records conducted by the Superintendent of Public Instruction, including:~~

(i) and (ii) remain the same.

(iii) program schedule, name, and number of participants; and

~~(e) (d)~~ maintain records of all professional development activities for which renewal unit awards are made for one five years following the date of completion of the annual reporting requirement.

(3) remains the same.

AUTH: 20-4-102, MCA
IMP: 20-4-108, MCA

10.57.410 CLASS 2 STANDARD TEACHER'S LICENSE (1) through (2)(a) remain the same.

(b) completion of an accredited professional educator preparation program ~~which included~~ including appropriate supervised teaching experience as the terms are defined in ARM 10.57.102; and

(c) remains the same.

(3) If the educator preparation program completed by the applicant is not in Montana, upon initial application of a Class 1, Class 2, or Class 3, the applicant must provide proof of a passing score on the PRAXIS II applicable to the requested endorsement as required by the Montana educator preparation programs.

(3) remains the same but is renumbered (4).

~~(4) (5)~~ A lapsed Class 2 standard teacher's license may be reinstated by earning 60 renewal units during the five-year period preceding the validation date of application for the new license.

AUTH: 20-2-121, 20-4-102, MCA
IMP: 20-4-102, 20-4-103, 20-4-106, 20-4-108, MCA

10.57.411 CLASS 1 PROFESSIONAL TEACHER'S LICENSE (1) through (3) remain the same.

(4) A lapsed Class 1 professional teacher's license may be reinstated by earning 60 renewal units during the five-year period preceding the ~~validation~~ date of application for the new license.

AUTH: 20-4-102, MCA
IMP: 20-4-106, 20-4-108, MCA

10.57.412 CLASS 1 AND 2 ENDORSEMENTS (1) remains the same.

(2) Areas approved for endorsement on Class 1 and 2 licenses include the following: agriculture, art K-12, biology, business and information technology education, chemistry, communication, computer science K-12, early childhood (age 3 to grade 3), earth science, economics, elementary education (K-8), English, English as a second language K-12, family and consumer sciences, geography, health, health enhancement K-12, history, industrial trades and technology education, journalism, library K-12, marketing, mathematics, middle grades (4-8), music K-12, ~~physical education K-12~~, physics, political science, psychology, reading K-12, school counseling K-12, science (broadfield), social studies (broadfield), sociology, special education P-12, theater, ~~trades and industry~~, traffic education K-12, and world languages K-12.

(3) through (5) remain the same.

(a) completion of an NCATE or CAEP accredited professional educator preparation program at the grade level(s) identified by the program, including supervised teaching experience; ~~and~~ or

(b) and (i) remain the same.

(ii) 40 semester credits in an extended major; and

(iii) supervised teaching experience.

(6) through (9) remain the same.

AUTH: 20-4-102, MCA
IMP: 20-4-106, 20-4-108, MCA

10.57.413 CLASS 3 ADMINISTRATIVE LICENSE (1) through (4) remain the same.

(5) A lapsed Class 3 administrative license may be reinstated by showing verification of 60 renewal units earned during the five-year period preceding the ~~validation~~ date of application for the new license.

AUTH: 20-4-102, MCA
IMP: 20-4-106, 20-4-108, MCA

10.57.414 CLASS 3 ADMINISTRATIVE LICENSE – SUPERINTENDENT ENDORSEMENT (1) through (1)(d) remain the same.

(e) licensure and endorsement as a ~~P-12~~ principal (P-12); and

(f) and (2) remain the same.

AUTH: 20-4-102, MCA
IMP: 20-4-106, 20-4-108, MCA

10.57.415 CLASS 3 ADMINISTRATIVE LICENSE – ELEMENTARY PRINCIPAL ENDORSEMENT (1) through (1)(c) remain the same.

(d) completion of three semester credits of college ~~coursework~~ courses in both Montana school law and special education law; and
(e) remains the same.

AUTH: 20-4-102, MCA
IMP: 20-4-106, 20-4-108, MCA

10.57.416 CLASS 3 ADMINISTRATIVE LICENSE – SECONDARY PRINCIPAL ENDORSEMENT (1) through (1)(c) remain the same.

(d) completion of three semester credits of college ~~coursework~~ in courses in both Montana school law and special education law; and
(e) remains the same.

AUTH: 20-4-102, MCA
IMP: 20-4-106, 20-4-108, MCA

10.57.417 CLASS 3 ADMINISTRATIVE LICENSE – K-12 PRINCIPAL ENDORSEMENT (1) through (1)(c) remain the same.

(d) completion of three semester credits of ~~college coursework~~ in college courses in both Montana school law and special education law; and
(e) remains the same.

AUTH: 20-4-102, MCA
IMP: 20-4-106, 20-4-108, MCA

10.57.424 CLASS 5 PROVISIONAL LICENSE (1) and (2) remain the same.

(3) An applicant for a Class 5 provisional license who has graduated from an educator preparation program outside of Montana and does not meet the testing requirements of ARM 10.57.410(3), must provide a current Montana address or job offer from an accredited or state-funded P-12 school in Montana.

(3) and (4) remain the same but are renumbered (4) and (5).

AUTH: 20-4-102, MCA
IMP: 20-4-106, 20-4-108, MCA

10.57.428 CLASS 5 PROVISIONAL LICENSE – ELEMENTARY PRINCIPAL ENDORSEMENT (1) remains the same.

(2) Applicants required to complete coursework other than Montana school law and special education law must also submit written evidence of enrollment in an accredited professional educator preparation program leading to the elementary principal endorsement ~~and enrollment in the Board of Public Education approved internship program as outlined in ARM 10.55.607.~~

AUTH: 20-4-102, MCA
IMP: 20-4-106, 20-4-108, MCA

10.57.429 CLASS 5 PROVISIONAL LICENSE – SECONDARY PRINCIPAL ENDORSEMENT (1) remains the same.

(2) Applicants required to complete coursework other than Montana school law and special education law must also submit written evidence of enrollment in an accredited professional educator preparation program leading to the secondary principal endorsement ~~and enrollment in the Board of Public Education approved internship program as outlined in ARM 10.55.607.~~

AUTH: 20-4-102, MCA
IMP: 20-4-106, 20-4-108, MCA

10.57.430 CLASS 5 PROVISIONAL LICENSE – K-12 PRINCIPAL ENDORSEMENT (1) remains the same.

(2) Applicants required to complete coursework other than Montana school law and special education law must also submit written evidence of enrollment in an accredited professional educator preparation program leading to the K-12 principal endorsement ~~and enrollment in the Board of Public Education approved internship program as outlined in ARM 10.55.607.~~

AUTH: 20-4-102, MCA
IMP: 20-4-106, 20-4-108, MCA

10.57.433 CLASS 6 SPECIALIST LICENSE (1) through (4) remain the same.

(5) A lapsed Class 6 specialist license may be reinstated by showing verification of 60 renewal units earned during the five-year period preceding the ~~validation~~ date of application for the new license.

AUTH: 20-4-102, MCA
IMP: 20-4-106, 20-4-108, MCA

10.57.437 CLASS 8 DUAL CREDIT POSTSECONDARY FACULTY LICENSE (1) A faculty member of a college or university is required to hold a Class 8 dual credit license, unless already licensed or eligible for licensure as a Class 1, 2, or 4 and properly endorsed, whenever a faculty member is teaching a dual credit course at the college or university for which one or more students will earn both high school and college credit.

(2) through (4) remain the same.

(5) A Class 8 dual credit postsecondary faculty license ~~shall be renewed pursuant to the requirements of ARM 10.57.215.~~ may be consecutively reissued upon submission and approval of an application for renewal. An educator with a lapsed Class 8 license must submit a new application.

(6) remains the same.

AUTH: 20-4-102, MCA
IMP: 20-4-106, 20-4-108, MCA

4. Statement of Reasonable Necessity: ARM Title 10, chapter 57 rules were comprehensively amended in December 2014. There were errors and omissions in those amendments discovered during initial implementation of the amended rules which are addressed in these amendments.

Clarifications are necessary in the definitions in ARM 10.57.102 of "Endorsement," "Year of administrative experience," and "Year of teaching experience."

In ARM 10.57.216, the requirements for renewal activity providers is corrected for consistency with current practice, and to assist with documentation of renewal activity attendance.

The Class 2 license requirements of ARM 10.57.410 and ARM 10.57.424 are amended to reflect the persistent problem of out-of-state applicants having no requirement to pass any content knowledge tests prior to obtaining a recommendation for licensure from the applicant's educator preparation program.

Several rules (ARM 10.57.410, 10.57.411, 10.57.413, and 10.57.433) are amended to clarify the relevant date for renewing lapsed licenses so as to not unnecessarily hinder the appropriate licensure of educators.

Several inadvertently omitted endorsement areas are included in ARM 10.57.412.

The student teaching requirement in ARM 10.57.412 was mistakenly deleted in the prior amendments.

ARM 10.57.415, 10.57.416, 10.57.417, 10.57.428, 10.57.429, and 10.57.430 are amended to make the requirement for principals to have a course in special education law consistent with the requirement in ARM Title 10, chapter 58 that educator preparation programs include this course in principal preparation programs.

The rule on Class 8 dual credit licenses is amended to clarify that those teachers must teach at the postsecondary school, and provides for the correct renewal process for Class 8 licenses.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Peter Donovan, Executive Secretary, 46 North Last Chance Gulch, P.O. Box 200601, Helena, Montana, 59620-0601; telephone (406) 444-0302; fax (406) 444-0847; or e-mail pdonovan@mt.gov and must be received no later than 5:00 p.m., July 9, 2015.

6. Peter Donovan has been designated to preside over and conduct this hearing.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the board.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Peter Donovan
Peter Donovan
Rule Reviewer

/s/ Sharon Carroll
Sharon Carroll
Board Chair
Board of Public Education

Certified to the Secretary of State June 1, 2015.

BEFORE THE BOARD OF BARBERS AND COSMETOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.121.301 definitions,)
24.121.403 general requirements,)
24.121.601 licensure by examination,)
24.121.603 out-of-state applicants,)
24.121.605 postsecondary school)
licensure, 24.121.611 examination)
requirements and process,)
24.121.803 school requirements,)
24.121.805 school operating)
standards, 24.121.807 school)
curricula, 24.121.809 student)
withdrawal, transfer, or graduating,)
24.121.1103 instructor requirements,)
24.121.1105 teacher-training)
curriculum, 24.121.1301 salons/booth)
rental, 24.121.1509 implements,)
instruments, supplies, and)
equipment, 24.121.1517 salon)
preparation storage and handling,)
24.121.2101 continuing education,)
24.121.2301 unprofessional conduct,)
and the adoption of NEW RULES I)
nonroutine application, II granting)
exception, III licensure equivalency,)
IV credited hours for Montana-)
licensed individuals, V inactive)
instructor license, and VI licensee)
and applicant contact information)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
ADOPTION

TO: All Concerned Persons

1. On July 2, 2015, at 10:00 a.m., a public hearing will be held in the Large Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Barbers and Cosmetologists (board) no later than 5:00 p.m., on June 26, 2015, to advise us of the nature of the accommodation that you need. Please contact Sharon Peterson, Board of Barbers and Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana

59620-0513; telephone (406) 841-2375; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdcos@mt.gov (board's e-mail).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: As part of the periodic review of its administrative rules, the board is proposing revisions throughout the rules. Amendments in this notice are intended to correct prior errors, improve organization and readability, make language more consistent among the rules, and better align the board's rules with statutory requirements. Accordingly, the board has determined that reasonable necessity exists to generally amend certain rules at this time. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

4. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.121.301 DEFINITIONS (1) through (4) remain the same.

(5) ~~"Booth rental" means an establishment or business attached to or within a licensed salon or shop that is operated independently by a licensed booth renter.~~

(6) through (22) remain the same, but are renumbered (5) through (21).

(a) ~~toe (teeth)~~ tapering (toe or teeth, middle, heel);

(b) through (d) remain the same.

(23) and (24) remain the same, but are renumbered (22) and (23).

(24) "Locker" means a chest, drawer, compartment, closet, or the like that is placed in a set location in a school, made of metal or other rigid and sturdy material, and may be locked for storage and safekeeping of clothing, valuables, and other personal belongings of students only, and is not subject to entry by a board inspector.

(25) remains the same.

(26) "Microdermabrasion" means a gentle, progressive, very superficial mechanical exfoliation of the uppermost layers of the stratum corneum using a closed-loop vacuum system ~~that utilizes aluminum oxide or corundum crystals as the abrasive material.~~

(27) through (29) remain the same.

~~(30) "Trade show" is a show or class which offers specific product knowledge, product information, product sales, or retail of product.~~

(31) through (36) remain the same, but are renumbered (30) through (35).

AUTH: 37-1-131, 37-1-319, 37-31-203, 37-31-204, MCA

IMP: 37-31-101, 37-31-203, 37-31-204, 37-31-303, 37-31-305, 37-31-309, 37-31-311, MCA

REASON: The board is deleting the term "booth rental" because "booth" is already defined in board statute and should not be also defined in rule. The board is amending "free-hand methods" in (21) to clarify the term regarding free-hand clipper style for tapering, and align with terminology used in barber courses of licensed schools. Following a request by school owners, students, and board inspectors, the board is amending this rule to clearly define "locker" at (24). It is reasonably

necessary to amend (26) to align the term "microdermabrasion" with other amendments in this notice to permit use of other types of abrasive material or reusable heads. Lastly, the board is deleting the definition of "trade show" since the board is amending the term out of ARM 24.21.2101, which is the only place it is used in board rule.

24.121.403 GENERAL REQUIREMENTS (1) remains the same.

(2) Applications received by the board will be reviewed for completeness. If the application is not complete, the applicant has ~~480 days~~ one year in which to supply the remaining information or documents. If the application is not completed within ~~480 days~~ one year, the application is ~~rejected~~ times out, and the applicant shall be required to submit a new application package and fees.

(3) through (10) remain the same.

AUTH: 37-1-131, 37-31-203, MCA

IMP: 37-31-301, 37-31-302, 37-31-303, 37-31-304, 37-31-305, 37-31-309, 37-31-311, MCA

REASON: The board is amending this rule to facilitate the standardization of application processes among all professional and occupational licensing boards by utilizing a one-year limit on applications. This change will also help avoid the early expiration of applications delayed by the wait for state licensure verifications, various practical exam testing schedules, and supplementing nonroutine applications for the board's review.

24.121.601 APPLICATIONS FOR LICENSURE BY EXAMINATION (4)

~~Applicants for licenses to practice shall obtain a license within three years of the applicant's graduation date from a licensed school.~~

~~(2) Applicants previously licensed may apply for licensure within three years of termination of license by meeting current board licensing requirements and successfully passing the board-approved exam.~~

~~(3) Applicants for licensure shall submit the following documentation:~~

~~(a) hour records showing the following hours completed:~~

~~(i) barbering - 1500;~~

~~(ii) cosmetology - 2000;~~

~~(iii) electrology - 600;~~

~~(iv) esthetics - 650;~~

~~(v) manicuring - 350; or~~

~~(vi) supplemental barbering - 150.~~

~~(b) a barbering, cosmetology, electrology, esthetics, or manicuring school diploma from a board-licensed school;~~

~~(c) proof of high school graduation or equivalency. A manicurist applicant may provide a certificate of completion from a vocational technical program;~~

~~(d) copy of a birth certificate or other verifiable evidence of applicant's birth date; and~~

~~(e) proof of passage of a board-approved examination.~~

~~(4) In lieu of a high school diploma or equivalency, applicants may petition the board for an exception by submitting the following information:~~

~~(a) certified copies of applicant's high school transcripts; and/or~~

~~(b) lists of courses completed including:~~

~~(i) adult education courses;~~

~~(ii) postsecondary education courses; and~~

~~(iii) other experiences providing evidence to equivalency of a high school diploma.~~

~~(5) The board shall accept hours of instruction from jurisdictionally licensed schools located outside Montana towards fulfillment of the hour requirements for the various categories of licenses.~~

~~(6) Out-of-state student applicants shall meet the same requirements as in-state barbering, cosmetology, electrology, esthetics, or manicuring students.~~

~~(7) An applicant who has completed 1500 hours of barbering instruction or more, possesses a current barbering license, and enrolls in a course of cosmetology, shall receive 1500 hours of credit toward the 2000-hour requirement for a cosmetologist license.~~

~~(8) An applicant who has completed 2000 hours of cosmetology instruction and possesses a current cosmetology license shall complete an additional 125 hours in clipper cuts and 25 hours in shaving to qualify for barbering licensure.~~

~~(9) An applicant who has completed 650 hours of training or more, possesses a current esthetics license, and enrolls in a course of cosmetology, shall receive 650 hours of esthetics credit toward the 2000-hour requirement for a cosmetologist license.~~

~~(10) An applicant who has completed 350 hours of training or more, possesses a current manicurist license, and enrolls in a course of cosmetology will be granted 350 hours of credit toward the 2000-hour requirement for a cosmetologist license.~~

(1) Applicants for licensure must submit a completed application on forms provided by the department, electronically or by paper, including appropriate fees and required documentation.

(2) Applicants may qualify for licensure by one of two licensure methods:

(a) examination; or

(b) credentialing.

(3) To qualify for licensure by examination, the applicant must submit the following:

(a) For a barber license:

(i) proof of age;

(ii) proof of graduation from an approved school or course of barbering with at least 1,500 hours of training as provided in [NEW RULE III(3)]; or, if a Montana-licensed cosmetologist, completion of a supplemental barbering course pursuant to [NEW RULE IV];

(iii) proof of high school diploma or its equivalent as provided in [NEW RULE III]; and

(iv) proof of passage of a board-approved examination in barbering.

(b) For a cosmetology license:

(i) proof of age;

- (ii) proof of graduation from an approved school or course of cosmetology with at least 2,000 hours of training as provided in [NEW RULE III(3)];
- (iii) proof of high school diploma or its equivalent as provided in [NEW RULE III]; and
- (iv) proof of passage of a board-approved examination in cosmetology.
- (c) For an electrology license:
 - (i) proof of age;
 - (ii) proof of graduation from an approved school or course of electrology with at least 600 hours of training as provided in [NEW RULE III(4)];
 - (iii) proof of high school diploma or its equivalent as provided in [NEW RULE III]; and
 - (iv) proof of passage of a board-approved examination in electrology.
- (d) For a manicurist license:
 - (i) proof of age;
 - (ii) proof of graduation from an approved school or course of manicuring with at least 400 hours of training as provided in [NEW RULE III(5)];
 - (iii) proof of high school diploma or its equivalent as provided in [NEW RULE III]; and
 - (iv) proof of passage of a board-approved examination in manicuring.
- (e) For an esthetician license:
 - (i) proof of age;
 - (ii) proof of graduation from an approved school or course of esthetics with at least 650 hours of training as provided in [NEW RULE III(6)];
 - (iii) proof of high school diploma or its equivalent as provided in [NEW RULE III]; and
 - (iv) proof of passage of a board-approved examination in esthetics.
- (f) For an instructor license:
 - (i) proof of a current Montana license under this chapter for barbering, cosmetology, electrology, manicuring, or esthetics;
 - (ii) proof of graduation from an approved school or course of teacher training with at least 650 hours of training as outlined in ARM 24.121.1105, or three years of experience working in the area of practice pursuant to 37-31-305, MCA;
 - (iii) proof of high school diploma or its equivalent as provided in [NEW RULE III]; and
 - (iv) proof of passage of a board-approved examination in teacher training.
- (4) Applicants by examination who have never been licensed and who completed their professional education out of state must meet the same requirements as an applicant from Montana.
- (5) Individuals who have been previously licensed in Montana under this chapter, and whose license has terminated, must reapply under one of the licensing methods.
- (6) Applications will automatically time out after one year following the application open date. If an application has timed out, the applicant must reapply and pay all appropriate fees.

AUTH: 37-1-131, 37-31-203, MCA

IMP: 37-31-303, 37-31-304, 37-31-308, MCA

REASON: The board is amending this rule and ARM 24.121.603 and adopting New Rules II, III, and IV to define licensure qualifications to meet the growing challenge of evaluating fragmented and variously defined license types and training from other jurisdictions. The board is proposing these changes to provide a cafeteria approach to evaluating licensure qualifications and allow applicants trained for a scope of practice not consistent with any particular Montana license to receive recognition of that training in applying for Montana licensure

Additionally, the board recognizes that training for practice areas relative to barbering and cosmetology in Montana is largely accomplished through hands-on experience. Thus, the board finds it appropriate, especially in conjunction with the cafeteria-style approach to evaluating licensure qualifications, to also consider and apply relevant work experience toward licensure requirements.

24.121.603 LICENSURE BY CREDENTIALING WITH AN OUT-OF-STATE APPLICANTS LICENSE ~~(1) Applicants other than barbers tested and licensed in states administering a nationally recognized written and practical examination and having received a scaled score as required for licensure in Montana, may qualify for licensure by endorsement.~~

~~(2) A barber applicant will qualify for licensure by endorsement without examination by submitting a complete application, all required documentation, by meeting the requirements of 37-31-304, MCA, and the following:~~

~~(a) proof of completion of 1500 hours of training in an approved school of barbering or barbering course;~~

~~(i) For the purposes of 37-1-304, MCA, "substantially equivalent" for barbers means 1500 hours of formal training and successful completion of a board-approved examination by a passing score set forth in rule. Applicants who have not completed 1500 hours of formal training shall be required to pass a board-approved examination as specified in rule. Work experience obtained in the profession will not be considered as part of a barbering applicant's qualifications or credit for hours.~~

~~(ii) The applicant will be credited for the hours of formal training currently required in that state or the hours shown in the transcript or verification.~~

~~(b) copy of a birth certificate or other verifiable evidence of applicant's birth date;~~

~~(c) an original state board transcript or verification from each state in which the applicant holds or has held a license; and~~

~~(d) proof of high school graduation or equivalency; or~~

~~(e) in lieu of a high school diploma or equivalency, applicants may petition the board for an exception by submitting the following information:~~

~~(i) certified copies of applicant's high school transcripts; or~~

~~(ii) lists of courses completed including:~~

~~(A) adult education courses;~~

~~(B) postsecondary education courses; and~~

~~(C) other experiences providing evidence of equivalency to a high school diploma.~~

~~(3) To qualify for licensure by endorsement, an out-of-state cosmetologist shall submit an application including the following documentation:~~

~~(a) proof of completion of 2000 hours of training in an approved school of cosmetology;~~

~~(i) For the purposes of 37-1-304, MCA, "substantially equivalent" for cosmetologists means 2000 hours of formal training and successful completion of a board-approved examination by a passing score set forth in rule. Applicants who have not completed 2000 hours of formal training shall be required to pass a board-approved examination as specified in rule. Work experience obtained in the profession will not be considered as part of a cosmetologist applicant's qualifications or credit for hours.~~

~~(ii) The applicant shall be credited for the hours of formal training currently required in that state or the hours shown in the transcript or verification.~~

~~(b) copy of a birth certificate or other verifiable evidence of applicant's birth date;~~

~~(c) a certified state board transcript or verification from each state in which the applicant holds or has held a license; and~~

~~(d) proof of high school graduation or equivalency; or~~

~~(e) in lieu of a high school diploma or equivalency, applicants may petition the board for an exception by submitting the following information:~~

~~(i) certified copies of applicant's high school transcripts; or~~

~~(ii) lists of courses completed including:~~

~~(A) adult education courses;~~

~~(B) postsecondary education courses; and~~

~~(C) other experiences providing evidence of equivalency to a high school diploma.~~

~~(4) To qualify for licensure by endorsement, an out-of-state electrologist shall submit an application including the following documentation:~~

~~(a) proof of completion of 600 hours of training in an approved school of electrology;~~

~~(i) For the purposes of 37-1-304, MCA, "substantially equivalent" for electrologists means 600 hours of formal training and successful completion of a board-approved examination with a passing score set forth in rule. Applicants who have not completed 600 hours of formal training shall be required to pass a board-approved examination as specified in rule. Work experience obtained in the profession will not be considered as part of an electrologist applicant's qualifications or credit for hours.~~

~~(ii) The applicant will be credited for the hours of formal training currently required in that state or the hours shown in the transcript or verification.~~

~~(b) copy of a birth certificate or other verifiable evidence of applicant's birth date;~~

~~(c) an original state board transcript or verification from each state in which the applicant holds or has held a license; and~~

~~(d) proof of high school graduation or equivalency; or~~

~~(e) in lieu of a high school diploma or equivalency, applicants may petition the board for an exception by submitting the following information:~~

~~(i) certified copies of applicant's high school transcripts; or~~

~~(ii) lists of courses completed including:~~

~~(A) adult education courses;~~

~~(B) postsecondary education courses; and~~

~~(C) other experiences providing evidence of equivalency to a high school diploma.~~

~~(5) To qualify for licensure by endorsement, an out-of-state esthetician shall submit an application including the following documentation:~~

~~(a) proof of completion of 650 hours of training in an approved school of esthetics or esthetics course;~~

~~(i) For the purposes of 37-1-304, MCA, "substantially equivalent" for estheticians means 650 hours of formal training and successful completion of a board approved examination with a passing score set forth in rule. Applicants who have not completed 650 hours of formal training shall be required to pass a board approved examination as specified in rule. Work experience obtained in the profession will not be considered as part of an esthetician applicant's qualifications or credit for hours.~~

~~(ii) The applicant will be credited for the hours of formal training currently required in that state or the hours shown in the transcript or verification.~~

~~(b) copy of a birth certificate or other verifiable evidence of applicant's birth date;~~

~~(c) an original state board transcript or verification from each state in which the applicant holds or has held a license; and~~

~~(d) proof of high school graduation or equivalency; or~~

~~(e) in lieu of a high school diploma or equivalency, applicants may petition the board for an exception by submitting the following information:~~

~~(i) certified copies of applicant's high school transcripts; or~~

~~(ii) lists of courses completed including:~~

~~(A) adult education courses;~~

~~(B) postsecondary education courses; and~~

~~(C) other experiences providing evidence of equivalency to a high school diploma.~~

~~(6) To qualify for licensure by endorsement, an out-of-state manicurist shall submit an application including the following documentation:~~

~~(a) proof of completion of 350 hours of training in an approved school of manicuring or manicuring course;~~

~~(i) For the purposes of 37-1-304, MCA, "substantially equivalent" for manicurists means 350 hours of formal training and successful completion of a board approved examination with a passing score set forth in rule. Applicants who do not possess 350 hours of formal training shall successfully pass a board approved examination as specified in rule. Work experience obtained in the profession will not be considered as part of a manicurist applicant's qualifications or credit for hours.~~

~~(ii) The applicant will be credited for the hours of formal training currently required in that state or the hours shown in the transcript or verification.~~

~~(b) copy of a birth certificate or other verifiable evidence of applicant's birth date;~~

~~(c) an original state board transcript or verification from each state in which the applicant holds or has held a license; and~~

~~(d) proof of high school graduation or equivalency; or~~

~~(e) in lieu of a high school diploma or equivalency, applicants may petition the board for an exception by submitting the following information:~~

~~(i) certified copies of applicant's high school transcripts; or~~

~~(ii) lists of courses completed including:~~

~~(A) adult education courses;~~

~~(B) postsecondary education courses; and~~

~~(C) other experiences providing evidence of equivalency to a high school diploma.~~

~~(7) Applicants from foreign countries shall be held to the same licensure requirements as out-of-state applicants. Applicants shall first receive board approval for the foreign hours of training in accordance with the established curriculum set forth in rule.~~

(1) Applicants for licensure must submit a completed application provided by the department, electronically or by paper, including appropriate fees and required documentation.

(2) Applicants may qualify for licensure by one of the following licensure methods: examination or credentialing. To qualify for licensure by credentialing, an applicant must satisfy the requirements of (3) and (4).

(3) To qualify for licensure by credentialing the applicant must submit the following documentation:

(a) For a barber license:

(i) proof of age;

(ii) proof of current unencumbered barber license in another state;

(iii) license verification from each state or jurisdiction the applicant has been licensed in, whether the license is current or not; and

(iv) proof of passage of a board-approved examination in barbering with appropriate passing scores.

(b) For a cosmetology license:

(i) proof of age;

(ii) proof of current unencumbered cosmetology license in another state;

(iii) license verification from each state or jurisdiction the applicant has been licensed in, whether the license is current or not; and

(iv) proof of passage of a board-approved examination in cosmetology with appropriate passing scores.

(c) For an electrology license:

(i) proof of age;

(ii) proof of current unencumbered electrology license in another state;

(iii) license verification from each state or jurisdiction the applicant has been licensed in, whether the license is current or not; and

(iv) proof of passage of a board-approved examination in electrology with appropriate passing scores.

(d) For a manicurist license:

(i) proof of age;

(ii) proof of current unencumbered manicurist license in another state;

(iii) license verification from each state or jurisdiction the applicant has been licensed in, whether the license is current or not; and

(iv) proof of passage of a board-approved examination in manicuring with appropriate passing scores.

(e) For an esthetician license:

(i) proof of age;

(ii) proof of current unencumbered esthetician license in another state;

(iii) license verification from each state or jurisdiction the applicant has been licensed in, whether the license is current or not; and

(iv) proof of passage of a board-approved examination in esthetics with appropriate passing scores.

(4) An out-of-state applicant applying for a license by credentialing must also meet the following requirements:

(a) To qualify for a barber license the applicant must possess a license type in good standing that includes scope of training and practice equal to [New Rule III(2)] and either have completed a course of training of at least 1,100 hours in a school or attest to 1,250 hours of work experience as a licensed barber.

(b) To qualify for a cosmetologist license the applicant must possess either:

(i) a license type in good standing that includes scope of training and practice equal to the cosmetologist requirements in [New Rule III(3)] and either have completed a course of training of at least 1,500 hours in a school or attest to 1,500 hours of work experience as a licensed cosmetologist; or

(ii) a combination of licensure in good standing that includes scopes of training and practice equal to:

(A) [New Rule III(3)(d) through (g)] and have completed a course of training equal to or exceeding 900 hours in a school;

(B) [New Rule III(4)] and have completed a course of training equal to or exceeding 200 hours in a school; and

(C) [New Rule III(5)] and have completed a course of training equal to or exceeding 400 hours in a school.

(c) To qualify for an electrology license the applicant must possess a license type in good standing that includes the scope of training and practice equal to [New Rule III(4)] and either have completed at least 450 hours of electrology training in a school or attest to at least 750 hours of work experience as a licensed electrologist.

(d) To qualify for a manicurist license the applicant must possess a license type in good standing that includes the scope of training and practice equal to [New Rule III(5)] and either have completed at least 200 hours of electrology training in a school or attest to at least 750 hours of work experience as a licensed manicurist.

(e) To qualify for an esthetician license the applicant must possess a license type in good standing that includes the scope of training and practice equal to [New Rule III(5)] and either have completed at least 400 hours of electrology training in a school or attest to at least 750 hours of work experience as a licensed esthetician.

(f) For any other combinations or types of licensure such as hairstyling, braiding, or make-up artists, applying for licensure will be individually assessed by review of the respective licensing requirements, course curricula and transcripts and may require further review by the board.

(5) Applicants with foreign training will be considered nonroutine for the purposes of evaluating the education and qualifications and must:

(a) submit copies of their training and education curricula to the board;

(b) provide acceptable official translations of all supporting documents required for licensing and evaluation by the board. Acceptable translations are prepared by a reliable source such as a third party company or certified translator authorized to provide official translations to English, but translations prepared by the applicant or the applicant's relatives, coworkers, or friends are not acceptable. Documentation and contact information of the translator must be attached to the translation for the board to review and contact if necessary; and

(c) take and pass the board-approved examination. Proof of passage of the examination must be received from the source or another state licensing jurisdiction through a license verification.

(6) Applicants who obtained their training from Canada are not considered foreign for purposes of this rule.

(7) Applicants by examination who have never been licensed and who completed their professional education out of state must meet the same requirements as an applicant from Montana.

(8) Individuals who have been previously licensed in Montana under this chapter and whose licenses have terminated must reapply.

(9) Applications will automatically time out after one year following the application open date. Applicants with applications that have timed out must reapply and pay all appropriate fees.

AUTH: 37-1-131, 37-31-203, MCA

IMP: 37-1-304, 37-31-303, 37-31-304, 37-31-305, 37-31-308, MCA

REASON: See REASON for ARM 24.121.601.

24.121.605 APPLICATION FOR POSTSECONDARY SCHOOL LICENSURE

(1) through (9) remain the same.

(10) Each school shall be located in a structure that meets all applicable local and state building codes requirements.

(11) Applicants shall furnish the board with a blueprint or detailed scale drawing of the floor plan as part of the application for licensure.

AUTH: 37-1-131, 37-31-203, MCA

IMP: 37-31-101, 37-31-302, 37-31-311, 37-31-312, MCA

REASON: In conjunction with proposed amendments to ARM 24.121.803, the board is adding (10) and (11) to uniformly address building requirements for all schools by referring to building code standards. For example, current rules contain ventilation standards that the board is unable to measure, and that are essentially redundant with existing building code requirements. The ventilation requirement is being removed from ARM 24.121.803 and instead licensees must meet all applicable building code standards per (10).

24.121.611 EXAMINATION REQUIREMENTS AND PROCESS (1) remains the same.

(a) Applicants must submit the testing eligibility letter to the examination vendor in order to schedule their examination.

(b) Applicants must provide a photo ID at the examination location to be admitted to the examination.

(2) through (4) remain the same.

(5) Applicants must have an examination eligibility letter in order to schedule and take both the written and practical board-approved exam.

(a) Montana-enrolled students or graduates of a Montana-licensed school under this chapter will receive their testing eligibility letter from the school. Students are eligible to take the written and practical portion of the board-approved exam following 90 percent completion of their educational requirements have been met.

(b) Applicants licensed by credentialing who are required to take the board-approved exam will receive their testing eligibility letter from the board office, once the proof of graduation or license verification in another state is received.

(6) The testing eligibility letter is valid for 180 days from the date of the letter.

(7) Once the applicant has taken and passed the examination the applicant shall notify the board office. The board office will verify the examination scores directly with the vendor.

(8) Instructor applicants applying for a license under 37-31-305(2)(d)(ii), MCA, are required to provide an affidavit of three years of experience in a particular area of practice to the board office in order to receive a testing eligibility letter.

AUTH: 37-1-131, 37-31-203, MCA

IMP: 37-31-304, 37-31-305, 37-31-308, MCA

REASON: The board is amending this rule to clearly delineate the testing process in response to internal application workflow changes for the board and the test administrator, and to address questions from schools, students, and applicants.

24.121.803 SCHOOL REQUIREMENTS (1) through (3) remain the same.

~~(4) Schools shall have a mechanical ventilation or portable air purifier system that provides the total cubic square feet of the school with at least four air exchanges per hour. The ventilation system must operate continuously during business hours of the school. Doors and windows are not acceptable for the ventilation requirement.~~

(5) through (11)(a) remain the same, but are renumbered (4) through (10)(a).

(b) one protective covering per student;

(b) through (j) remain the same, but are renumbered (c) through (k).

(12) remains the same, but is renumbered (11).

(a) remains the same.

(b) one protective covering per student;

(b) through (j) remain the same, but are renumbered (c) through (k).

AUTH: 37-1-131, 37-31-203, 37-31-311, MCA

IMP: 37-31-311, MCA

REASON: The board is amending this rule to be consistent with amendments to

ARM 24.121.605 regarding minimum building standards. The board is also correcting an apparent oversight by adding the requirement for a protective covering per student in manicuring and esthetic schools. Coverings are currently required in other board-licensed schools, and the board intended the requirement apply to all licensed schools.

24.121.805 SCHOOL OPERATING STANDARDS (1) through (6)(a) remain the same.

(b) copy of a birth certificate or other verifiable evidence of applicant's birth date;

(c) copy of high school diploma or its recognized equivalent, or a signed statement that the person was admitted or enrolled on the basis that the student was beyond the compulsory age of education as provided in 20-5-102, MCA;

(b) through (p) remain the same, but are renumbered (d) through (r).

(7) remains the same.

(8) Appropriately licensed instructors shall directly supervise students at all times on the school premises in the classroom and on the clinic floor. One instructor shall supervise no more than 25 cosmetology, barbering, esthetics, or manicuring students, and no more than ten electrology students, at any time. No instructor may supervise classroom and clinic floor activities simultaneously.

(9) through (12)(d) remain the same.

(e) manicuring students - ~~80~~ 110 hours.

(13) and (14) remain the same.

(15) Upon completion by students of at least 90 percent of the required course of study, and prior to graduating and receiving a diploma, the student may take the board-approved final practical examination exam. ~~The final practical examination must include all components for evaluation as provided in ARM 24.121.807 for each course of study.~~

(16) A person may submit a license application when the person is no more than 90 days from completing the requisite course of study given the person's current and expected rate of progression.

AUTH: 37-1-131, 37-31-203, 37-31-311, MCA

IMP: 37-31-311, MCA

REASON: In May 2014, the board adopted ARM 24.121.806 as part of a rules package that was necessary to align board rules with the U.S. Department of Education standards so that licensed schools would be considered "postsecondary" schools that qualify for federal student financial aid. Consistent with ARM 24.121.806, the board is amending (6) to establish a duty to maintain relevant records that the board can audit to ensure continued compliance with U.S. Department of Education requirements.

The question of whether instructors may teach class and supervise clinical work simultaneously was recently presented to the board in relation to a school application. Following discussion and reference to current rules, the board concluded that it is not permissible for an instructor to supervise clinical work and teach a classroom simultaneously. However, because the question caused some

debate and discussion on the topic, the board determined it is reasonably necessary to expressly state this prohibition by amending (8).

In response to recent requests by licensed schools, the board is amending (12)(e) to increase the basic training of manicurists from 80 to 110 hours in conjunction with the amendment to ARM 24.121.807(6), to change the total hour requirements for the manicuring course from 350 hours to 400 hours. The schools are, in turn, responding to graduated manicurists who are concerned that they were not as prepared to enter the work force as they would like to have been.

Additionally, the board has received requests to clarify and slightly modify the application process. The amendments regarding the application process are consistent with those requests and with internal application workflow changes of the board and the test administrator.

24.121.807 SCHOOL CURRICULA (1) through (2)(a)(i) remain the same.

(ii) shampoo, scalp treatment, and hair styling (thermal and air styling, ~~finger waving~~, hair pieces to include weaves and extensions), 230 hours;

(iii) through (3)(a)(i) remain the same.

(A) manicures (including ~~water, oil,~~ hand and arm massage, ~~paraffin wax treatments,~~ and polish);

(B) pedicures (including foot, ankle, and lower leg massage, ~~paraffin wax treatments,~~ and polish);

(C) application of monomer liquid and polymer powder nail enhancements, artificial nails (including sculptured, nail tips, nail wraps, UV gels, and nail art fills, repairs, tip overlays, fiberglass, gel, and acrylic); and

(D) and (3)(a)(ii) remain the same.

(A) skin care (including facials, cosmetics, makeup, massage, essential oils, the application and maintenance of artificial eyelashes and extensions, tinting of the eyelashes and eyebrows, and the chemical curling of the eye lashes;

(B) through (5)(a)(i) remain the same.

(ii) massage, skin care, makeup, (including the use of vaporizer, high frequency, massage brush, vacuum spray, galvanic unit, and lamps), cosmetics, facials, essential oils, the application and maintenance of artificial eyelashes and extensions, tinting of the eyelashes and eyebrows, the chemical curling of the eye lashes, and skin exfoliation (including manual, chemical, and mechanical exfoliation), 300 hours;

(iii) through (5)(b) remain the same.

(6) The required curriculum for manicuring students includes ~~350~~ 400 hours of training, of which at least ~~35~~ 40 hours is in theory, distributed as follows:

(a) ~~265~~ 300 hours of training, distributed as follows:

(i) remains the same.

(ii) bacteriology, sanitation, sterilization, safety, anatomy, physiology, diseases and disorders of skin and nails, ~~manicure~~ basic chemistry, ~~and nail care~~ nail product chemistry, and electricity, 55 hours;

(iii) manicures (including ~~water, oil,~~ hand, and arm massage), pedicures (including foot, ankle, and lower leg massage), polish applications, ~~paraffin wax treatments,~~ and the proper use of manicuring implements ~~including the electric nail file,~~ a minimum of 35 hours; and

(iv) use of the electric nail file, 10 hours; and
~~(iv)~~ (v) application of artificial nails, sculptured nails monomer liquid and polymer powder nail enhancements, nail tips, nail wraps, tip overlays, fills, repairs (including fiberglass, gel, and acrylic), UV gels, and nail art, a minimum of 145 140 hours.

(b) ~~85~~ 100 hours of instruction shall be at the discretion of the school provided that the hours are within the applicable curriculum.

(7) remains the same.

AUTH: 37-1-131, 37-31-203, 37-31-311, MCA

IMP: 37-31-101, 37-31-304, 37-31-305, 37-31-311, MCA

REASON: The board determined it is reasonably necessary to amend this rule in response to questions and concerns from schools, board staff, and licensees. These amendments not only modify curricula requirements in response to the expressed desire of schools, but also modify and help clarify the required coursework in terms more consistent with the practices.

In response to recent requests by licensed schools, the board is amending (6) to increase the total hour requirements for the manicuring course from 350 hours to 400 hours. This amendment and the resultant changes at the school level are in response to concerns of graduated manicurists that they were not as prepared to enter the work force as they would like to have been.

24.121.809 STUDENT WITHDRAWAL, TRANSFER, OR GRADUATING

(1) remains the same.

(2) When transferring between licensed schools, the transferring student shall provide the school with a statement of good standing and official transcript from the previous school. The new school shall, at its discretion, may grant full credit for all hours completed and grades received by the transferring student within three years of the student's original enrollment date.

(3) and (4) remain the same.

AUTH: 37-1-131, 37-31-203, 37-31-311, MCA

IMP: 37-31-311, MCA

REASON: The board is amending this rule to remove the rigid requirement on schools to grant credit to transferring students because it is not always possible to segment coursework in a way that caters to every individual student. While credit should be granted where possible, the board recognizes that a student may have to repeat some hours of training to fit within the structure and curriculum of the new school. The board believes this is a matter for the schools to determine, and this amendment will allow a reasonable degree of discretion.

24.121.1103 INSTRUCTOR REQUIREMENTS - TEACHER-TRAINING PROGRAMS (1) through (4) remain the same.

~~(5) All student or cadet instructors shall register with the board.~~

(6) remains the same, but is renumbered (5).

~~(7) (6)~~ Upon completion by the student of at least 90 percent of the ~~teacher-training required~~ course of study, and prior to ~~graduation~~ graduating and issuance of ~~receiving~~ a diploma, the student may take the board-approved ~~practical examination exam~~. The final practical examination must include all components for evaluation as provided in ARM 24.121.1105.

AUTH: 37-1-131, 37-31-203, 37-31-311, MCA

IMP: 37-31-305, 37-31-311, MCA

REASON: The board is deleting (5) to eliminate registration of student or cadet instructors because the board determined registration is the responsibility of the schools.

24.121.1105 TEACHER-TRAINING CURRICULUM AND TEACHING METHODOLOGY COURSEWORK (1) remains the same.

(2) The board-approved coursework related to teaching methodology shall consist of 135 hours and include the following:

(a) teaching methods 6 credits or 90 hours:

(i) task analysis;

(ii) developing instructional objectives;

(iii) visual aids and their construction;

(iv) motivational tools;

(v) preparation of instructive materials;

(vi) lesson planning;

(vii) fundamentals of speech and public speaking;

(viii) methods of test construction;

(ix) methods of evaluation or grading; and

(x) curriculum planning and development.

(b) educational psychology three credits or 45 hours;

(c) coursework may be completed through:

(i) classes acceptable to a state's board of regents or equivalent authority and approved through that state's university system;

(ii) self-study to be observed and documented by the administrator of the school employing the instructor; or

(iii) class studies pre-approved by the board.

(d) prior to renewal of the instructor license, documentation of completed coursework must be submitted to the board for board approval.

(3) Coursework completed prior to instructor licensure may be used to satisfy the requirements of this subsection.

AUTH: 37-1-131, 37-31-203, 37-31-311, MCA

IMP: 37-31-305, 37-31-311, MCA

REASON: The 2013 Montana Legislature enacted Chapter 102, Laws of 2013 (Senate Bill 343), an act that amended 37-31-305, MCA, by providing three years of experience as an alternate instructor qualification. Under the alternative qualifications, a license to instruct may be issued to an individual who has at least

three years of practical experience, subject to the requirement that the individual complete board-approved coursework related to teaching methodology within two years of licensure. This board is amending this rule to further implement the legislation and clearly delineate what constitutes board-approved coursework related to teaching methodology.

24.121.1301 SALONS/BOOTH RENTAL (1) ~~Mobile homes, moveable trailers, and structures on skids are not considered fixed places of business and will not be licensed as a salon, shop, or school. Each salon and shop shall be located in a structure that meets all applicable local and state building codes requirements.~~

(2) through (7) remain the same.

(8) A new salon or shop may be granted a temporary operating permit pending an initial inspection. No prior notice of the inspection is required. A temporary operating permit shall terminate and a license shall not be granted without board review, unless the salon or shop provides the board with a response within 30 days of the date of the inspection that indicates all the inspection violations have been corrected to the inspector's satisfaction. If a temporary permit terminates, the salon or shop must cease operation until the application is granted by the board and a license issued. A subsequent temporary operating permit is not available, unless the application times out pursuant to ARM 24.121.403 and a new application is filed.

(8) remains the same, but is renumbered (9).

(10) A licensee may not renew a booth renter license, unless, at the time of renewal, the licensee has at least one currently active license to practice.

(9) remains the same, but is renumbered (11).

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA

IMP: 37-31-204, 37-31-302, 37-31-309, 37-31-312, MCA

REASON: Consistent with other amendments within this notice, the board is amending (1) to remove the prohibition against mobile homes and similar structures and instead require that licensed salons and shops meet applicable building codes requirements.

In response to licensing staff questions, the board is adding (8) to clearly set forth the process for temporary practice permits.

The board is revising its policies regarding board-generated complaints and the board's definition of "nonroutine" license applications. In accordance with those revisions, booth renter licenses will be issued to licensees with an active license to practice, without requiring the extensive application materials for a license to practice. Consequently, all complaints will be directly associated with the license to practice. Considering those changes in policy, the board determined it is reasonably necessary to require an active license to practice as a strict condition to renewing a booth renter license and is adding (10) accordingly.

24.121.1509 IMPLEMENTS, INSTRUMENTS, SUPPLIES, AND EQUIPMENT (1) through (5)(a)(ii) remain the same.

~~(iii) used only in accordance with specific manufacturer directions with the exception of plastic tips, which are single use items that require disposal after a one time use.~~

~~(6) Aluminum oxide crystals or manufacturer approved corundum used in microdermabrasion machines are:~~

~~(a) for single use purposes and shall:~~

~~(i) be discarded after each use in accordance with federal, state, and local disposal regulations; and~~

~~(ii) have a granule size no larger than 120 grit or the equivalent of 100 to 102 microns.~~

~~(b) The board shall approve the use of abrasives, other than aluminum oxide crystals or approved corundum, prior to the use of such abrasives by licensees.~~

~~(7) Only single use plastic tips are allowed to be used in microdermabrasion machines and must be disposed of after each client.~~

~~(8) Microdermabrasion machines must be maintained and filters changed in accordance with OSHA and manufacturer requirements.~~

(b) Solid or liquid abrasives used in microdermabrasion machines are for single-use purpose only and shall be discarded after each use in accordance with federal, state, and local disposal regulations.

(c) The use of abrasive tips are allowed if used in accordance with specific manufacturer directions.

(d) Single-use plastic tips are allowed to be used in microdermabrasion machines and must be disposed of after each use.

(e) Microdermabrasion machines that have tips that are multiuse, according to specific manufacturer directions, must be sterilized by use of an autoclave.

(f) Microdermabrasion machines must be maintained and filters changed in accordance with OSHA and manufacturer requirements.

~~(9) through (12) remain the same, but are renumbered (6) through (9).~~

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA

IMP: 37-1-131, 37-31-203, 37-31-204, 37-31-312, MCA

REASON: The board determined the proposed amendments to this rule regarding microdermabrasion are reasonably necessary to address the evolving technology of microdermabrasion machines that have been introduced to the market. The board notes that different machines are now acceptable for esthetic use, and is amending this rule to clearly set forth the requirements for the use and disinfection of those machines.

24.121.1517 SALON PREPARATION STORAGE AND HANDLING

~~(1) through (9) remain the same.~~

~~(10) If the board inspector obtains evidence that a product or item prohibited by this rule is being used in a salon, shop, or school, the inspector may seize the product or item and remove it from the facility immediately. If a prohibited product or item is seized by an inspector, the licensee will be responsible for the costs of disposing of the product or item. The licensee will be mailed a notice that sets forth the disposal costs incurred by the board in relation to the product or item, and the~~

licensee shall pay such costs within 30 days of the date the notice is mailed to the licensee.

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA

IMP: 37-31-204, 37-31-312, MCA

REASON: In carrying out its duties to protect the public, the board has seized a number of prohibited items. In some cases, the items are chemicals, biohazardous materials, or may not be readily identified because labelling has been removed or concealed. Because the disposal of these items is costly to the board, the board concluded that those costs ought to be borne by the licensees who, in addition to costing the board money in terms of enforcement, pose a health and safety risk to the public by using or storing such prohibited items in the licensees' premises.

24.121.2101 CONTINUING EDUCATION - INSTRUCTORS/INACTIVE INSTRUCTORS (1) Active instructors shall complete 30 hours of board-approved continuing education (CE) per renewal period to maintain active status licensure of which eight hours must be in teaching methodology pursuant to ARM 24.121.1105.

~~(2) Courses taught via distance education must first be approved by the board.~~

~~(3) (2) Continuing education courses must be germane to the practice or business of barbering, cosmetology, electrology, esthetics, manicuring, or instructing and teacher training.~~

~~(4) (3) Requests for approval of CE courses must be made on forms approved by the board department or its designee.~~

~~(5) A maximum of ten hours per renewal period may be obtained at trade shows where products are being promoted.~~

~~(6) All approved education must be open and available to all instructor licensees, unless it violates a franchise agreement.~~

~~(7) through (10) remain the same, but are renumbered (4) through (7).~~

~~(11) (8) The course provider must supply each licensee with a course completion certificate and course evaluation form and must verify attendance of each licensee.~~

~~(12) No licensee shall repeat a course for credit in any three-year period.~~

~~(13) (9) Course approval will be for the current calendar year. All courses will expire March 1 of each year. Course approval will be for three years. All courses will expire March 1 of the third year.~~

~~(14) remains the same, but is renumbered (10).~~

~~(15) (11) An instructor may receive credit for attending board-sponsored events meetings of the board.~~

~~(16) A licensee may place their instructor license on inactive status by submitting a written request that the license be placed inactive.~~

~~(17) An inactive licensee has the sole responsibility to keep the board informed of any change of the licensee's mailing address during the period of time the instructor license remains on inactive status.~~

~~(18) In order to avoid lapse, expiration, or termination of the instructor license, an inactive licensee must renew the inactive license each renewal period.~~

~~(19) An inactive licensee does not need to report continuing education until converting the license to active status.~~

~~(20) To convert an inactive instructor license to active status, licensees shall submit evidence of completion of 15 hours of approved continuing education obtained within the 12-month period prior to converting the license.~~

AUTH: 37-1-131, 37-1-319, 37-31-203, MCA

IMP: 37-1-141, 37-1-306, MCA

REASON: The board determined it is reasonably necessary to make broad changes to the continuing education requirements for instructors. As part of those changes, the board is removing all references to inactive instructor requirements from this rule and shifting those provisions to New Rule V.

24.121.2301 UNPROFESSIONAL CONDUCT (1) through (1)(x) remain the same.

(y) failing to timely and fully pay the costs of disposal set forth in a notice provided to the licensee pursuant to ARM 24.121.1517;

(y) and (z) remain the same, but are renumbered (z) and (aa).

(2) remains the same.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-31-203, MCA

IMP: 37-1-136, 37-1-137, 37-1-141, 37-1-316, 37-31-301, 37-31-331, MCA

REASON: The board determined it is reasonably necessary to amend this rule by adding to the actions considered by the board as unprofessional conduct. To better protect public health, safety, and welfare, the board is amending this rule to emphasize and provide a means of enforcing the proposed amendment to ARM 24.121.1517, which will require licensees to reimburse the board for costs associated with disposing of prohibited items.

5. The proposed new rules provide as follows:

NEW RULE I NONROUTINE APPLICATIONS (1) The board shall review an application containing any of the following criteria:

(a) criminal convictions and charges:

(i) a felony conviction of any nature, or a misdemeanor conviction relating to sex or violence, if the sentence imposed for any such conviction has not been fully discharged or if the conviction was entered within the past ten years;

(ii) any conviction involving use or sale of drugs, fraud, deceit, or theft, pursuant to 37-1-316(1), MCA, unless the conviction occurred more than five years before application and all court-ordered conditions have been satisfied, discharged, or dismissed;

(iii) three or more misdemeanor convictions that have occurred within five years of application, which include, but are not limited to, the following traffic-related crimes:

(A) reckless driving;

- (B) DUI; and
- (C) hit-and-run; or
- (iv) a pending criminal charge if, as a conviction, it would cause the application to be "nonroutine" under any part of (a). A criminal charge resulting in a deferred sentence that has not been discharged as of the date of application is considered a conviction for purposes of determining whether the application is nonroutine. Misdemeanor traffic convictions not involving alcohol or drugs will not cause an application to be considered nonroutine.
- (b) other unprofessional conduct:
 - (i) an investigation, complaint, consent agreement, or disciplinary action involving the applicant that either:
 - (A) resulted in a license or license application that was revoked, suspended, denied, withdrawn, or surrendered; or that was placed on probation or subjected to any condition or restriction for the period of two or more years; or
 - (B) resulted in a license or license application that is currently encumbered by a disciplinary sanction, meaning conditions imposed on the license have not been satisfied or are ongoing if the action was based upon the applicant's underlying conduct and not based on another state's or jurisdiction's disciplinary action; or
 - (ii) the applicant was diagnosed with an addiction or participated in a chemical dependency or other addiction treatment program within three years of submitting application. However, if treatment has been successfully completed and any recommended follow-up is being complied with, the department may consider the application routine;
 - (iii) the applicant answered "yes" on the application regarding a diagnosis for a physical condition or mental health disorder involving a potential health risk to the public;
 - (iv) the applicant was accused of unlicensed practice, unless the accusation has been resolved in favor of the applicant; or
 - (v) for a salon operating on a temporary practice permit, an inspection report reflecting three or more sanitation violations, prohibited items, use of machines outside of scope, permitting unlicensed practice, or other grounds constituting unprofessional conduct.
- (c) education:
 - (i) the applicant's barbering, cosmetology, electrology, esthetics, or manicuring education was obtained in a foreign jurisdiction other than Canada;
- (d) application discrepancies:
 - (i) failure to accurately and completely respond to a question on the application form. The department may treat an application as routine under this subsection if the department receives an adequate explanation for such a failure;
 - (ii) the department may, but is not required to, submit an otherwise "routine" application for board review if:
 - (A) questions arise whether the applicant meets all requirements for licensure, including, but not limited to, the demonstration of good moral character; or
 - (B) inconsistencies, irregularities, or other matters of concern exist in the application or related documentation;
- (e) with the exception of instructor and school licenses, an application will be deemed "routine" if it is "nonroutine" under this policy, based on information

previously considered by the board, relative to a prior application that resulted in the issuance of an unencumbered license or if it resulted in a complaint that was resolved without discipline; or

(f) a booth rental application is always routine, so long as the applicant holds a current practice license and is not restricted from working as a booth renter.

AUTH: 37-1-131, 37-31-203, MCA

IMP: 37-1-101, 37-1-131, 37-1-307, MCA

REASON: Pursuant to 37-1-101(1), MCA, the department shall process and issue licenses to all applicants who submit complete and routine applications. The board, however, must review all completed nonroutine applications prior to licensure. The board determined it is reasonably necessary to revise and clearly delineate the definition of nonroutine application to facilitate the licensure process.

NEW RULE II GRANTING EXCEPTION TO HIGH SCHOOL DIPLOMA OR EQUIVALENCY (1) Exceptions to providing a high school diploma or equivalency recognized by the State Superintendent of Public Instruction at the Office of Public Instruction (OPI) pursuant to 37-31-304, MCA, may be made upon the following documentation:

- (a) high school transcripts with graduation date;
- (b) college, university, or vocational-technical school diploma or transcripts with graduation date;
- (c) diploma from an Associates, Bachelors, or higher degree;
- (d) diploma or transcripts from a home school program;
- (e) proof of service in the armed forces, such as a copy of DD214, indicating high school equivalency;
- (f) original verification/letter from high school or alterative school sent directly from the school to the board office indicating completion through grade 12; or
- (g) by submitting a request in writing and any experience or documentation to support the applicant that meets the intent of the requirement such as, but not limited to:
 - (i) adult education courses completed;
 - (ii) college or university courses completed;
 - (iii) work experience; and
 - (iv) previous licensure in this or other jurisdictions.

AUTH: 37-1-131, 37-31-203, 37-31-304, MCA

IMP: 37-1-131, 37-31-203, 37-31-304, MCA

REASON: Section 37-31-304, MCA, requires the board to provide, by rule, "procedures for granting an exception" to the "high school diploma or its equivalent" requirement for licensure.

The board is amending ARM 24.121.601 and 24.121.603 and adopting New Rules II, III, and IV to recognize various experience and training that will be acceptable for purposes of qualifying for a Montana license. In conjunction with those amendments and adoptions, the board is, similarly, modifying its present

procedures for granting an exception to the "high school diploma or its equivalent" requirement so that the board has greater flexibility and board staff has more specific direction to allow exceptions without bringing each request to the board.

NEW RULE III LICENSURE EQUIVALENCY FOR PROFESSIONAL EDUCATION (1) The board recognizes the fragmentation of license types among states making it difficult to determine license type and scope of practice from state to state. The following is a breakdown of scopes of practice and is to be used to assist out-of-state applicants and the board in determining appropriate licensure, if any, regardless of the name or title of the out-of-state license that is equivalent to Montana licensure.

(2) The scope of training required for the practice of barbering is as follows:

- (a) haircutting with proper uses of tools (e.g., shears, razor, clippers, and thinning shears);
- (b) shampooing and scalp treatments;
- (c) hairstyling, including weaves, braiding, and extensions;
- (d) wet setting, blow drying, curling, and flat ironing; and the arranging of dry hair;
- (e) hair coloring, hair lightening, waving, and relaxing;
- (f) facial shaving with straight razor; and
- (g) skin care.

(3) The scope of training required for the practice of cosmetology is as follows:

- (a) manicuring and pedicuring, including massage and polishing, nail art, and use of an electric nail file;
- (b) application and removal of artificial nails, gels, tips, and wraps;
- (c) skin care, skin exfoliation, facials, makeup application, epilation, electricity and light therapies, and application of artificial lashes;
- (d) hair coloring, hair lightening, waving, and relaxing;
- (e) shampoo and scalp treatments;
- (f) hairstyling, including weaves, braiding, and extensions;
- (g) wet setting, blow drying, curling and flat ironing, and the arranging of dry hair; and
- (h) haircutting with proper uses of tools (e.g., shears, razor, clippers, and thinning shears).

(4) The scope of training required for the practice of electrology is as follows:

- (a) electrolysis;
- (b) thermolysis;
- (c) the blend;
- (d) electricity, chemistry, and light therapy; and
- (e) epilation.

(5) The scope of training required for the practice of manicuring is as follows:

- (a) manicuring;
- (b) pedicuring; and
- (c) applying and removing artificial nails, gels, tips, and wraps and use of an electric nail file.

(6) The scope of training required for the practice of esthetics is as follows:

- (a) skin care;
- (b) skin exfoliation, facials, and makeup application;
- (c) epilation;
- (d) electricity and light therapies; and
- (e) application of artificial lashes.

AUTH: 37-1-131, 37-31-203, 37-31-304, MCA

IMP: 37-1-131, 37-31-203, 37-31-304, MCA

REASON: The board determined that it is reasonably necessary to adopt New Rule III to better define qualifications to meet licensure by credentialing for out-of-state applicants. The amendments also address the various types of licensure from other states that may not be directly compatible with Montana licensure requirements, and how they will be addressed by staff and the board in relation to amendments being made to ARM 24.121.601 and 24.121.603.

NEW RULE IV CREDITED HOURS FOR MONTANA-LICENSED INDIVIDUALS IN A COSMETOLOGY OR BARBERING PROGRAM (1) A Montana licensee will receive the following credit of hours towards course requirements upon enrollment in a cosmetology course in Montana:

- (a) licensed barber 1500 hours;
- (b) licensed electrologist 80 hours;
- (c) licensed manicurist 200 hours; or
- (d) licensed esthetician 325 hours of credit will be given towards the cosmetology course.

(2) A Montana-licensed cosmetologist may apply for a barber license after completion of an additional 150 hours in barbering:

- (a) 125 hours in clipper cutting; and
- (b) 25 hours in straight razor shaving.

AUTH: 37-1-131, 37-31-203, 37-31-304, MCA

IMP: 37-1-131, 37-31-203, 37-31-304, MCA

REASON: There has been a great deal of discussion regarding the application of a licensee's prior training to additional licensure. To provide consistency among licensed schools in Montana, the board is adopting New Rule IV to clarify the requirement of licensed schools to credit individuals the appropriate number of hours if they enroll in a cosmetology or barbering program subsequent to becoming licensed in Montana in another area of practice. See also the REASON for ARM 24.121.601.

NEW RULE V INACTIVE INSTRUCTOR LICENSE (1) The status of inactive allows the licensee to maintain a license with the board; however, the licensee may not practice for more than ten days in any one calendar year as a substitute instructor with an inactive status. The board may request documentation if necessary.

(2) A licensee may place their instructor license on inactive status by submitting a request in writing or electronically to the department.

(3) A licensee with an inactive status must abide by all the statutes and rules pertaining to the license, including updating licensee information such as contact information and disciplinary actions.

(4) Inactive licensees are not subject to CE requirements while on inactive status.

(5) In order to avoid lapse, expiration, or termination of the instructor license, an inactive licensee must renew the inactive license each renewal period and pay the appropriate fee.

(6) To reactivate an inactive instructor license, the licensee must complete a reactivation request form, submit the fee, and provide proof of 30 hours of completed CE of which eight hours must be in teaching methodology, within the last 12 months prior to activating their instructor license.

AUTH: 37-1-131, 37-1-319, 37-31-203, MCA

IMP: 37-1-131, 37-1-319, 37-31-203, 37-31-305, MCA

REASON: The board determined it is reasonably necessary to redefine the process for inactive instructor licenses. For clarity, the board is eliminating the inactive instructor language from ARM 24.121.2101 and relocating the provisions as a separate rule in New Rule V.

NEW RULE VI LICENSEE AND APPLICANT CONTACT INFORMATION

(1) A licensee or applicant of the board is required to update their primary contact information with the department no later than 30 days following a change in contact information. This includes, but is not limited to, the following information:

- (a) name;
- (b) mailing address;
- (c) telephone number;
- (d) e-mail;
- (e) physical address for business licenses;
- (f) ownership for business licenses; and
- (g) hours of operation for business licenses.

(2) E-mail is the department's primary method of contact, unless otherwise requested by the licensee or applicant in writing.

AUTH: 37-1-131, 37-31-203, MCA

IMP: 37-1-131, 37-1-309, 37-31-203, MCA

REASON: The board is adopting New Rule VI to require that licensees provide and maintain specific contact and business information for the board. This new rule will address complaints from licensees regarding their lack of notice regarding license renewal and other board correspondence, and will help facilitate paperless correspondence and online renewal, thereby decreasing board costs. It will also specifically require ownership and hours of operation for licensed salons and shops, which will aid the board's efforts relative to inspections and compliance.

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Barbers and Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdcos@mt.gov, and must be received no later than 5:00 p.m., July 10, 2015.

7. An electronic copy of this notice of public hearing is available at www.cosmetology.mt.gov (department and board's web site). The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

8. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Barbers and Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdcos@mt.gov; or made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. Senator Elsie Arntzen, the primary bill sponsor for Senate Bill 343 (2013), was contacted on August 18, 2014, by electronic mail.

10. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.121.301, 24.121.403, 24.121.601, 24.121.603, 24.121.605, 24.121.611, 24.121.803, 24.121.805, 24.121.807, 24.121.809, 24.121.1103, 24.121.1105, 24.121.1301, 24.121.1509, 24.121.1517, 24.121.2101, and 24.121.2301 will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the adoption of NEW RULES I through VI will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Barbers and Cosmetologists, 301 South Park Avenue, P.O.

Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdcos@mt.gov.

11. Tyler Moss, attorney, has been designated to preside over and conduct this hearing.

BOARD OF BARBERS AND
COSMETOLOGISTS
WENDELL PETERSEN, PRESIDENT

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ PAM BUCY
Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 1, 2015

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF PUBLIC HEARING ON
Rules I through IV, the amendment of)	PROPOSED ADOPTION,
ARM 42.13.902 and 42.13.904, and)	AMENDMENT, AND REPEAL
the repeal of ARM 42.13.903)	
pertaining to the Responsible Alcohol)	
Sales and Service Act server training)	
programs)	

TO: All Concerned Persons

1. On July 9, 2015, at 11 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on June 26, 2015. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

3. The department is proposing the rule actions in this notice to provide clear guidance to state trainers and private training providers on the trainer application process and training instruction requirements. Since the adoption of the server training rules following passage of the Responsible Alcohol Sales and Service Act in 2011, the department has worked with trainers to ensure the quality of trainers and the effectiveness of training programs. Updating the rules to reflect information the department has been providing to trainers will help ensure consistency in the administration of training programs.

4. The rules as proposed to be adopted provide as follows:

NEW RULE I DEFINITIONS The following definitions apply to this subchapter:

- (1) "Acceptable forms of identification" include:
 - (a) state driver license or identification card;
 - (b) Canadian driver license or identification card;
 - (c) passport;
 - (d) tribal identification card; and
 - (e) any form of government issued identification.

(2) "Combined exam score" means the overall score of an exam administered by a private training provider where the Montana portion of the exam is weighted as 50 percent of the overall exam score.

(3) "House policies" means a company policy that dictates how a certain situation, activity, or process should be handled.

(4) "Incident log" means a document that tracks situations occurring on the licensed premises.

(5) "Private training provider" means a private business that provides responsible alcohol sales and service training using a program that is approved by the department.

(6) "Proof of training document" means a document stating the program name, training date, participant's name, and participant's date of birth, that is issued to a participant who obtained a score of 80 percent or more on the exam.

(7) "State trainer" means an individual that is approved by the department to provide responsible alcohol sales and service training using the department's curriculum.

(8) "Training records" means records submitted to the department by a private training provider that include the program name, training date, whether training was online or in person, and each participant's name, date of birth, and combined exam score.

AUTH: 16-4-1009, MCA

IMP: 16-4-1006, MCA

REASONABLE NECESSITY: The department proposes adopting New Rule I to add definitions of terms used and/or proposed to be used in subchapter 9. Definitions are necessary to add clarity and provide more detailed information for the industry and public regarding the subject matter covered in the rules.

NEW RULE II STATE TRAINER APPLICATION PROCESS (1) The department, in its sole discretion, may approve an application for an individual to be a state trainer.

(2) To apply to be a state trainer, an applicant must:

(a) possess a minimum of one year combined experience in:

(i) law enforcement;

(ii) communications;

(iii) public relations;

(iv) healthcare; or

(v) education;

(b) serve on a drug- or alcohol-related coalition;

(c) have endured an alcohol-related life-changing experience; or

(d) possess experience equivalent to the criteria above, as approved by the department.

(3) In addition to the requirements in (2), an applicant must:

(a) possess a minimum of one year experience in public speaking;

(b) be a high school graduate or possess the GED equivalent;

(c) be at least 21 years of age; and

(d) have no alcohol-related convictions within the past five years.

(4) Upon the department's approval of an application, the applicant must attend the department's training and pass the exam with a minimum score of 90 percent to be certified as a state trainer.

(5) A state trainer shall retain certification unless it is revoked or suspended by the department or withdrawn by the trainer. The department may revoke or suspend certification upon determining that the trainer is unsuitable.

AUTH: 16-4-1009, MCA

IMP: 16-4-1006, MCA

REASONABLE NECESSITY: The department proposes adopting New Rule II to set out the minimum qualification requirements for individuals interested in becoming a state trainer who will instruct participants using the department's curriculum on alcohol sales and service. The proposed eligibility requirements strive to ensure that training sessions are presented clearly and effectively. The proposed rule also sets out the process an individual would undertake to become a state trainer, including attendance of a training session and passage of a department exam. Making this content available in the rule will provide potential trainers with the criteria the department uses in its approval process. The proposed rule further provides that the department may revoke or suspend a state trainer's certification if warranted.

NEW RULE III PRIVATE TRAINING PROGRAM APPLICATION PROCESS

(1) The department, in its sole discretion, has the authority to approve a private training provider's program.

(2) A private training provider's program must adhere to the curriculum requirements set forth in [NEW RULE IV].

(3) An applicant seeking to provide in-classroom training must submit:

(a) the curriculum, including the Montana specific training supplement;

(b) classroom materials used by the trainer and participants;

(c) instructional aids, including videos or other visual components;

(d) sample proof of training document; and

(e) the exam, its answers, and an explanation of how the combined exam score will be calculated.

(4) An applicant seeking to provide online training must:

(a) make the program available to the department in its online format;

(b) incorporate videos, scenarios, or games into the program;

(c) provide a sample proof of training document; and

(d) submit the exam, its answers, and an explanation of how the combined exam score will be calculated.

(5) A private training program shall retain its approval status for five years unless it is revoked or suspended by the department or withdrawn by the training provider. Upon expiration of the five-year term, the provider may apply to have its program reapproved under the application process.

AUTH: 16-4-1009, MCA

IMP: 16-4-1006, MCA

REASONABLE NECESSITY: The two types of alcohol server training programs are: (1) the state program, where state trainers instruct participants using the department's curriculum; and (2) private training programs, where private businesses instruct participants using a program developed by the business and approved by the department. The department proposes adopting New Rule III to provide private businesses with information on how to submit a program for the department's approval so that the private training provider can instruct participants using that program. Additionally, the proposed rule requires review of an approved program every five years to ensure the content remains consistent and up-to-date with the Montana Alcoholic Beverage Code.

NEW RULE IV CURRICULUM REQUIREMENTS FOR STATE AND PRIVATE TRAINING PROGRAMS (1) In addition to the requirements in 16-4-1006, MCA, the curriculum must cover the:

- (a) effects of alcohol on the body, including behavioral cues and absorption rates;
- (b) standard drink sizes and equivalency;
- (c) methods to identify underage or intoxicated persons and prevent sales thereto;
- (d) strategies used by underage persons to obtain alcohol;
- (e) acceptable forms of identification;
- (f) actions that can be taken to prevent an alcohol-related incident from occurring;
- (g) maintenance of documentation that may affect liability, including an incident log and house policies; and
- (h) techniques for denying alcohol sales.

AUTH: 16-4-1009, MCA

IMP: 16-4-1006, MCA

REASONABLE NECESSITY: The content in this proposed New Rule IV is largely relocated from ARM 42.13.904, which set forth the responsibilities of training providers. The department proposes relocating and updating this content within this rule to clarify that the curriculum requirements apply to both the state program and private training programs. The department further proposes removing all content previously set forth in ARM 42.13.904 that reiterated 16-4-1006, MCA, in favor of inserting a citation to that statute in the introductory language of this new rule.

5. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

42.13.902 DEPARTMENT RESPONSIBILITIES REGARDING THE ENFORCEMENT OF MANDATORY SERVER AND SALES STATE TRAINING PROGRAMS ~~(1) The implementation and enforcement of the mandatory server and sales training programs within the Responsible Alcohol Sales and Service Act in~~

~~Montana is under the exclusive authority and jurisdiction of the Department of Revenue. This is intended for state licenses and does not extend to tribal government and federal government issued licenses.~~

~~(2) The department's goal is to have effective and affordable training widely available through approved training providers in order to achieve public health and safety goals with a trained work force. Although the department cannot guarantee it will meet these goals continuously, the department will strive to accomplish them based on available resources.~~

~~(3) To comply with and implement the Act, the department will:~~

~~(1) The department shall:~~

~~(a) develop a standard curriculum to set the baseline for all training providers meeting the requirements of [NEW RULE IV];~~

~~(b) update the standard curriculum on an annual basis following each legislative session;~~

~~(c) determine delivery standards based on an objective evaluation;~~

~~(d) determine testing standards based on an objective evaluation;~~

~~(e) conduct train-the-trainer sessions for the standard curriculum or delegate such responsibility to another entity;~~

~~(f) determine trainer specifications, training policies and coordinate the trainer network for the standard curriculum; and~~

~~(g) determine specifications for training providers.~~

~~(c) conduct a full review of the curriculum every five years;~~

~~(d) issue determinations on state trainer applications within 30 days of the recruitment period closing;~~

~~(e) facilitate the training of state trainers;~~

~~(f) provide training materials;~~

~~(g) grade exams; and~~

~~(h) issue proof of training documents.~~

~~(2) A state trainer shall:~~

~~(a) provide a minimum of three hours of training utilizing the department's curriculum;~~

~~(b) adhere to the department's curriculum delivery requirements;~~

~~(c) establish the time and location of training sessions;~~

~~(d) administer an exam provided by the department;~~

~~(e) submit the attendance roster and all completed exams to the department within two weeks of a training session; and~~

~~(f) abide by all applicable laws, regulations, and policies concerning the confidentiality of participants' information.~~

~~(3) The department shall not compensate state trainers for providing training. State trainers may charge participants up to \$15 per person for each training session.~~

~~(4) The department will:~~

~~(a) approve, regulate, and monitor training providers and their curriculums;~~

~~(b) review and approve or deny a responsible alcohol sales and service training curriculum within 45 days of a complete application submittal;~~

~~(c) issue an approval or denial letter to the training provider; and~~

~~(d) provide contact information on the department web site for all approved publicly offered training providers.~~

~~(5) The department will develop an electronic tracking system for training providers to input participants' training information.~~

~~(6) Other than through the train-the-trainer program, the department will not provide responsible alcohol sales and service training programs directly to retail sales employees.~~

AUTH: 16-4-1009, MCA

IMP: ~~16-4-1001, 16-4-1002, 16-4-1003, 16-4-1004, 16-4-1005, 16-4-1006, 16-4-1007, 16-4-1008,~~ MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.13.902 to set forth all information regarding the state training program together in a single rule. The state training program is instructed by individuals approved by the department using the department's curriculum for alcohol sales and service. The department proposes updating and locating its responsibilities under (1) and updating and relocating the state trainer's responsibilities under (2), to make this rule covering the state trainer program easier to follow and understand. Additionally, the department is providing notice under new (3) that state trainers are not paid by the department for conducting training sessions but may charge participants.

Portions of the state trainer content proposed to be included in this rule was previously located in ARM 42.13.904, which is also proposed to be restructured in this same notice, to locate the private training program content together in one rule.

The department further proposes revising the title of the rule to better reflect the rule content as amended, and proposes striking unnecessary implementing statutes. Section 16-4-1006, MCA, of the Responsible Alcohol Sales and Service Act, specifically addresses the server and sales training program and is therefore the only implementing statute necessary for this rule.

42.13.904 PRIVATE TRAINING PROGRAMS PROVIDER RESPONSIBILITIES REGARDING THE RESPONSIBLE ALCOHOL SALES AND SERVICE ACT

~~(1) In order for a responsible alcohol sales and service training curriculum to be valid for purposes of Title 16, Ch. 4, part 10, MCA, and the rules in this subchapter, the training provider must submit its curriculum to the department for approval. All training providers shall meet the following submittal requirements for approval. In order to have their curriculum approved, a training provider must submit:~~

- ~~(a) a hard copy of the curriculum and student workbook;~~
 - ~~(b) a hard copy of the trainers' workbook or guide;~~
 - ~~(c) a hard copy of all participant handouts;~~
 - ~~(d) a hard copy of the course exam along with the answer sheet;~~
 - ~~(e) a hard copy of any training supplement specific to the state of Montana;~~
 - ~~(f) a hard copy of the program proof of completion document issued to participants; and~~
 - ~~(g) a copy of all videos or other visual aids used in the training program.~~
- (1) The department shall:

- (a) issue determinations on private training program applications within 45 days;
 - (b) publish providers' contact information on the department's web site;
 - (c) provide notice of new legislation impacting curriculum within 30 days of passage;
 - (d) evaluate program effectiveness, including consideration of the percentage of program participants who sell to underage or intoxicated persons; and
 - (e) notify the provider of any required changes based upon program deficiencies.
- ~~(2) The department strongly supports and recommends the use of an interactive discussion format for both classroom and online curriculums.~~
- ~~(3) The department supports and recommends the use of community-based expert presenters during the training, e.g., a law enforcement officer to present information regarding false identifications, a health expert to present information pertaining to how alcohol affects the body, and an attorney to present potential liability and penalty issues.~~
- ~~(4) If submitting an online program, the training provider must also make the program in its online format available for the department to review.~~
- ~~(5) The~~
- ~~(2) A private training provider must provide the contact information to be listed on the department's web site regarding the training provider including shall:~~
- (a) company name provide a minimum of three hours of training utilizing the provider's approved curriculum;
 - (b) address;
 - (c) phone number;
 - (d) e-mail; and
 - (e) web site addresses.
- (b) update its curriculum within 30 days of receiving notice of new legislation;
 - (c) submit updated curriculum to the department for review and only utilize updated curriculum upon receipt of departmental approval;
 - (d) establish the time and location of training sessions;
 - (e) administer an exam that includes a Montana portion provided by the department and questions based upon the curriculum content requirements set forth in [NEW RULE IV];
 - (f) grade exams;
 - (g) issue proof of training documents;
 - (h) submit training records to the department on a monthly basis in the form prescribed by the department; and
 - (i) abide by all applicable laws, regulations, and policies concerning the confidentiality of participant's personal information.
- ~~(3) Upon determining that an approved program is ineffective or that the provider failed to adhere to any requirement in (2), the department shall notify the provider and the provider shall cease instructing the program. The provider may apply to have a new program approved under the application process.~~
- ~~(4) The department shall not compensate private training providers for providing training. The providers may charge participants for the training session.~~

~~(6) In order for a responsible alcohol sales and service training curriculum to be approved by the department, the curriculum must provide at least three hours of instruction and meet course minimum standards to include the following content:~~

~~(a) the effects of alcohol on the human body, to include behavior cues and absorption rate factors;~~

~~(b) information on standard drink sizes and equivalency;~~

~~(c) information, including but not limited to, a review of Montana alcoholic beverage laws and criminal, civil, and administrative penalties related to 16-3-301, 16-6-304, and 27-1-710, MCA;~~

~~(d) an explanation of the three types of liability, their full consequences, and the importance of not selling or serving to underage and intoxicated persons;~~

~~(e) procedures for checking identification and the acceptable forms of identification;~~

~~(f) procedures for gathering proper documentation that may affect the licensee's liability, including maintaining an incident log, training records, licensee's policies, and conditions of employment;~~

~~(g) training for handling difficult situations, such as persons who exhibit uncooperative, disruptive, or intimidating behavior;~~

~~(h) evaluation techniques regarding intoxicated persons or others who pose a potential liability, and recommended approaches for refusing sales or service;~~

~~(i) a final test that includes questions concerning alcohol and its effect on the body and behavior, recognizing and dealing with the problem drinker, Montana liquor laws, and terminating service. The portion of the exam concerning Montana liquor laws shall consist of uniform questions approved by the department. To keep the integrity of training, the program should have different tests that are used randomly; and~~

~~(j) the participant must pass the final test with a minimum score of 80 percent.~~

~~(7) The curriculum must be delivered in a manner that accomplishes results based on an empirical objective evaluation and the department may periodically conduct a review of approved training to ensure that curriculum delivery meets the minimum standards.~~

~~(8) The department will continually strive to improve the effectiveness of both the training and the testing and will consider, among other factors, the future rate of violations by servers as a percentage who have undergone each type of training and testing. If the department determines that a particular training or testing method is less successful than others, the department may require improvements in the less successful training or testing methods, or choose to not continue certification of such training.~~

~~(9) Training providers must resubmit their curriculum to the department every two years for approval.~~

~~(10) Based on the criteria within this rule, training providers approved prior to its adoption must seek and obtain re-approval within 90 days of the rule's effective date. Training providers approved prior to the effective date of this rule may continue to provide training within the 90 days following the effective date while they are seeking the department's re-approval. Any previous approval by the department will otherwise expire 90 days following the adoption of this rule.~~

~~(11) Course exams must be graded by the training provider and not the individual trainer who instructed the course participants.~~

~~(12) Proof of training must be issued by the training provider and not the individual trainer who instructed the course participants.~~

~~(13) Within 30 days of each training session, training providers must:~~

~~(a) issue a certificate to each participant who successfully completed the training and passed the test that includes:~~

~~(i) full name;~~

~~(ii) date of birth; and~~

~~(iii) date of training.~~

~~(b) provide electronic notification to the department, in a format prescribed by the department, the following information for all participants:~~

~~(i) the training provider's name;~~

~~(ii) the date of training;~~

~~(iii) the type of training (i.e., online, classroom, or both);~~

~~(iv) the participant's full name;~~

~~(v) the participant's date of birth; and~~

~~(vi) the participants passing or failing score.~~

AUTH: 16-4-1009, MCA

IMP: ~~16-3-301, 16-4-1001, 16-4-1002, 16-4-1003, 16-4-1004, 16-4-1005, 16-4-1006, 16-4-1007, 16-4-1008, 16-6-304, 16-6-305, MCA~~

REASONABLE NECESSITY: The department proposes amending ARM 42.13.904 to set forth all information regarding private training programs together in a single rule. Private training programs are instructed by private businesses using a program that has been approved by the department. The department proposes relocating the content unrelated to private training providers to other rules as also set forth in this same notice. Additionally, the department proposes updating and locating its responsibilities under (1), and updating and relocating the private training providers' responsibilities under (2), to make the rule easier to follow and understand.

The department proposes including the language in new (3) to make the private training providers aware that the department may require a provider to cease program instruction upon the department's notification that the program is ineffective or that the provider is not meeting its obligations. Additionally, the department is providing notice under new (4) that private training providers are not paid by the department for conducting training sessions but may charge participants.

The department further proposes revising the title of the rule to better reflect the rule content as amended and striking unnecessary implementing statutes. Section 16-4-1006, MCA, of the Responsible Alcohol Sales and Service Act, specifically addresses the server and sales training program and is therefore the only implementing statute necessary for this rule.

6. The department proposes to repeal the following rule:

42.13.903 LICENSEE RESPONSIBILITIES REGARDING THE RESPONSIBLE ALCOHOL SALES AND SERVICE ACT

AUTH: 16-4-1009, MCA

IMP: 16-3-301, 16-4-1001, 16-4-1002, 16-4-1003, 16-4-1004, 16-4-1005, 16-4-1006, 16-4-1007, 16-4-1008, 16-6-304, 16-6-305, MCA

REASONABLE NECESSITY: The department proposes repealing ARM 42.13.903 because the rule contains outdated training information and also reiterates portions of the statutory language from the Responsible Alcohol Sales and Service Act, making the rule unnecessary.

7. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than July 20, 2015.

8. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct this hearing.

9. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding a particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 7 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

10. An electronic copy of this notice is available on the department's web site at revenue.mt.gov. Open the drop down list under the "Other Useful Resources" tab located at the top of the homepage and select "Administrative Rules." Proposal notices are located under the "Hearing Information" section within. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

11. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of SB 29, 2011, Senator Lynda Moss, was notified by regular mail on July 9, 2013, and subsequently notified on May 8, 2015.

12. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption, amendment, and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State June 1, 2015.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF PUBLIC HEARING ON
Rule I and amendment of ARM)	PROPOSED ADOPTION AND
44.6.110, 44.6.113, 44.6.202, and)	AMENDMENT
44.6.203 pertaining to the Secretary)	
of State's electronic filing system, the)	
filing of a Title 71 lien, and)	
requirements for filing UCC)	
amendments with the Business)	
Services Division)	

TO: All Concerned Persons

1. On July 9, 2015, at 9:30 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Office Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m. on June 25, 2015, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 431-7718; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

3. The rule as proposed to be adopted provides as follows:

NEW RULE I SECRETARY OF STATE'S STATEWIDE ELECTRONIC FILING SYSTEM (1) Pursuant to 2-15-401 and 2-15-404, MCA, the secretary of state has developed and partially implemented a statewide electronic filing system to allow the online filing of many business documents required to be filed with the secretary of state.

(2) The online filing system is named SIMS, which is an acronym for the secretary of state's information management system.

(3) The implemented first phase of SIMS allows the online filing of Uniform Commercial Code documents.

(4) SIMS is hosted in a PCI (payment card industry) compliant data center and day-to-day operational and security management is the responsibility of a contracted vendor.

(5) The SIMS application is built to accept and store properly entered data, allow later search capability of the system, and provide standardized reporting.

(6) SIMS users are required to set up a SIMS account through ePass (the state of Montana's online access portal), which identifies them for the purpose of

authentication, unless the secretary of state is granted an exception from complying with ePass policies or standards.

(7) Password complexity for online users is consistent with Department of Administration standards.

(8) State and federal law governing the filing of lien notices does not require signatures if the document is filed online.

(9) SIMS generates an image based on the information entered by the online user which contains a unique filing number and filing date/time and may be printed for the user's records.

AUTH: 2-15-404, MCA

IMP: 2-15-401, 2-15-404, MCA

REASON: The Secretary of State has implemented the first phase of the electronic online filing system authorized by 2-15-404, MCA. The first phase allows the filing of Uniform Commercial Code documents online. Future phases will be implemented later this year to allow the online filing of many business documents required to be filed with the Secretary of State. This rule is proposed to meet the requirements of 2-15-404, MCA.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

44.6.110 DEFINITIONS AND FORMAT REQUIREMENTS FOR THE FILING OF A TITLE 71 LIEN (1) through (2)(a) remain the same.

(b) the social security number and/or federal tax ID number for every debtor listed if the lien is to appear on the farm bill master list per 7 U.S.C. § 1631;

(c) through (g) remain the same.

AUTH: 2-15-404, 30-9A-526, MCA

IMP: 2-15-401, 2-15-404, 30-9A-502, 71-3-125, MCA

REASON: The Secretary of State is amending (2)(b) to clarify that a social security number and/or federal tax ID number need only be supplied if the lien is to appear on the Farm Bill Master List because of the federal law requiring those liens to contain that information. The authority and implementation statutes were reviewed and updated.

44.6.113 DEFINITIONS AND REQUIREMENTS FOR ONLINE FILING

(1) The following definitions apply for filing Uniform Commercial Code (UCC) liens and amendments online:

(a) "B2B" means business to business filings.

(b) "ePass" is the state of Montana's online access portal.

(c) "PCI" means payment card industry.

(d) "SIMS" is the secretary of state's online information management system.

~~(a)~~ (e) "Submitter" is a person or entity that files a Uniform Commercial Code document who, after having been authenticated to SIMS via ePass, is able to file lien notices or amendments or perform lien searches online;

~~(b)~~ "compliance technician" is a person who works in the secretary of state's office who is qualified to certify that a lien document meets the requirements of state and federal laws.

(2) Fees and payment methods for online filing of Uniform Commercial Code UCC liens and the federal farm bill liens and amendments are by credit and/or debit card.

(3) through (8) remain the same.

(9) A Uniform Commercial Code document UCC and effective financing statement lien notices or amendments that is are successfully completed and submitted online will be considered filed upon receipt by the secretary of state's office once payment has successfully been completed by the submitter. The online technology application will ensure the document is properly completed prior to acceptance structure of the online screens will guide the submitter while ensuring the notice or amendment adheres to all rules, laws, and regulations that govern the document. The submitter ~~will be notified by an online message if required fields are not properly completed~~ is notified by SIMS if the information entered does not adhere to the requirements that govern lien notices and amendments. A message confirming successful completion and acceptance will appear online when the filing is accepted by SIMS.

(10) Submitters should print and retain their acknowledgement ~~message as proof that the online filing was received~~ and the filed document as proof that the online filing was received and recorded by the secretary of state's office. The acknowledgement ~~message~~ will contain a unique filing number, filing date and time, filing type, debtor(s) information, secured party(ies) information, and filing language.

(11) The following online filings will be rejected:

(a) a filing that is not machine readable when submitted via the B2B submission method; or

(b) remains the same.

(12) The submitter will be notified ~~by an online message~~ if their document is rejected. If a filing is later determined to be improper under 30-9A-420, MCA, the secretary of state's office will notify the submitter of the rejection.

(13) remains the same.

AUTH: 2-15-404, 30-9A-526, MCA

IMP: 2-15-401, 2-15-404, 30-9A-502, 71-3-125, MCA

REASON: The proposed amendments are reasonably necessary to update existing rule language to conform to the online filing requirements for Uniform Commercial Code lien notices filed through the Secretary of State's newly implemented online information management system (SIMS). The authority and implementation statutes were reviewed and updated.

44.6.202 EFFECTIVE DATE AND TIME (1) Any filing lien notice or amendment delivered by the postal service by 4:00 p.m. has an effective time and

date as of 8:00 a.m. on the delivery date. Any lien notice or amendment delivered by facsimile, walk-in, or express delivery service by 4:00 p.m. has an effective time and date consistent with the delivery date and time. Filings received after 4:00 p.m. have the next business day's effective date.

(2) Any filing received by fax, lien notice or amendment delivered by the postal service, facsimile, walk-in, or express delivery service will have the same date and time as received after 4:00 p.m. has an effective time and date of 8:00 a.m. the next business day.

(3) Any lien notice or amendment filed online through the secretary of state's electronic filing system will receive the effective date and time the same as it was successfully recorded in the UCC database.

AUTH: 2-15-404, 30-9A-526, MCA

IMP: 2-15-401, 2-15-404, 30-9A-519, 71-3-125, MCA

REASON: The amendments are reasonably necessary to clarify that Uniform Commercial Code documents delivered for filing by 4:00 p.m. will receive an effective date and time of 8:00 a.m. on the delivery date, Uniform Commercial Code documents delivered for filing after 4:00 p.m. will receive an effective date and time of 8:00 a.m. the next business day, and that Uniform Commercial Code documents filed online through the Secretary of State's information management system (SIMS) will receive the effective date and time the same as when they are successfully recorded. The authority and implementation statutes were reviewed and updated.

44.6.203 REQUIREMENTS FOR FILING UCC AMENDMENTS (1) In addition to the requirements of 30-9A-512, MCA, ~~the following information needs to be included:~~

~~(a) the name of a debtor currently reflected on the Secretary of State's records for the original filing number being amended;~~

~~(b) the name of a secured party currently reflected on the Secretary of State's records for the original filing number being amended; and~~

~~(c) the original initial filing number on file with the secretary of state must be included; and~~

~~(f) only one filing number per form is permitted.~~

~~(2) remains the same.~~

AUTH: 2-15-404, 30-9A-526, MCA

IMP: 2-15-401, 2-15-404, 30-9A-519, MCA

REASON: The amendments are proposed to harmonize the Secretary of State's filing requirements to Revised Article 9 of the Uniform Commercial Code. The authority and implementation statutes were reviewed and updated.

5. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena,

Montana 59620-2801, or by e-mailing jquintana@mt.gov, and must be received no later than 5:00 p.m., July 16, 2015.

6. Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, has been designated to preside over and conduct the hearing.

7. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding administrative rules, corporations, elections, notaries, records, uniform commercial code, or combination thereof. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-4263, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the Secretary of State has determined that the adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 1st day of June, 2015.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
2.59.104 pertaining to semiannual)
assessment for banks)

TO: All Concerned Persons

1. On April 16, 2015, the Department of Administration published MAR Notice No. 2-59-526 pertaining to the proposed amendment of the above-stated rule at page 351 of the 2015 Montana Administrative Register, Issue Number 7.

2. The department has thoroughly considered the comment received. The comment received and the department's response are as follows:

COMMENT 1: Sheri Nicholson of Beartooth Bank commented there were only 30 days in June.

RESPONSE 1: The department thanks Ms. Nicholson for her comment on this amendment. Ms. Nicholson is referring to page two of the Notice of Proposed Amendment where a typing error of June 31, 2015, is listed as the semiannual assessment date instead of June 30, 2015.

3. The department has adopted the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

2.59.104 SEMIANNUAL ASSESSMENT (1) through (3) remain as proposed.
(4) No fee will be charged for the June ~~31~~30, 2015, semiannual assessment.
This section sunsets August 31, 2015.

By: /s/ Sheila Hogan
Sheila Hogan, Director
Department of Administration

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State June 1, 2015.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 8.94.3817 pertaining to the)
administration of the 2017 Biennium)
Treasure State Endowment Program)
–Planning Grants)

TO: All Concerned Persons

1. On April 16, 2015, the Department of Commerce published MAR Notice No. 8-94-130 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 355 of the 2015 Montana Administrative Register, Issue Number 7.

2. The department has amended the above-stated rule as proposed.

3. No comments or testimony were received.

/s/ G. Martin Tuttle
G. MARTIN TUTTLE
Rule Reviewer

/s/ Douglas Mitchell
DOUGLAS MITCHELL
Deputy Director
Department of Commerce

Certified to the Secretary of State June 1, 2015.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 8.94.3727 pertaining to the)
administration of the 2015-2016)
Federal Community Development)
Block Grant (CDBG) Program)

TO: All Concerned Persons

1. On April 30, 2015, the Department of Commerce published MAR Notice No. 8-94-131 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 402 of the 2015 Montana Administrative Register, Issue Number 8.

2. The department has amended the above-stated rule as proposed.

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

Comment #1: A comment was received – having gone through the planning process for housing, the increase in funding amount is completely reasonable and appreciated, and the corresponding match requirements make sense as well.

Response #1: The proposed increase to award amount and corresponding match requirements are intended to encourage quality planning projects, given current cost estimates for certain planning activities.

Comment #2: A comment was received – in the form of a question to staff – similar to the consolidation of the planning activities and guidelines; will a similar process be in place for project grants in the future?

Response #2: The department intends to consolidate the project grant guidelines in a similar manner as the planning grant guidelines, but this process is taking longer due to the level of detail involved in project grant guidelines and applications. The Community Development Division will be holding webinars and training sessions in the near future, and working with community development and economic development representatives to gain insight and determine what specific changes will be helpful to both programs, with the intent to launch the consolidated document in early 2016.

Comment #3: Comment was received – in the form of a letter to staff - from the Cancer Action Network, the American Lung Association, and the Montana Department of Public Health and Human Services, encouraging the department to

consider adopting smoke-free requirements as a threshold for new housing development receiving grant funds.

Response #3: The comments provided are appreciated but pertain more specifically to the project grant application guidelines – when housing is being constructed – as opposed to the planning grant stage.

Comment #4: A comment was received – in the form of a question to staff - indicating the commenter was excited to see the planning grant amount increased to \$50,000, and was wondering if a combination of planning activities could be applied for and funded under one CDBG application; for instance, if the community wished to hire an architect to design a senior/community center and also retain a grant writer to prepare a CDBG Public Facility grant for the project designed by the architect, would this be eligible?

Response #4: The CDBG Application Guidelines for Housing, Public Facilities and Economic Development Planning Grants will continue to consider funding multiple, related planning activities, so long as the activities proposed are eligible pursuant to the guidelines and are related to one project.

Comment #5: A comment was received – in the form of a question to staff - are planning grants accepted year round? The guidelines suggest this is the case; however, that seems very generous so I just wanted to be sure. Is there a specific deadline they must be submitted by?

Response #5: The department will accept applications for the FFY 2015 CDBG planning grant cycle on a first-come, first-served basis, beginning July 1st, until all FFY 2015 funds have been allocated.

Comment #6: A comment was received suggesting the inclusion of the development of an independent water and/or sewer district, including public outreach, legal assistance, development of bylaws, cost estimating and user rates estimating, boundary establishments, and elections per Title 7, parts 22 and 23, MCA, as an eligible activity under "Section II Eligible Planning Projects and Cost."

Response #6: The 2015 CDBG Application Guidelines for Housing, Public Facility and Economic Planning Grants allows applicants to propose a planning project other than those listed under eligible activities, which may be appropriate under special circumstances or was not contemplated in the development of the guidelines. Applicants should work with Planning Bureau staff to determine whether a proposed project meets the eligibility requirements under this section of the guidelines.

/s/ Kelly A. Lynch
KELLY A. LYNCH
Rule Reviewer

/s/ Douglas Mitchell
DOUGLAS MITCHELL
Deputy Director
Department of Commerce

Certified to the Secretary of State June 1, 2015.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 8.111.602 and 8.111.603)
pertaining to the Low Income Housing)
Tax Credit Program)

TO: All Concerned Persons

1. On March 26, 2015, the Department of Commerce published MAR Notice No. 8-111-129 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 288 of the 2015 Montana Administrative Register, Issue Number 6.

2. The department has amended the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ G. Martin Tuttle
G. MARTIN TUTTLE
Rule Reviewer

/s/ Douglas Mitchell
DOUGLAS MITCHELL
Deputy Director
Department of Commerce

Certified to the Secretary of State June 1, 2015.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.21.1003 pertaining to)
apprenticeship training ratios)

TO: All Concerned Persons

1. On April 16, 2015, the Department of Labor and Industry (department) published MAR Notice No. 24-21-302 regarding a public hearing on the proposed amendment of the above-stated rule at page 363 of the 2015 Montana Administrative Register, Issue No. 7. On April 30, 2015, the department published an amended notice of public hearing at page 405 of the 2015 Montana Administrative Register, Issue No. 8.

2. On May 11, 2015, at 10:00 a.m., the department held a public hearing in the auditorium of the DPHHS Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rule. Various members of the public attended and commented on the proposed amendments. In addition, one member of the public submitted written comments.

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

Comment 1: Several commenters expressed support for the proposed rule amendments exactly as the amendments were drafted and proposed.

Response 1: The department acknowledges the comments.

Comment 2: A commenter objected to the 1:2 apprentice-to-journeyman ratio, and suggested that a 1:1 ratio would make it easier for an apprentice to get sufficient hours in order to timely complete an apprenticeship. The commenter appeared to suggest that the issue was related to when the apprenticeship program was sponsored by a labor union and used a 1:2 ratio, apprentices could not obtain sufficient hours to timely complete the apprenticeship.

Response 2: The department concludes that the proposed amendments of ARM 24.21.1003(4) make it more likely that an apprentice will keep on track for the timely completion of the apprenticeship, as the department will more closely monitor the progress of apprentices. The department believes that the commenter may misunderstand the effect of the recent amendments to ARM 24.21.1003 which allow an apprentice who has made sufficient progress in both hours of training and in related instruction to be excluded from the 1:2 ratio requirement. The recent

amendments, in the department's judgment, have already addressed many of the concerns expressed by the commenter.

The department also notes that the subject of the ratio is not a part of the present rulemaking proposal. To the extent that the commenter intended to comment directly on the recent amendments to the ratio (see MAR Notice No. 24-21-301, published on December 11, 2014, on page 2920 of the 2014 Montana Administrative Register, Issue No. 23), the comments are untimely because that comment period on the numerical ratio has been closed for several months.

4. The department has amended ARM 24.21.1003 as proposed.

/s/ MARK CADWALLADER

Mark Cadwallader
Alternate Rule Reviewer

/s/ PAM BUCY

Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 1, 2015

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION AND
Rule I and the amendment of ARM) AMENDMENT
37.97.102, 37.97.132, and 37.97.186)
pertaining to updating rules for youth)
care facilities)

TO: All Concerned Persons

1. On January 15, 2015, the Department of Public Health and Human Services published MAR Notice No. 37-704 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 12 of the 2015 Montana Administrative Register, Issue Number 1.

2. The department has amended ARM 37.97.186 as proposed.

3. The department has adopted the following rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

NEW RULE I (37.97.191) YOUTH CARE FACILITY (YCF): FIRE SAFETY

(1) The department adopts and incorporates by reference ~~group R-3 of the occupancy designation/classification group R-3 of the International Fire Code (IFC), January 1, 2012,~~ which sets forth the fire safety regulations that apply to youth care facilities. A copy of ~~group R-3 of the International Fire Code~~ IFC definitions and requirements for R-3 occupancies may be obtained from the Fire Prevention and Investigation Section of the Department of Justice, 2225 11th Avenue, Helena, Montana, 59620.

(2) remains as proposed.

(3) Smoke detectors approved by a recognized testing laboratory must be located on each level of the facility, at the top of stairways, in any bedroom, in any hallway leading to bedrooms, and in areas requiring separation as set forth in ~~the International Fire Code according to IFC Section 907.2.10~~ 907.2.11, IFC.

(4) through (11) remain as proposed.

AUTH: 52-2-111, 52-2-113, 52-2-603, 52-2-622, MCA
IMP: 52-2-111, 52-2-603, ~~62-2-622~~ 52-2-622, MCA

4. The department has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

37.97.102 YOUTH CARE FACILITY (YCF): DEFINITIONS The following definitions apply to all YCF licensing rules:

(1) through (33) remain as proposed.

AUTH: 44-3-1142, 52-2-111, 52-2-603, 52-2-622, MCA
IMP: 52-2-113, ~~52-2-602~~ 52-2-603, 52-2-622, 53-2-201, MCA

37.97.132 YOUTH CARE FACILITY (YCF): GENERAL REQUIREMENTS FOR ALL ADMINISTRATORS, STAFF, INTERNS, AND VOLUNTEERS (1) through (7) remain as proposed.

(8) All direct-care staff who transport youth must have a valid driver's license and, while transporting youth, follow all laws applicable to driving in Montana.

AUTH: 52-2-111, 52-2-603, 52-2-622, MCA
IMP: 52-2-111, 52-2-603, 52-2-622, MCA

5. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

Comments to NEW RULE I (ARM 37.97.191)

COMMENT #1: A commenter stated R-3 is an occupancy designation/classification found in the definitions in Chapter 2, not a regulation.

RESPONSE #1: The department agrees with the commenter and the proposed new rule has been modified as suggested by the state fire marshal.

COMMENT #2: A commenter stated the new rule seems reasonable; however, the commenter believes the department failed to take into consideration the cost imposed for requiring staff to be trained on the proper use of fire extinguishers.

RESPONSE #2: The department agrees that the new rule is reasonable and thanks the commenter; however, the department disagrees that the cost of training has not been considered. The department believes the training is minimal and can be provided during the orientation training required of new staff. The department does not describe how this training is to be provided only that it is to be provided; additionally, the rule as written allows providers to develop their own method for that training.

COMMENT #3: A commenter pointed out that a typographical error was made under the Montana Code Annotated (MCA) authority section.

RESPONSE #3: The department corrected the reference to 62-2-622, MCA, by changing it to 52-2-622, MCA.

Comments to ARM 37.97.102

COMMENT #4: A commenter pointed out that one MCA citation had been renumbered and another MCA citation needed to be corrected.

RESPONSE #4: The department corrected the reference to 41-3-1142, MCA by changing it to 52-2-111, MCA. 52-2-602, MCA, was corrected to 52-2-603, MCA.

Comments to ARM 37.97.132

COMMENT #5: One comment was received concerning the definition for "grounds for records." The commenter indicated that investigations and background checks are currently being conducted.

RESPONSE #5: The department believes that the commenter's comment is beyond the scope of this rule change.

COMMENT #6: A commenter wrote that it is unreasonable to require all direct care staff to have a current valid driver's license. The commenter stated that the department does not reimburse providers for the cost of transporting clients. The commenter believes it may be discriminatory if a person has a disability that precludes them from being able to obtain a driver's license; however, the person may provide competent care to youth. The commenter believes the department is overreaching its role with private employers who, in the end, are held responsible for employment laws and the Americans with Disabilities Act (ADA) requirements.

RESPONSE #6: The department agrees that only staff required to transport youth should have a current driver's license. The proposed new rule has been amended. The department disagrees with the comment that the providers are not reimbursed for the cost for transportation. The cost for transportation is included in the provider's daily rate.

COMMENT #7: Two commenters were concerned about staff receiving traffic tickets and how the department would respond. One commenter states the vague nature of this rule allows incredible discretion by the department and licenser. Is one "failure to yield" allowed but a "driving too fast for conditions" grounds for termination? Again, as a private employer, the youth care facility (YCF) may impose employment policies that, for example, require the employee have a driving record that allows them to be insured by the YCF's insurance company or prohibit the use of the employee's personal vehicle to perform job responsibilities; however, these kinds of policies should be established and enforced by the employer. It is the employer, not the department, who assumes the risk and liability for employees who may be required to drive as a job requirement. The commenters urged the department to not adopt this proposed amendment to the rule.

RESPONSE #7: It is not the intent of the department to monitor driver records of staff or driving performance while off duty. The department has amended the proposed rule to require staff to follow all laws applicable to driving in Montana while transporting youth. It is vital that staff drive in a safe and prudent manner while

transporting youth. It is quite reasonable for the department to require staff to follow all laws while transporting youth. The department does not require providers to terminate staff based on a minor rule violation. If the violation places youth at risk the provider would be responsible for correcting the violations in a reasonable manner. Providers continue to be responsible for employing staff that do not place the youth in their care at risk of harm.

Comments to ARM 37.97.186

COMMENT #8: A commenter said the maintenance policy is subjective and the schedule is unnecessary and burdensome on providers by adding time to orientation training. The commenter believes the department is micromanaging requiring additional paperwork and written policies for providers.

RESPONSE #8: The department contends a maintenance policy will ensure all providers and their staff are aware of the responsibility to provide a clean and well maintained home. The rule allows providers to implement a maintenance policy that works best for them which can include monthly inspections as one commenter requires. Direct care staff members are typically responsible for the majority of cleaning in YCFs and should be informed of their duties as such and this information should be included in orientation training.

COMMENT #9: A commenter said that a rule requiring adequate housekeeping and maintaining home and furnishings in good repair creates a number of subjective standards open to interpretation, confusion, and challenges in consistent implementation.

RESPONSE #9: The department applies reasonable standards for interpretation and implementation of rules. The department inadvertently removed this requirement when revising the YCF rules in 2011. The department believes it is necessary to reimplement the requirement. Past implementation of the requirement did not cause a significant impact on providers and maintaining equipment and furniture is an ordinary cost of doing business. When conflicts arise, the surveyors review the information with the surveyor's supervisor in order to come to a reasonable conclusion. When violations are cited and the provider disagrees, they have the opportunity to discuss those issues with the department's licensing supervisor.

COMMENT #10: A commenter asked what is the definition for a safe and sufficient quantity for cleaning supplies, as many contain hazardous material.

RESPONSE #10: As stated in the rule, sufficient quantity would mean enough to meet the housekeeping needs of the facility.

Hazardous material, poison, and toxin requirements are outlined in existing sections of the rule and are not within the scope of this proposed rule change.

/s/ Susan Callaghan
Susan Callaghan, Esq.
Rule Reviewer

/s/ Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State June 1, 2015

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.86.4401 and 37.86.4406)
pertaining to the federally qualified)
health centers and rural health clinics)

TO: All Concerned Persons

1. On April 30, 2015, the Department of Public Health and Human Services published MAR Notice No. 37-706 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 425 of the 2015 Montana Administrative Register, Issue Number 8.

2. The department has amended the above-stated rules as proposed.

3. No comments or testimony were received.

4. These rule amendments are effective July 1, 2015.

/s/ Susan Callaghan
Susan Callaghan, Esq.
Rule Reviewer

/s/ Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State June 1, 2015.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.79.304 pertaining to)
updating the HMK evidence of)
coverage document)

TO: All Concerned Persons

1. On April 30, 2015, the Department of Public Health and Human Services published MAR Notice No. 37-708 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 429 of the 2015 Montana Administrative Register, Issue Number 8.

2. The department has amended the above-stated rule as proposed.

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: The commenter "acknowledges the importance of telemedicine in the delivery of care and appreciates its addition as a benefit" and "requests the department gives consideration to ensuring the term of telemedicine is well defined." The commenter offers "its assistance in this endeavor."

RESPONSE #1: The Healthy Montana Kids Evidence of Coverage (EOC) document, July 1, 2015 version, which is proposed to be adopted by reference in MAR Notice No. 37-708, defines telemedicine on page 10 as: "The use of a secure interactive audio and video, or other telecommunications technology by a health care provider to deliver health care services at a site other than the site where the patient is located. Does not include audio only (phone call), e-mail, and/or facsimile transmission." The commenter did not propose either a definition or a change to this definition, and at this time, the department believes the definition in the EOC appropriately describes the added service.

4. This rule amendment is effective July 1, 2015.

/s/ Susan Callaghan
Susan Callaghan, Esq.
Rule Reviewer

/s/ Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State June 1, 2015

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF AMENDMENT
ARM 42.3.101, 42.3.102, 42.3.103,)	
42.3.104, 42.3.105, 42.3.106,)	
42.3.107, 42.3.108, 42.3.109,)	
42.3.110, 42.3.111, 42.3.113, and)	
42.15.314 pertaining to the 2009)	
recodification of statutes in Title 15,)	
chapter 30, MCA)	

TO: All Concerned Persons

1. On April 30, 2015, the Department of Revenue published MAR Notice No. 42-2-927 pertaining to the proposed amendment of the above-stated rules at page 439 of the 2015 Montana Administrative Register, Issue Number 8.
2. The department has amended the above-stated rules as proposed.
3. No comments or testimony were received.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State June 1, 2015.

BEFORE THE PUBLIC SERVICE COMMISSION
DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

IN THE MATTER OF the Petition of) REGULATORY DIVISION
Greycliff Wind Prime, LLC for)
Declaratory Ruling that GreyCliff's)
Organizational Structure Satisfies) DOCKET NO. D2015.3.23
the Statutory Definition of a)
Community Renewable Energy Project)

DECLARATORY RULING

BACKGROUND

1. On March 12, 2015, Greycliff Wind Prime, LLC (Greycliff) filed a *Petition for Declaratory Ruling* (Petition) with the Montana Public Service Commission (Commission).

2. On March 16, 2015, the Commission issued a *Notice of Petition for Declaratory Ruling and Opportunity to Comment*. The Commission received *Comments* from Jeffrey Wagner and Diana's Great Idea, LLC. Greycliff filed a *Response to the Comments Regarding Greycliff's Requested Declaratory Ruling* on April 13, 2015.

3. Greycliff is planning construction of a wind project in Sweet Grass County, Montana. In its *Petition*, Greycliff presents a legal question pertaining to Section 69-3-2003(4)(a) of the Montana Code Annotated, which defines a "community renewable energy project" (CREP) in part as "an eligible renewable resource... in which local owners have a controlling interest." Pet. at p. 11 (Mar. 12, 2015). Greycliff also presents a legal question pertaining to Section 69-3-2003(11)(c), which defines "local owners" in part as "business entities organized under the laws of Montana" that "have less than \$50 million of gross revenue; have less than \$100 million of assets; and have at least 50% of the equity interests, income interests, and voting interests owned by Montana residents." *Id.* at p. 6.

4. On February 25, 2014, the Commission declared that "an eligible renewable resource does not qualify as a CREP unless 'local owners have a controlling interest' at the time of interconnection and at any point thereafter." Declaratory Rul., Dkt. D2014.1.7, ¶ 8 (Feb. 25, 2014).

5. On March 27, 2014, the Commission declared that "local owners" have a "controlling interest" in a project "only if they own, directly or indirectly, more than half of the equity, income and voting rights in the project." Declaratory Rul., Dkt. D2014.1.9, ¶ 17 (Mar. 27, 2014) ("there would have been no reason to insert the word 'interest'" into the definition of CREP if the Legislature had merely intended local owners to have "management control."). Because a "second member would have [had] the right to consent to major decisions, change project vendors, dissolve [the project], and remove

the local owner under certain conditions, the Commission [was] not persuaded that the local owner would have 'the power to direct the management or policies' – and thereby 'control' the project – by virtue of its limited management interest." *Id.* at ¶ 16.

6. Greycliff requests that the Commission issue a declaratory ruling finding that, "consistent with the organizational structure and definitions of income, equity, and voting interests, and the definition of controlling interest, set forth in [Greycliff's] Petition, the Project will be eligible for certification as a CREP." Pet. at p. 12.

7. Greycliff's organizational structure consists of Greycliff Wind, LLC (GWLLC), the purported "local owner" of the project. *Id.* at p. 9. Greycliff asserts that at least 50% of GWLLC will be owned by the Montana Wind Equity Fund, LLC (MWEF), a Montana limited liability company, and Montana Wind Resources (MWR). *Id.* Greycliff explains that MWEF "is specifically created as a vehicle for Montana residents to invest in Montana wind projects and is 100% owned and managed by Montana residents." *Id.* Greycliff states that MWR is 100% owned and managed by two Montana residents. *Id.* According to Greycliff, it is likely that "new Montana investors will be admitted and some existing Montana investors will withdraw." *Id.* The remaining minority ownership of GWLLC will be possessed by non-Montana members. *Id.* at p. 10. Sharing ownership of the project with GWLLC will be a non-Montana tax equity member, which will possess less than 50% ownership of Greycliff and will "absorb the federal production tax credit..." *Id.*; see also Ex. A.

8. According to Greycliff, a local owner will have "a controlling interest" in the project because the local owner "at all times" will possess "at least 50% of the equity, income, and voting interests" in the project. *Id.* at p. 9. Specifically, Greycliff asserts that "Montana residents will always have at least 50% of all capital accounts" in the project, "Montana residents will own at least 50% interest in the net cash flow" of the project, and finally that "Montana residents will have over 50% of the voting interests" in the project. *Id.*

9. Greycliff states that "equity interests" can be measured by comparing the capital accounts of members. *Id.* at p. 7.

10. Greycliff asserts that the Commission should interpret "income interests" to mean "the members' share of distributions of net cash flow from operations, after payment of expenses." *Id.* Greycliff clarifies that income interest should not refer to taxable income. *Id.* at 7-8.

11. Greycliff states that Montana residents will have 50% of the voting interests because all matters requiring a vote by members will be decided by a majority of members, except for certain acts "which require the consent of 100%" of the members. *Id.* at p. 9. Greycliff clarifies that the following acts will require the consent of 100% of its members:

- (i) any act requiring 100% approval under the Montana Limited Liability Company Act (§ 35-8-307(3), MCA);
- (ii) borrowing or loaning money;
- (iii) acquiring or constructing property other than the Project;
- (iv) granting liens on company property;
- (v) beginning or settling litigation;
- (vi) declaring bankruptcy; or
- (vii) amending or waiving legally binding agreements on the

company that were previously approved by the investor (the "100% Vote Decisions").

Id. at pp. 9-10.

CONCLUSIONS OF LAW

12. The Commission "shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision..." Mont. Code Ann. § 2-4-501. "A declaratory ruling or the refusal to issue such a ruling shall be subject to judicial review in the same manner as decisions or orders in contested cases." *Id.*; Admin. R. Mont. 1.3.229(2).

13. The Commission has adopted the Attorney General's Model Procedural Rules governing declaratory rulings. Admin. R. Mont. 38.2.101. "A party may seek a declaratory ruling from the agency when doubt exists as to how a statute or rule administered by an agency affects the party's legal rights." *Id.* at 1.3.226.

14. A "community renewable energy project" is, in relevant part, "an eligible renewable resource that is interconnected on the utility side of the meter in which local owners have a controlling interest and that is less than or equal to 25 megawatts in total calculated nameplate capacity." Mont. Code Ann. § 69-3-2003(4)(a).

15. In order for "business entities" to qualify as "local owners," "at least 50% of the equity interests, income interests, and voting interests [must be] owned by Montana residents." *Id.* at § 69-3-2003(11)(c)(iii).

16. The Commission declines to issue the declaratory ruling sought by Greycliff because it is not persuaded that Greycliff's proposed corporate structure satisfies the requirement that "local owners" possess a "controlling interest" in a CREP pursuant to Section 69-3-2003 of the Montana Code Annotated.

DONE AND DATED this 18th day of May, 2015, by a vote of 4 to 1. Commissioner Kavulla dissenting.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

/s/BRAD JOHNSON
BRAD JOHNSON
Chairman

/s/TRAVIS KAVULLA
TRAVIS KAVULLA (DISSENTING)
Vice Chair

/s/ KIRK BUSHMAN
KIRK BUSHMAN
Commissioner

/s/ROGER KOOPMAN
ROGER KOOPMAN
Commissioner

/s/BOB LAKE
BOB LAKE
Commissioner

ATTEST:

Aleisha Solem
Commission Secretary

(SEAL)

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 28th day of May 2015, a true and correct copy of the foregoing was served by placing same in the U.S. mail, postage prepaid, addressed as follows:

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/s/Aleisha Solem
Paralegal-Commission Secretary

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: **Administrative Rules of Montana (ARM)** is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- | | |
|---------------|---|
| Known Subject | 1. Consult ARM Topical Index.
Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute | 2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2015. This table includes those rules adopted during the period April 1, 2015, through June 30, 2015, and any proposed rule action that was pending during the past 6-month period (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2015, this table, and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2015 Montana Administrative Register.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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