

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 19

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 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 DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment)
of ARM 2.59.104 pertaining to the)
semiannual assessment of banks)

NOTICE OF PUBLIC HEARING
ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On October 25, 2007, at 10:30 a.m., a public hearing will be held in Room 342 of the Park Avenue Building, 301 S. Park, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Administration, Division of Banking and Financial Institutions, 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 Division of Banking and Financial Institutions no later than 5:00 p.m. on October 18, 2007, to advise us of the nature of the accommodation that you need. Please contact Christopher Romano, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2928; TDD (406) 444-1421; facsimile (406) 841-2930; e-mail to cromano@mt.gov.

3. The rule as proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

2.59.104 SEMI-ANNUAL ASSESSMENT (1) Based upon the following schedule, and upon calculation of the semiannual value for the respective bank, the value shall be multiplied by the factor of 1.50 to determine the dollar fee assessment, rounded to the next highest dollar, due the Division of Banking and Financial Institutions for the semiannual period.

Total assets (Million)	Base	Plus rate/ Million	Over (Million)
0-1	0	.00085	0
1-10	850	.000105	1
10-50	1,795	.000085	10
50-100	5,195	.00005	50
over 100	7,695	.00003	100

~~Based upon this schedule, and upon calculation of the semi-annual value for the respective bank, the value shall be multiplied by the factor of 1.37 to determine the dollar fee assessment due the Division of Banking and Financial Institutions for the semi-annual period, rounded to the next highest dollar.~~

AUTH: 32-1-213, MCA
IMP: 32-1-213, MCA

REASON: It is reasonably necessary for the division to amend ARM 2.59.104 to ensure that revenue collected from the semiannual assessments is commensurate with the costs associated with the division's regulation of state-chartered banks. The semiannual assessment has not been increased since 1994. The cost of regulating banks has increased and now exceeds the current revenue from the semiannual assessments. The increased costs are reflected in a career ladder professional program implemented to recruit and retain bank examiners, professional education and training of the bank examiners, professional certification for the division and its examiners by the Conference of State Bank Supervisors, and increased overhead expenses in the areas of rent, travel, supplies, and communications. The proposed adjustment will result in a 9.5% increase in assessments for the 64 state-chartered banks regulated by the division. It is anticipated that this proposed increase would annually increase revenue for the division by \$180,310.

4. 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 Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to kosullivan@mt.gov, and must be received no later than November 2, 2007.

5. Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Proposal Notice is available through the Department of Administration's web site at <http://doa.mt.gov/AdministrativeRules.asp>. The department 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 department 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.

7. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address or e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Such written requests may be mailed or delivered to Christopher Romano, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to cromano@mt.gov; or may be

made by completing a request form at any rules hearing held by the Division of Banking and Financial Institutions.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

By: /s/ Janet R. Kelly
Janet R. Kelly, Director
Department of Administration

By: /s/ Dal Smilie
Dal Smilie, Rule Reviewer
Department of Administration

Certified to the Secretary of State September 24, 2007.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment)
of ARM 2.59.401 pertaining to credit)
union supervisory and examination fees)

NOTICE OF PUBLIC HEARING
ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On October 25, 2007, at 8:30 a.m., a public hearing will be held in Room 342 of the Park Avenue Building, 301 S. Park, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Administration, Division of Banking and Financial Institutions, 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 Division of Banking and Financial Institutions no later than 5:00 p.m. on October 18, 2007, to advise us of the nature of the accommodation that you need. Please contact Christopher Romano, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2928; TDD (406) 444-1421; facsimile (406) 841-2930; e-mail to cromano@mt.gov.

3. The rule as proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

2.59.401 CREDIT UNIONS - SUPERVISORY AND EXAMINATION FEES

(1) The following annual ~~Supervisory fees (annual)~~ will be assessed upon the December 31 total assets of each year and become due and payable on or before February 15 of the next succeeding year.:

<u>Total Assets</u>	<u>Fee</u>
\$500,000 or less	0.00026 x total assets
Over \$500,000 but not over \$1,000,000	\$130 plus 0.000221 x total assets in excess of \$500,000
Over \$1,000,000 but not over \$2,000,000	\$240.50 plus 0.000182 x total assets in excess of \$1,000,000
Over \$2,000,000 but not over \$5,000,000	\$422.50 plus 0.00013 x total assets in excess of \$2,000,000
Over \$5,000,000	\$812.50 plus 0.000091 x total assets in excess of \$5,000,000
<u>\$2,500,000 or less</u>	<u>0.00030 x total assets</u>

<u>Over \$2,500,000, but not over \$10,000,000</u>	<u>\$750 plus 0.000225 x total assets in excess of \$2,500,000</u>
<u>Over \$10,000,000, but not over \$50,000,000</u>	<u>\$2,437.50 plus 0.0001425 x total assets in excess of \$10,000,000</u>
<u>Over \$50,000,000, but not over \$100,000,000</u>	<u>\$8,137.50 plus 0.00008250 x total assets in excess of \$50,000,000</u>
<u>Over \$100,000,000, but not over \$250,000,000</u>	<u>\$12,262.50 plus 0.00007850 x total assets in excess of \$100,000,000</u>
<u>Over 250,000,000</u>	<u>\$24,037.50 plus 0.00007500 x total assets in excess of \$250,000,000</u>

The above fees will be assessed upon the December 31 total assets of each year and become due and payable on or before February 15 of the next succeeding year.

(2) Examination fees:

(a) The fee for the regular, annual examination will be calculated according to the following schedule:

<u>Total Assets</u>	<u>Fee</u>
\$500,000 or less	0.00078 x total assets
Over \$500,000 but not over \$1,000,000	\$390 plus 0.0003575 x total assets in excess of \$500,000
Over \$1,000,000 but not over \$5,000,000	\$568.75 plus 0.00026 x total assets in excess of \$1,000,000
Over \$5,000,000	\$1,608.75 plus 0.0000975 x total assets in excess of \$5,000,000
<u>\$2,500,000 or less</u>	<u>0.000225 x total assets</u>
<u>Over \$2,500,000, but not over \$5,000,000</u>	<u>\$562.50 plus 0.000215 x total assets in excess of \$2,500,000</u>
<u>Over \$5,000,000, but not over \$15,000,000</u>	<u>\$1,100.00 plus 0.0001875 x total assets in excess of \$5,000,000</u>
<u>Over \$15,000,000, but not over \$50,000,000</u>	<u>\$2,975.00 plus 0.000125 x total assets in excess of \$15,000,000</u>
<u>Over \$50,000,000, but not over \$100,000,000</u>	<u>\$7,350.00 plus 0.000105 x total assets in excess of \$50,000,000</u>

Over 100,000,000, but not
over \$250,000,000

\$12,600.00 plus 0.00009 x total assets
in excess of \$100,000,000

Over 250,000,000

\$26,100.00 plus 0.000055 x total assets
in excess of \$250,000,000

(b)(3) A charge of ~~\$1025~~ per hour per examiner engaged in the examination will be made in addition to the above charges. The number of hours charged for examiners in training will be adjusted to exclude time devoted to training.

(c) and (d) remain the same, but are renumbered (4) and (5).

AUTH: 32-3-201, MCA

IMP: 32-3-201, MCA

REASON: It is reasonably necessary for the division to amend ARM 2.59.401 to ensure that revenue collected from the credit union supervisory and examination fees is commensurate with the costs associated with the division's regulation of state-chartered credit unions. The credit union supervisory and examination fees have not been increased since 1991. The cost of regulating credit unions has increased and now exceeds the current revenue from the supervisory and examination fees. The increased costs are reflected in a career ladder professional program implemented to recruit and retain credit union examiners, professional education and training of the credit union examiners, and increased overhead expenses in the areas of rent, travel, supplies, and communications. The proposed adjustment will result in an increase in supervisory and examination fees for the 11 state-chartered credit unions regulated by the division. The supervisory fees are collected each year, but the examination fees are only collected after the completion of the division's examination. The frequency of these examinations may vary and all 11 state-chartered credit unions may not be examined each year. It is certain that all 11 state-chartered credit unions would be examined within a period of three years. It is anticipated that this proposed increase would annually, on average over the next three years, increase revenue for the division by \$23,175.

It is reasonably necessary for the division to amend subsection (2)(a) in order to eliminate the specific reference to annual examinations. The frequency of these examinations is at the discretion of the division as set forth by 32-3-203, MCA. The division has utilized examination frequency guidance from the National Credit Union Administration which sets forth an 18-month cycle for certain credit unions. The division has implemented this guidance.

4. 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 Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to kosullivan@mt.gov, and must be received no later than November 2, 2007.

5. Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Proposal Notice is available through the Department of Administration's web site at <http://doa.mt.gov/AdministrativeRules.asp>. The department 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 department 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.

7. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address or e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Such written requests may be mailed or delivered to Christopher Romano, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to cromano@mt.gov; or may be made by completing a request form at any rules hearing held by the Division of Banking and Financial Institutions.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

By: /s/ Janet R. Kelly
Janet R. Kelly, Director
Department of Administration

By: /s/ Dal Smilie
Dal Smilie, Rule Reviewer
Department of Administration

Certified to the Secretary of State September 24, 2007.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed adoption of)	NOTICE OF PUBLIC HEARING
New Rule I pertaining to examination)	ON PROPOSED ADOPTION
fees for business and industrial)	
development corporations)	

TO: All Concerned Persons

1. On October 25, 2007, at 2:00 p.m., a public hearing will be held in Room 342 of the Park Avenue Building, 301 S. Park, Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Department of Administration, Division of Banking and Financial Institutions, 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 Division of Banking and Financial Institutions no later than 5:00 p.m. on October 18, 2007, to advise us of the nature of the accommodation that you need. Please contact Christopher Romano, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2928; TDD (406) 444-1421; facsimile (406) 841-2930; e-mail to cromano@mt.gov.

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

NEW RULE I EXAMINATION FEES (1) A business and industrial development corporation (BIDCO) licensee shall pay the Division of Banking and Financial Institutions a fee for the cost of conducting the examination of a BIDCO licensee, an affiliate, or subsidiary of the licensee as well as the cost of preparing the examination report. This fee shall be equal to \$50 per hour per examiner, plus out-of-pocket costs for travel, lodging, and meals while away from the examiner's place of employment.

AUTH: 32-11-105, MCA
IMP: 32-11-203, MCA

REASON: It is reasonably necessary for the division to propose New Rule I in order to establish the examination fees for a licensed business and industrial development corporation which includes an affiliate or subsidiary of the licensee. The authority to adopt examination fees by rule is specifically referenced in Section 31 of the Business and Industrial Corporation Act. This Act was passed during the 2007 Regular Legislative Session as part of Senate Bill 321. The division anticipates that there will be one licensed business and industrial development corporation. It is anticipated that there will be two examiners required over a period of 144 hours to complete an examination. It is estimated that the total annual revenue from the \$50 per hour charge will be \$7,200. The division anticipates that

the examination would be conducted at a licensee's location which would require overnight travel. The division estimates the out-of-pocket costs for two examiners' travel, lodging, and meals to be \$1,527 for this examination. It is then estimated that the total revenue for this examination to be \$8,727.

4. 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 Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to kosullivan@mt.gov, and must be received no later than November 2, 2007.

5. Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Proposal Notice is available through the Department of Administration's web site at <http://doa.mt.gov/AdministrativeRules.asp>. The department 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 department 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.

7. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address or e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Such written requests may be mailed or delivered to Christopher Romano, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to cromano@mt.gov; or may be made by completing a request form at any rules hearing held by the Division of Banking and Financial Institutions.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. Senator John Brueggeman, the primary bill sponsor of SB 321 (2007), was notified on July 27, 2007, by regular mail.

By: /s/ Janet R. Kelly
Janet R. Kelly, Director
Department of Administration

By: /s/ Dal Smilie
Dal Smilie, Rule Reviewer
Department of Administration

Certified to the Secretary of State September 24, 2007.

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

In the matter of the proposed amendment) NOTICE OF PUBLIC HEARING
of ARM 24.121.301 definitions, 24.121.407) ON PROPOSED AMENDMENT
premises and general requirements,) AND ADOPTION
24.121.601 and 24.121.605 applications for)
licensure, 24.121.803, 24.121.805,)
24.121.807, and 24.121.809 school-facility)
and operation, 24.121.1105 teacher-)
training curriculum, 24.121.1301 salons/)
booth rental, 24.121.1501, 24.121.1507,)
24.121.1509, 24.121.1511, 24.121.1513,)
24.121.1515, 24.121.1517, 24.121.1519,)
and 24.121.1521 sanitary standards,)
24.121.2301 unprofessional conduct, and)
the adoption of NEW RULE I anonymous)
complaints, NEW RULE II disinfecting)
agents, and NEW RULE III blood spills)

TO: All Concerned Persons

1. On October 29, 2007, at 1:00 p.m., a public hearing will be held in room 439, 301 South Park Avenue, 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 October 23, 2007, to advise us of the nature of the accommodation that you need. Please contact Andy Verbanac, Board of Barbers and Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2335; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2323; e-mail dlibsdcos@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: As part of a periodic review, the board is generally amending its rules throughout to eliminate outdated and unnecessary provisions, clarify language, align terminology with current textbook, curricula, and industry usage, and implement better organization and proper rule numbering. It is reasonably necessary to replace "tool" with "implement" as tools are included in the definition of "implement" in current textbooks and industry practice. Punctuation is amended to comply with ARM rule formatting requirements. Implementation cites are being amended to accurately reflect all statutes implemented through the rules and delete reference to a repealed statute.

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 The following definitions shall apply as used in this chapter:

(1) "Beauty culture" means but is not limited to hairdressing, manicuring, and esthetics.

~~(4)~~(2) "Blood spill kit" means a kit containing the equipment necessary to follow all of the blood spill procedures as required by ~~ARM 24.121.407~~ [NEW RULE III].

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

~~(5)~~(6) "Clean" means the absence of, or the removal of, soil, dirt, dust, hair, or foreign material, by washing, sweeping, clearing away, or any other appropriate method rendering a sanitary condition.

(6) through (8) remain the same but are renumbered (7) through (9).

~~(9)~~(10) "Direct supervision" means the on-site physical presence of a supervisor in the clinic and basic areas of the school, where students perform educational activities and services requiring licensure, and includes communication, direction, observation, and evaluation on a consistent basis.

(11) "Disinfected" or "disinfection" means eliminating bacteria, viruses, and organisms on inanimate surfaces.

(10) and (11) remain the same but are renumbered (12) and (13).

~~(12)~~(14) "Employee" means a person employed by a salon, shop, or school and paid wages and/or commissions in accordance with federal, state, and local regulations.

(13) remains the same but is renumbered (15).

(16) "Hairdressing" means performing any or all of the following on natural or artificial hair including but not limited to hairstyling (wet, dry, thermal, and braiding), chemical services (waving, relaxing, hair coloring, and lightening), hair cutting, and shampooing and scalp treatments.

(14) through (16) remain the same but are renumbered (17) through (19).

~~(17)~~(20) "Noninvasive" means procedures confined to the nonliving cells of the epidermis, specifically the stratum corneum layer, and through which living cells are never altered, cut, or damaged. At no time shall individuals licensed in this chapter perform services where the germinative or basal layers of the skin are compromised.

(18) remains the same but is renumbered (21).

~~(19)~~(22) "Sanitized," "sanitary," or "sanitation" means ~~the absence of agents of infection, disease, or infestation by insects, vermin, soil, dust, dirt, hair or foreign material, or the removal of agents of infection, disease, or infestation by insects, vermin, soil, dust, dirt, hair or foreign material from items, implements, tools and surfaces~~ to significantly reduce the number of pathogens or disease producing organisms found on a surface.

(23) "Single use items" mean items which shall be discarded after being used one time. These items include but are not limited to emery boards, nonmetal files without documentation from the manufacturer stating file is disinfectable, mandrels, and sanding bands for electric files, orangewood/birchwood sticks, wooden applicator sticks or spatulas, porous foot files, disposable gloves, paraffin liners, cotton balls, cotton strips, cotton swabs, neck strips or muslin strips, and any item that cannot be cleaned and disinfected and remain intact in its original condition.

(20) remains the same but is renumbered (24).

(25) "Supplemental barbering course" means a course of study in a licensed school, consisting of at least 125 hours in clipper cuts and 25 hours in shaving to licensed cosmetologists only, in order to meet the required educational needs for a barber license prior to taking a national written exam.

(21) remains the same but is renumbered (26).

(22)(27) "Working area" means the area of a salon, shop, or school where students or licensees perform services upon clients or members of the public.

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

IMP: 37-1-306, 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 determined it is reasonably necessary to define five new terms and modify the definition of an existing term to comply with and clarify terminology used in current rules, to define new words introduced elsewhere in this notice, and to bring language up to date with current textbooks and industry practice.

24.121.407 PREMISES AND GENERAL REQUIREMENTS (1) The premises of all salons, shops, and schools must be kept in clean, ~~sanitary~~, and ~~in~~ a safe conditions at all times.

(2) and (3) remain the same.

~~(4) If there is another salon, shop, and school connected to a salon, shop, or school, there must be a door between the establishments that must remain closed during business hours.~~

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

~~(6)(5) Furniture must be kept in clean, ~~sanitary~~, and ~~in~~ a safe conditions at all times.~~

(7) remains the same but is renumbered (6).

~~(8) Food must not be prepared and sold or stored in a salon, shop, school, or booth. Beverages that are prepared beyond the addition of water are prohibited. The following exceptions apply:~~

~~(a) food and nonalcoholic beverages that the licensee has for the licensee's own consumption;~~

~~(b) items dispensed from vending machines if the machines comply with federal, state, and local laws; or~~

~~(c) if the salon, shop, or school is licensed as a food purveyor in accordance and in compliance with all state and county regulations.~~

~~(9)(7) Single service disposable drinking cups must may be available for clients. use unless the salon, shop, or school is licensed as a food purveyor as above.~~

~~(10) If a blood spill should occur, the licensee, student, or cadet instructor shall follow the blood spill procedure adopted by the National Interstate Council of State Boards of Cosmetology (NIC). The board adopts and incorporates by reference the blood spill procedure as adopted by NIC, August 1998. A copy of the blood spill procedure is available at the board offices, 301 South Park Avenue, P.O. Box 200513, Helena, MT 59620-0513.~~

~~(11) The NIC blood spill procedure must be posted in all salons, shops, and schools.~~

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

IMP: 37-31-204, 37-31-311, MCA

REASON: It is reasonable and necessary to amend this rule to eliminate the unnecessary requirement for closed doors between salons, shops, and schools. The board is unaware of any connected entities and determined that the issue would be adequately addressed and prohibited through (3) of this rule.

The board is deleting the restrictions on food in salons, shops, schools, or booths to accommodate the diverse nature of current salons and shops, many of which exist as part of a spa facility providing services for up to a half a day or more. The board concluded that the public is adequately protected without the restrictions.

The board is amending (7) to make single service disposable drinking cups an option instead of a requirement. The board always intended the choice to be within a facility's discretion and concluded the public is well protected as salons, shops, and schools must be kept in a clean and safe condition.

The board is striking the NIC blood spill procedures in (10) from this rule as the requirements are being further delineated in New Rule III in this notice.

24.121.601 APPLICATIONS FOR LICENSURE (1) Applicants for licenses to practice shall apply for licensure within ~~five~~ three years of the applicant's graduation date from a licensed school.

(2) Previously licensed applicants may apply for licensure within ten years of termination of license by meeting current board licensing requirements and successfully passing a national written exam.

(2) through (2)(a)(iii) remain the same but are renumbered (3) through (3)(a)(iii).

(iv) esthetics - 650; ~~or~~

(v) manicuring - 350; or

(vi) supplemental barbering - 150.

(b) through (e) remain the same.

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

(b) lists of courses completed, including:

(i) through (iii) remain the same.

(4) remains the same but is renumbered (5).

~~(5)~~(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.

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

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

REASON: It is reasonably necessary to amend this rule to require application for licensure within three years of graduation instead of five. The board concluded that five years is too long between graduation and actual practice because both the professions and training change rapidly and the public's best interest is served by ensuring that licensees are current on standards of practice.

The board is adding (2) to delineate the licensure requirements for previously licensed applicants as current board rules do not address this situation. Numerous former licensees have approached the board and are currently waiting for direction.

The board is amending this rule to specify the supplemental hours that may be completed for barbering licensure. Although it is a current requirement that a licensed cosmetologist complete an additional 125 hours in clipper cuts and 25 hours in shaving to qualify for a barber license, it was not clear that cosmetology schools could offer these additional hours in a separate course. The board notes that since a course was not being offered and Montana does not have any barber schools, individuals were completing the full barbering curriculum at out of state barber schools to meet the requirements. This amendment will facilitate qualified cosmetologists in obtaining the supplemental hours in this state.

It is reasonably necessary to strike subsections (2)(c), (3)(c), (5)(c), and (6)(c) from ARM 24.121.807 and add them to this rule as (7) through (10) because these sections are licensing requirements, not school curricula requirements.

24.121.605 APPLICATION FOR SCHOOL LICENSURE (1) through (2)(b)(i) remain the same.

(ii) esthetics course; ~~or~~

(iii) manicuring course; or

(iv) supplemental barbering course.

(c) through (3)(a) remain the same.

(b) Cosmetology schools offering courses in barbering, esthetics, ~~and/or manicuring, and/or supplemental barbering~~ shall be required to post a ~~single~~ \$5000 bond or other security for each course.

(4) Schools shall not allow the bond or other security to be cancelled or to expire as long as the school is licensed and shall submit to the board proof of continuous annual renewal of the bond or other security ~~in the form of a certificate of insurance~~.

(5) remains the same.

(6) Schools shall provide true and accurate copies of all current school policies, procedures, rules, student contracts, tuition costs, and required deposits, including but not limited to those policies, procedures, and rules addressing:

(a) through (7) remain the same.

(a) compliance with board statutes, rules, policies, and procedures; and/or

(b) remains the same.

(8) As part of the inspection, investigation, or audit process the board may use information found by or prepared for the Department of Education or ~~National Accrediting Commission of Cosmetology Arts and Sciences (NACCAS)~~ other applicable national accrediting associations' or commissions' reviews.

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

IMP: 37-31-302, 37-31-311, 37-31-312, ~~37-31-321~~, MCA

REASON: It is reasonably necessary to amend this rule and add the supplemental barbering course that cosmetology schools can offer to align with the amendment to ARM 24.121.601, which specifies the supplemental hours needed for licensed cosmetologists to meet the required hours to receive a barber license.

The board is amending this rule to require that cosmetology school applicants provide a \$5000 bond or other security for each course offered instead of a single bond or security. The board decided that a \$5000 bond or security is inadequate to cover a school offering multiple courses based on a past occurrence when a single bond was insufficient to reimburse students following a school closure. The board is deleting the requirement that schools submit a certificate of insurance to prove annual bond or security renewal. The board determined it was unnecessary and overly restrictive to limit the method as long as proof is submitted.

The board is amending (8) because the board determined there is no reason to limit the sources of investigation or audit information as there are additional legitimate accrediting associations or commissions that currently exist.

24.121.803 SCHOOL REQUIREMENTS (1) Schools or courses licensed after April 1, 2001, shall provide a separate classroom, other than the clinic floor, for theory/ or basic classes.

(2) Schools shall provide a separate lunch/ or break room for students.

(3) Separate restrooms with sinks for male and female persons must be provided and shall include hot and cold running water connected to a sewer or septic system.

(4) remains the same.

(5) Schools shall display at the entrance a large legible sign with letters not less than two inches in size with the words "School of Barbering," "School of Cosmetology," "School of Electrology," "School of Esthetics," or "School of Manicuring" permanently affixed to the facility as to not be easily altered or removed by weather or individuals. Similar signs with the words "Student Work Only" shall be posted within each classroom and on the clinic floor.

(6) remains the same.

(7) Barbering schools or cosmetology schools offering a separate barbering course or supplemental barbering course shall provide the following equipment:

(a) and (b) remain the same.

~~(c) a fire extinguisher that is readily accessible to the clinic floor, classroom, storage room and other locations where flammable liquids may be kept. Fire extinguishers must be inspected at least once a year or more often as required by the manufacturer or local authority; and~~

(d) through (d)(iii) remain the same.

(iv) two covered wet sanitizers;

(e) through (8)(b) remain the same.

~~(c) a fire extinguisher that is readily accessible to the clinic floor, classroom, storage room and other locations where flammable liquids may be kept. Fire extinguishers must be inspected at least once a year or more often as required by the manufacturer or local authority; and~~

(d) through (d)(iii) remain the same.

(iv) two covered wet sanitizers;

(e) through (9) remain the same.

(a) a practice workroom; including:

(i) remains the same.

(ii) one sink, with hot and cold running water for hand washing;

(b) through (d) remain the same.

(10) Only presterilized, disposable needles may be used for electrolysis services on any individual in a licensed school, unless a properly installed, serviced, and operated autoclave is utilized for sterilization of reusable needles.

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

(e) one facial unit consisting of a vaporizer, high frequency unit, massage brush, vacuum spray, galvanic unit, magnifying lamp, and woods lamp;

(f) and (g) remain the same.

~~(h) one fire extinguisher that is readily accessible to the clinic floor, classroom, storage room and other locations where flammable liquids may be kept. Fire extinguishers must be inspected at least once a year or more often as required by the manufacturer or local authority;~~

(i) through (13)(d) remain the same.

~~(e) a fire extinguisher that is readily accessible to the clinic floor, classroom, storage room and other locations where flammable liquids may be kept. Fire extinguishers must be inspected at least once a year or more often as required by the manufacturer or local authority;~~

(f) and (f)(i) remain the same.

(ii) one sink for hand washing, not used for restroom facilities;

(g) through (j) remain the same.

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

REASON: It is reasonably necessary to amend (3) to allow schools to provide restrooms with a connection to either a city sewer or septic waste disposal system. The board is amending (7) to be consistent with amendments to ARM 24.121.601 and 24.121.605 and ensure that schools offering a supplemental barbering course provide the requisite equipment.

The board is amending this rule to delete the specific requirements for fire extinguisher location and inspection. The board concluded that it is unnecessary to regulate fire extinguishers this closely as this is already done by the companies servicing the extinguishers.

24.121.805 SCHOOL OPERATING STANDARDS (1) Schools shall not advertise, enroll, or admit students until ~~properly licensed~~ preliminary approval for school licensure is granted.

(2) through (5)(a) remain the same.

(b) a complete and current copy of all school policies, procedures, and rules.

(6) Schools shall maintain for not less than five years, and protect from loss, damage, and tampering, a registration file on each student who attended the school. Each file must include:

(a) name, address, and phone number;

(b) through (d) remain the same.

(e) academic records, including copies of written progress evaluations, signed by the student and the school designee;

(f) through (7) remain the same.

(a) Schools may convert clock hours to credit hours using the ~~conversion~~ conversion rate of 30 clock hours equaling one credit hour.

(b) 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.

(9) through (14) remain the same.

(15) Upon completion by students of at least 90 percent of the required hours of a course of study in barbering, cosmetology, electrology, esthetics, manicuring, or instructing, or supplemental barbering course and prior to graduating and receiving a diploma, the student shall take the school's final practical examination. The final practical examination must include all components for evaluation as provided in ARM 24.121.807 for each course of study. The final practical examination passing score shall be at least equal with the school's academic passing requirements.

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

REASON: The board determined it is reasonably necessary to amend this rule to allow schools to advertise, enroll, and admit students after receiving preliminary board approval for licensure but prior to being licensed. This amendment will enable schools to continue student registration prior to inspection and will facilitate a more accurate enrollment estimate, which can influence school licensure requirements. The amended rule will also be consistent with ARM 24.121.605. The board is also correcting the erroneous term "conversation" to "conversion" in (7)(a).

The board is amending (15) to be consistent with amendments to ARM 24.121.601, 24.121.605, and 24.121.803 and to specify that the supplemental barbering course is included in the requirement that students complete 90 percent of the required hours in a course of study before taking the final practical examination.

24.121.807 SCHOOL CURRICULA (1) Barbering, cosmetology, electrology, esthetics, manicuring, and instructor students shall complete the course of study within ~~five~~ three years of the student's original enrollment date.

(2) The required curriculum for barbering students is as follows:

(a) ~~4425~~ 1500 hours of training, of which at least 150 hours is in theory, distributed as follows:

(i) haircutting (including proper use of implements, e.g., shears, razors, clippers, thinning shears), 250 hours;

(ii) shampoo, and scalp treatment, ~~60 hours~~ and hair styling (thermal and air styling, finger waving, hair pieces to include weaves and extensions), 230 hours;

(iii) remains the same.

~~(iv) hair styling (thermal and air styling, finger waving, hair pieces to include weaves and extensions), 170 hours;~~

~~(v)(iv) chemical services (waving, 250 hours relaxing, hair coloring, and lightening), 400 hours;~~

~~(vi) chemical relaxing, 40 hours;~~

~~(vii) hair coloring and lightening, 170 hours;~~

~~(viii)(v) chemistry, bacteriology, sanitation, and sterilization, safety, skin, hair, and scalp anatomy, physiology, blood spill procedure, and diseases and disorders of skin, hair, and scalp, 85 hours; and~~

~~(ix)(vi) shop management, business methods, customer service, appointment book, professional ethics, current state board laws, and rules, and regulations, 20 hours; and~~

~~(x) business ethics, and personal grooming, 20~~ 100 hours.

(b) ~~The remaining~~ 375 hours of instruction shall be at the discretion of the school, provided that the hours are within the applicable curriculum.

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

(3) The required curriculum for cosmetology students is as follows:

(a) ~~4500~~ 2000 hours of training, of which at least 200 hours is in theory, distributed as follows:

(i) manicuring, ~~430~~ 125 hours; to include:

- (A) manicures (including water, oil, hand and arm massage, paraffin wax treatments, and polish);
- (B) pedicures (including foot, ~~and ankle, and lower leg~~ massage, paraffin wax treatments, and polish);
- (C) application of artificial nails (including sculptured, nail tips, nail wraps, fills, repairs, tip overlays, fiberglass, gel, and acrylic); and
- (D) ~~chemistry, anatomy, physiology, bacteriology, safety, sanitation, blood spill procedure, diseases and disorders of the nail; and~~
- ~~(E) the use of manicuring implements including the electric nail file;~~
- (ii) esthetics, 150 hours, to include:
 - (A) remains the same.
 - (B) skin exfoliation (including manual, chemical, and mechanical exfoliation);
 - (C) remains the same.
 - (D) ~~chemistry, electricity, and light therapy, anatomy, physiology, bacteriology, safety, sanitation, blood spill procedure, diseases and disorders of the skin;~~
- (iii) shampoo (including scalp treatment), hair styling (pin curls, finger waving, thermal curling, blow dry styling, braiding, back combing, and wet setting), 260 55 hours;
- (iv) chemical services (waving, 265 hours;
- ~~(v) chemical relaxing (ammonium thioglycolate, sodium hydroxide methods), 40 hours; hair coloring, and hair lightening), 530 hours;~~
- ~~(vi) hair styling (pin curls, finger waving, thermal curling, blow dry styling, braiding, back combing, wet setting), 205 hours;~~
- ~~(vii) hair coloring and hair lightening, 225 hours;~~
- ~~(viii)(v) hair cutting (including the proper uses of implements, e.g., shears, razors, clippers, thinning shears), 205 hours;~~
- ~~(ix)(vi) salon management, business methods, customer service, appointment book, and professional ethics, and current state board laws and rules, 110 150 hours;~~
- ~~(x) current state board laws and rules, 40 hours; and~~
- ~~(xi)(vii) chemistry, bacteriology, sanitation, and sterilization, safety, anatomy, physiology, blood spill procedure, and diseases and disorders of hair, and scalp, skin, and nails, 75 80 hours.~~
- (b) ~~The remaining 500 hours of instruction shall be at the discretion of the school, provided that the hours are within the applicable curriculum.~~
- ~~(c) 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.~~
- (4) The required curriculum for electrology students ~~includes 600 training hours~~ is as follows:
 - (a) 600 hours of training, of which at least 200 hours is of technical instruction (demonstration, lecture, classroom participation, or examination); and
 - (b) remains the same.
 - (i) a minimum of ~~30 90~~ hours of practical operations obtained in each of the following subjects:
 - (A) through (C) remain the same.

(ii) ~~The remaining~~ 310 hours of practical operations shall be at the discretion of the school, provided they are within the applicable curriculum.

(c) through (c)(xiii) remain the same.

(xiv) current state board laws and rules; and

(xv) remains the same.

(5) The required curriculum for esthetics students is as follows:

(a) ~~490~~ 650 hours of training, of which at least 65 hours is in theory, distributed as follows:

(i) bacteriology, sanitation, ~~and~~ sterilization, safety, anatomy, physiology, blood spill procedure, diseases and disorders of the skin, ~~55 hours~~;

(ii) electricity, chemistry, and light therapy (including the use of vaporizer, high frequency, massage brush, vacuum spray, galvanic unit and lamps), ~~130~~ 70 hours;

(iii)(ii) massage, skin care, and makeup, (including the use of vaporizer, high frequency, massage brush, vacuum spray, galvanic unit, and lamps), cosmetics, facials, essential oils, ~~170 hours~~;

(iv) and skin exfoliation (including manual, chemical, and mechanical exfoliation), ~~50~~ 300 hours;

(v) ~~current state board laws and rules, 40 hours~~;

(vi)(iii) waxing (face, neck, hands, and superfluous hair anywhere on the body, including tweezing), ~~45~~ 50 hours; and

(vii)(iv) salon management, business methods, appointment book, customer service, professional ethics, and current state board laws and rules, ~~70~~ 30 hours.

(b) ~~The remaining~~ 160 hours of instruction shall be at the discretion of the school provided that the hours are within the applicable curriculum.

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

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

(a) remains the same.

(i) salon management, business methods, customer service, appointment book, professional ethics, and current state board laws and rules, ~~60~~ 20 hours;

(ii) bacteriology, sanitation, ~~and~~ sterilization, safety, anatomy, ~~and~~ physiology, diseases and disorders of skin and nails, manicure chemistry, and nail care, ~~55~~ 40 hours;

(iii) manicures (including water, oil, hand and arm massage, ~~polish, paraffin wax treatments~~), ~~20 hours~~;

(iv) pedicures (including foot, ~~and ankle, and lower leg~~ massage, ~~polish, paraffin wax treatments~~), polish applications, paraffin wax treatments, and the proper use of manicuring implements including the electric nail file, ~~45~~ 35 hours; and;

(v)(iv) application of artificial nails, sculptured nails, nail tips, nail wraps, tip overlays, fills, ~~and~~ repairs (including fiberglass, gel, and acrylic), ~~440~~ 115 hours; and;

(vi) ~~the proper use of manicuring implements including the electric nail file, five hours~~;

(vii) ~~manicure chemistry and nail care, 15 hours; and~~

~~(viii) current state board laws and rules, 40 hours.~~

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

~~(c) Any 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 towards the 2000-hour requirement for a cosmetologist license.~~

(7) and (8) remain the same.

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

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

REASON: It is reasonably necessary to amend this rule to require that students complete a course of study within three years of original enrollment date instead of five. The board concluded that information learned in the first year or two of school is very relevant and pertinent to the practice and may not be easily retained and put effectively and safely into practice four or five years later. In addition, the board notes that education is not up to the current standards of practice after three years.

The board is amending the school curricula, specifically courses, subject matter, and individual course hours, at the schools' request. The total required hours per course of study are not being changed. Following amendment, the board will no longer require schools to micromanage and monitor students' required hours in specific subcategories of instruction, only in broader overall categories. This will allow instructors more discretion in tailoring instruction for individual students in specific areas when needed to ensure each student has adequate overall training.

It is reasonably necessary to strike subsections (2)(c), (3)(c), (5)(c), and (6)(c) from this rule and add them to ARM 24.121.601(7) through (10) because these provisions are licensing requirements, not school curricula requirements.

24.121.809 STUDENT WITHDRAWAL, TRANSFER, OR GRADUATING

(1) remains the same.

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

(3) Upon reenrollment, a withdrawn student shall be granted full credit for all hours completed and grades received by the reenrolling student within three years of the student's original enrollment date.

~~(3)(4)~~ Schools shall not allow a transferred student ~~who reenrolls~~ to practice on members of the public until the school receives an official transcript of the student's hours and grades within the required curriculum areas.

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

IMP: 37-31-311, MCA

REASON: The board decided it was necessary to amend this rule to correct inaccurate terminology to "hours completed" and "grades received." The board is changing the time for a new school to grant full credit from five to three years to be consistent with proposed amendments to ARM 24.121.601.

The board is amending this rule to specify credit granted upon reenrollment following student withdrawal as current rules do not address this situation and both students and instructors have posed questions on this issue.

The board determined it is necessary to amend (4) to clarify its application to transferred students. The board never intended it to apply to reenrolling students as the school would already have the reenrolling student's hours and grades on file.

24.121.1105 TEACHER-TRAINING CURRICULUM (1) Cosmetology, esthetics, and manicuring teacher-training courses shall consist of 650 hours and include the following:

- (a) teaching methods - ~~325~~ 245 hours, including:
 - (i) through (a)(v) remain the same.
 - (vi) lesson planning, including:
 - (A) remains the same.
 - (B) practical demonstration classes;₂
 - (vii) through (a)(ix) remain the same.
 - (x) curriculum planning and development;₂
- (b) general psychology - ~~400~~ 75 hours, including:
 - (i) through (b)(iv) remain the same.
 - (v) public relations;₂
- (c) business methods - ~~400~~ 115 hours, including:
 - (i) and (c)(ii) remain the same.
 - (iii) student registration, ~~and~~ withdrawal forms, and hours (tracking, completing, calculating, and verifying);
 - (iv) remains the same.
 - (v) salon/booth rental relationship; ~~and~~
 - (vi) professional ethics; ~~and~~
 - (vii) current state board laws and rules.
- (d) advanced theory of cosmetology, esthetics, or manicuring, and the chemistry, safety, sanitation, bacteriology, physiology, anatomy, ~~and~~ diseases and disorders that apply to each course - 75 hours; and
- (e) ~~current state board laws and rules - 50 hours~~ 140 hours of instruction shall be at the discretion of the school provided that the hours are within the applicable curriculum.

(2) Barbering teacher-training courses shall consist of 500 hours and include the following:

- (a) teaching methods - ~~250~~ 185 hours, including:
 - (i) through (a)(v) remain the same.
 - (vi) lesson planning, including:
 - (A) remains the same.
 - (B) practical demonstration classes;₂
 - (vii) through (a)(ix) remain the same.
 - (x) curriculum planning and development;₂

- (b) general psychology - ~~70~~ 50 hours, including:
 - (i) through (b)(iv) remain the same.
 - (v) public relations;₂
- (c) business methods - ~~70~~ 90 hours, including:
 - (i) and (c)(ii) remain the same.
 - (iii) student registration, ~~and~~ withdrawal forms, and hours (tracking, completing, calculating, and verifying);
 - (iv) remains the same.
 - (v) salon/booth rental relationship; ~~and~~
 - (vi) professional ethics; and
 - (vii) current state board laws and rules.
- (d) advanced theory of barbering, and the chemistry, safety, sanitation, bacteriology, physiology, anatomy, and diseases and disorders that apply to each course - ~~60~~ 45 hours; and
- (e) ~~current state board laws and rules - 50 hours~~ 130 hours of instruction shall be at the discretion of the school provided that the hours are within the applicable curriculum.

(3) Electrology teacher-training courses shall consist of 100 hours and include the following:

- (a) teaching methods - ~~75~~ 55 hours, including:
 - (i) through (a)(v) remain the same.
 - (vi) lesson planning, including:
 - (A) remains the same.
 - (B) practical demonstration classes;₂
 - (vii) through (a)(ix) remain the same.
 - (x) curriculum planning and development;₂
- (b) general psychology - five hours, including:
 - (i) through (b)(iv) remain the same.
 - (v) public relations;₂
- (c) business methods - ~~five~~ ten hours, including:
 - (i) and (c)(ii) remain the same.
 - (iii) student registration, ~~and~~ withdrawal forms, and hours (tracking, completing, calculating, and verifying);
 - (iv) remains the same.
 - (v) salon/booth rental relationship; ~~and~~
 - (vi) professional ethics; and
 - (vii) current state board laws and rules.
- (d) advanced theory of electrology and the chemistry, safety, sanitation, bacteriology, physiology, anatomy, and diseases and disorders that apply to each course - five hours; and
- (e) ~~current state board laws and rules - ten hours~~ 25 hours of instruction shall be at the discretion of the school provided that the hours are within the applicable curriculum.

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

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

REASON: The board is amending the teacher-training curricula throughout in response to requests by Montana schools offering these courses of study. Following review and discussion, the board determined it is reasonable and necessary to adjust the hours required among the course categories to create discretionary instruction hours. The total required hours per course of study are not being changed. This amendment is consistent with other curricula at ARM 24.121.807 and will allow instructors more discretion in tailoring teacher-training instruction for individual students in specific areas when needed to ensure every student has adequate overall training.

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.

(2) The board shall inspect and approve all salons, shops, and booths.

(a) through (4) remain the same.

(a) at least one sink basin, appropriate for the practice, within the confines of the salon or shop. The sink basin must have hot and cold running water and be connected to an ~~appropriate sewer~~ or septic system;

(b) one covered wet sanitizer of suitable size and depth, and appropriate sanitizing and disinfecting agents as defined in ARM 24.121.1513 and [NEW RULE III] ~~containing a sufficient amount of approved sanitizing agent for complete immersion of all implements, tools, and equipment (uncovered cleansers and sanitizing agents may be used, provided the cleansing and sanitizing agent is changed after each use);~~

(c) through (e) remain the same.

~~(i) towels to be used during the day may be removed from the cabinet at the beginning of the business day and stored on a shelf;~~

~~(ii) any towels not used during the course of the day shall be removed from the shelf, laundered and placed in the dust free cabinet; and~~

(f) and (5) remain the same.

(a) either a high frequency generator, galvanic generator, or electrolysis machine (dispersive or inactive electrode with connections to the machine, such as wet pad, metal rod, or water jar, necessary for electrology treatments);

(b) remains the same.

(i) only presterilized, disposable needles may be used for electrolysis services on any individual in a licensed salon, unless a properly installed, serviced, and operated autoclave is utilized for sterilization of reusable needles;

(c) covered containers for all lotions, soaps, and cotton to be used on clients;

(d) through (7) remain the same.

(8) Salon or shop owners shall be responsible for safety and sanitation in the salon or shop except sanitation and safety violations caused by the booth renter or taking place in the working area.

(9) remains the same.

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: It is reasonably necessary to amend this rule to specify that mobile homes, moveable trailers, and structures on skids are not considered fixed places of business. In response to licensee questions, the board is clarifying that these structure types may not be licensed. The board is amending (4)(a) to address situations where a shop or salon is connected to a septic waste disposal system.

It is reasonably necessary to amend (4)(b) to clarify that sanitizing and disinfecting are two separate processes and to be consistent with amendments to ARM 24.121.301 and 24.121.1513 and adoption of New Rule II. The inspectors informed the board the licensees do not understand the distinction or that both are required processes. The board is deleting the unnecessary sentence requiring complete immersion as the processes are adequately described in ARM 24.121.1511. The board is deleting "cleansers" and "cleansing" to update terminology with current textbooks and practices.

The board is striking the specific requirements for daily towel use as ARM 24.121.1301(4)(e) adequately addresses the situation. The board decided that it is unnecessary to specifically address such common sense practices and the public is still adequately protected without such excessive requirements. The board is striking "or" from (8) as erroneous. The board notes that booth renters have always been responsible for their own rented working areas and the amendment clarifies an owner's responsibility in common working areas only.

24.121.1501 PREMISES SANITATION (1) Carpeting is prohibited in the working areas, dispensaries, and restrooms of all salons, shops, and schools licensed on or after November 19, 2004.

(a) Salons, shops, and schools licensed prior to November 19, 2004, shall use appropriate, nonabsorbent floor covering to cover the existing carpet.

(b) Upon alteration or remodeling of ~~any working areas, dispensaries and restrooms~~ the salon, shop, or school, carpeted flooring must be removed and replaced with appropriate, nonabsorbent floor covering.

(2) Floors, walls, ceilings, doors, windows, screens, entrances, and receptacles, including those in the restrooms, must be maintained in a clean, ~~sanitary~~ and safe conditions at all times.

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

REASON: The board is amending this rule to clarify that nonabsorbent floor covering must cover any existing carpet. Inspectors reported to the board that some salons, shops, and schools were not doing this.

The board is also amending (1)(b) to clarify that carpeting must be removed whenever there is any alteration or remodeling of any part of a salon, shop, or school, not just in the specific areas. The board's ultimate goal has always been for the removal of all carpeting from all licensed facilities for sanitation purposes.

24.121.1507 HAND WASHING FACILITIES (1) Every shop, salon, and school must have a hand washing facility that is convenient to the work areas, but not located in a restroom.

- (a) The hand washing facility must have hot and cold running water, and be connected to an ~~approved sewer~~ or septic system.
- (b) A soap dispenser containing liquid soap must be provided.
- (c) Single service towels or a ~~workable hot an air blower~~ dryer is are required.

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

REASON: The board is amending (1)(a) to address situations where a shop, salon, or school is connected to a septic waste disposal system. The board is amending (1)(b) to no longer require use of liquid soap. The board concluded that the public is adequately protected as long as some type of soap is provided in a dispenser. The board is also changing "a workable hot air blower" to "dryer" as the proper term and because not all hand dryers use hot air.

24.121.1509 IMPLEMENTS, TOOLS, INSTRUMENTS, SUPPLIES, AND EQUIPMENT (1) The board shall approve all new machines and devices which utilize newly introduced technology and are used in the practice of barbering, cosmetology, electrology, esthetics, or manicuring prior to the use of such machines and devices by licensees.

(2) All machines, devices, implements, ~~tools and equipment~~, shelves, tables, sinks, and other equipment used in connection with the operation of a salon, shop, or school must be:

- (a) remains the same.
- (b) ~~clean,~~ in sanitary and ~~in a safe conditions~~ at all times.
- (3) remains the same.

(4) ~~Only~~ All microdermabrasion machines must be approved by the board prior to their use by licensees and only microdermabrasion machines specifically manufactured for use in esthetics services and approved by the board are permitted. Modified or medical machines ~~shall~~ may not be used.

- (a) and (a)(i) remain the same.
- (ii) kept in ~~a clean,~~ sanitary and safe ~~manner~~ conditions at all times; and
- (iii) through (5)(a) remain the same.

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

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

- (b) through (7) remain the same.

(8) Any and all implements, equipment, and instruments used to perform dermaplane and dermabrasion procedures including but not limited to blades, knives, scalpels, wires, and diamond fizzes are prohibited.

(9) The use of laser energy, as prescribed in ARM 24.156.501 as "any procedure in which human tissue is cut or altered by mechanical or energy forms, including electrical or laser energy or ionizing radiation" constitutes the practice of medicine and is prohibited for all individuals licensed under this chapter.

- ~~(8)~~(10) The use of roller or roll-on waxing systems is prohibited.

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

REASON: The board determined it is reasonably necessary to amend this rule to clarify which new machines and devices must be approved by the board. The board concluded that it is only necessary to approve those new machines and devices that utilize new technology. The board is amending this rule in response to numerous licensees seeking board approval of machines normally used in salons and not needing approval. The amendment will also address when licensees buy new machines from vendors at trade shows and use them right away. Newly developed machines that utilize new technology must be board approved prior to being used.

The board is amending this rule to clarify that all microdermabrasion machines must be approved by the board prior to use. Although a longstanding board requirement, it had not been previously delineated in rule.

The board is amending the specifications of microdermabrasion granule size because granules can be listed in grits or microns. This amendment will assist professionals by stating the conversion from one to the other.

It is reasonably necessary to delete sections (7) and (8) from ARM 24.121.1517 and add them to this rule as (8) and (9). These sections prohibit specific procedures and equipment and are more appropriately located in this rule.

24.121.1511 ~~CLEANING AND SANITIZING AND DISINFECTING TOOLS IMPLEMENTS AND EQUIPMENT~~ (1) All ~~tools, implements, equipment,~~ and electrical instruments must be thoroughly cleaned and subjected to an approved sanitizing and disinfecting process before being reused. ~~Cloth towels and other linens must be laundered before use. Single service items must be used only once and properly disposed of after use.~~

(2) ~~A sink or container must be of appropriate size to hold all tools to be cleaned plus a detergent solution. Sanitizing and disinfecting containers must be large enough to completely cover all implements with sanitizing and disinfecting agents.~~

(a) After removing all hair from ~~tools, implements,~~ the ~~tools implements~~ must be thoroughly washed in ~~warm~~ clean water and detergent solution in a clean sink or container.

(b) After ~~washing~~ scrubbing with soap and water, ~~tools implements~~ must be thoroughly rinsed in clean ~~warm~~ water.

(3) All ~~tools and~~ implements must be completely immersed in a board approved ~~sanitizing disinfecting~~ agent of proper strength and for the necessary time period according to manufacturer instructions.

(a) ~~Sanitizing containers must be large enough to completely cover all tools with sanitizing agent.~~

(b) ~~Contact points of all~~ All nonimmersible equipment and metal implements must be ~~cleaned~~ sanitized with a detergent solution and wiped or sprayed with a board approved ~~sanitizing disinfecting~~ agent.

(4) Sanitized ~~After sanitizing and disinfecting,~~ implements and tools must be stored in a clean, disinfected, dry, covered container and separated from used or soiled implements and tools.

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

(c) Equipment for steam, dry heat, and glass bead sterilization methods must be checked weekly for determining equipment to be in proper working order and reaching required temperature.

(6) remains the same.

(7) Metal bits for electric files must be properly sanitized and disinfected after each client.

~~(8) If a blood spill should occur, the licensee, student or cadet instructor shall follow the procedure adopted by the National Interstate Council of State Boards of Cosmetology (NIC). The board adopts and incorporates by reference the blood spill procedure as adopted by NIC, August 1998. A copy of the blood spill procedure is available at the board offices, 301 South Park Avenue, P.O. Box 200513, Helena, MT 59620-0513 and must be posted in public view in the salon, shop or school.~~

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

~~(10)(9) Foot baths bath basins must be cleaned and sanitized and disinfected after each use to include removal of all screens for cleaning and sanitizing. Tubing for airflow or water must be cleaned and sanitized.~~

(a) Sanitizing and disinfecting of all screens, tubing, other removable parts, and the areas behind each must be done at the end of each business day.

(10) Cloth towels and other linens must be laundered before each use.

(11) Single service items must be used only once and properly disposed of after use.

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

IMP: 37-31-204, MCA

REASON: It is reasonably necessary to amend this rule throughout to clarify that sanitizing and disinfecting are two separate processes and to be consistent with amendments to ARM 24.121.301 and 24.121.1513 and adoption of New Rule II. The inspectors informed the board the licensees do not understand the distinction or that both are required processes. The board also concluded the amendments are necessary to bring the rule up to date with current textbooks and industry practices.

It is reasonable and necessary to delete (8) as all blood spill procedures are set forth in proposed New Rule III.

The board is amending the provisions on foot bath basins to address the recent outbreak of Methicillin-resistant Staphylococcus Aureus (MRSA). The National Interstate Council of State Boards of Cosmetology, Inc. (NIC) recently published recommendations for decreasing the instance of MRSA contraction from salons. The amendments align the board requirements with NIC recommendations.

24.121.1513 SANITIZING AGENTS (1) ~~Tools, equipment and implements used in barbering, cosmetology, electrology, esthetics or manicuring which:~~ The following sanitizing agents are approved by the board:

~~(a) have come into contact with blood, bodily fluids and/or mucous membrane must be cleaned and disinfected, at a minimum, by complete immersion in an EPA-registered disinfectant that is:~~

~~(i) effective against HIV-1 and human hepatitis B virus and tuberculocidal; and~~

~~(ii) mixed and used according to the manufacturer's directions; and
(b) have not come in contact with blood, bodily fluids and/or mucous membrane, shall be disinfected by complete immersion in an EPA-registered, bactericidal, virucidal, fungicidal, and pseudomonacidal (formulated for hospitals) disinfectant that is mixed and used according to the manufacturer's directions.~~

~~(2)(a) Detergent detergent solutions; , disinfectants and sanitizing agents must be available for inspection and clearly labeled to disclose contents and manufacturer's directions.~~

~~(3)(b) Alcohol alcohol used at 70 percent or higher strength may be used as a sanitizer with a minimum of 20 minutes contact time; ; and~~

~~(4)(c) Chlorine chlorine compounds, hypochlorited in liquid or powder form (household bleach), may be used as a sanitizing agent at 200 parts per million one part per 100 concentration with a five-minute contact time.~~

~~(2) The sanitizing agents must be available for inspection and clearly labeled to disclose contents and manufacturer's directions.~~

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

IMP: 37-31-204, MCA

REASON: It is reasonably necessary to amend this rule to clarify the sanitizing process and specify for licensees which sanitizing agents are appropriate. The amendments are consistent with amendments to ARM 24.121.301 and 24.121.1513 and adoption of New Rule II. The board is deleting provisions on disinfecting equipment and implements from this rule as they are now set forth in New Rule II for clarity. The board is amending the concentration amounts for sanitizing agents to update terminology and align the rule with current textbooks and industry practices.

24.121.1515 TOOL IMPLEMENTS AND EQUIPMENT STORAGE AND HANDLING (1) Soiled ~~tools, implements and~~ equipment and implements must be stored separately from those that have been sanitized and disinfected.

(2) and (3) remain the same.

(4) ~~Tools, Implements,~~ instruments, and other implements equipment must not be placed onto garments or in garment pockets.

(5) ~~Tools, Implements,~~ instruments, and other equipment and implements dropped on the floor must be cleaned and sanitized and disinfected before reuse.

~~(6) Single service disposable drinking cups must be available for client use unless the establishment is licensed as a food purveyor by the department of public health and human services in accordance and compliance with all state and county regulations.~~

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

IMP: 37-31-204, MCA

REASON: The board is amending this rule to clarify that sanitizing and disinfecting are two different processes and comply with amendments to ARM 24.121.301 and 24.121.1513 and adoption of New Rule II. The board is amending the rule to require both disinfection and sanitization of items dropped on the floor as disinfection is necessary to remove bacteria and viruses. Sanitizing does not necessarily do this. Section (6) is being deleted as it is already set forth in ARM 24.121.407.

24.121.1517 SALON PREPARATION STORAGE AND HANDLING

- (1) remains the same.
- (a) stored, handled, and applied to protect against contamination; and
- (b) through (3) remain the same.
- (4) All acids for use in chemical exfoliation must be used in concentrations of 30 percent or less, a pH level of not less than 3.0, and shall be applied in a manner and for a duration as recommended by the manufacturer.
- (5) remains the same.
- (6) When using bulk products poured into another or smaller storage container, the new storage container must be labeled with the same product name, ingredients, and warnings as the original container.
- ~~(7) Dermaplane procedures, dermabrasion procedures, blades, knives, lancets and any tools that invade the skin or living cells are prohibited.~~
- ~~(8) The use of laser energy, as prescribed in ARM 24.156.501, as "any procedure in which human tissue is cut or altered by mechanical or energy forms, including electrical or laser energy or ionizing radiation", constitutes the practice of medicine and is prohibited for all individuals licensed under this chapter.~~

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

IMP: 37-31-204, MCA

REASON: It is reasonably necessary to delete sections (7) and (8) from this rule and relocate them at ARM 24.121.1509(8) and (9). These sections prohibit specific procedures and equipment and are more appropriately located within that rule.

24.121.1519 WASTE DISPOSAL (1) remains the same.

- (a) Waste containers must be kept clean and sanitary and plastic lined at all times.
- ~~(b) Plastic liners must be tightly secured and double bagged if necessary upon removal from the premises to prevent spillage of waste contents.~~
- (c) remains the same but is renumbered (b).
- ~~(2) Liquid waste must be disposed of in a public sewer or by a method conforming to state and local requirements and meeting with the approval of the health officer or sanitarian. Discharge of any liquid waste on the ground surface or in any other exposed manner is strictly prohibited.~~
- ~~(3) Chemical waste must be disposed of in accordance with manufacturer's directions and federal, state and local regulations.~~
- (4) remains the same but is renumbered (2).

~~(5)(3)~~ (3) Materials, chemicals, ~~tools or liquids,~~ and implements shall be disposed of in accordance with ~~current OSHA hazard communication standards~~ federal, state, and local regulations.

~~(6)(4)~~ (4) Aluminum oxide crystals or approved corundum ~~crystals~~ must be disposed of in accordance with federal, state, and local regulations.

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

IMP: 37-31-204, MCA

REASON: It is reasonably necessary to delete "sanitary" as using both "clean" and "sanitary" is redundant and to comply with current textbooks and industry practices. The board is deleting (1)(b) as waste containers are adequately addressed in (1). The board is combining (2) and (3) to clarify that licensees must dispose of all waste in accordance with federal, state, and local regulations and that it is the licensee's responsibility to know the applicable waste disposal regulations.

24.121.1521 PERSONAL HYGIENE (1) and (2) remain the same.

~~(a) prior to starting work before and after every client; and~~

~~(b) during work hours as often as necessary to remove soil and contamination; and~~

~~(c)~~ immediately after using the restroom.

(3) remains the same.

(4) A fresh pair of nonsterile, latex, nitrile, or vinyl disposable gloves must be worn during treatments when contact with blood or other potentially infectious materials, mucous membranes, and nonintact skin could occur.

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

IMP: 37-31-204, MCA

REASON: The board is amending this rule in response to licensee questions regarding hand washing requirements. It is reasonable and necessary to simplify the rule and clarify the board's intent that licensees are to wash their hands before and after each client. The board is adding (4) to require all licensees wear disposable gloves while providing certain treatments. The board notes that electrology infection control standards recommend protective coverage for the hands and determined it is in the public's best interest to implement this requirement for all licensees.

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

(c) breaching a contract with a client, student, salon or shop owner, booth renter, employee, or employer, if established as a final judgment in a court of law;

(d) through (g) remain the same.

(h) practicing with an expired license;

~~(h)(i)~~ (i) using the traditional symbol known as the "barber pole," or any likeness thereof, in any manner that may lead the public to believe either that

barbering was being practiced in, or that a licensed barber was employed by, a salon or shop that does not employ barbers;

(i) and (j) remain the same but are renumbered (j) and (k).

~~(k)~~(l) being convicted of a misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug, controlled substances, or alcoholic beverage, or any combination of such substances;

(l) remains the same but is renumbered (m).

~~(m)~~(n) acting in such a manner as to present a danger to public health or safety, or to any client including, but not limited to, incompetence, negligence, or malpractice;

~~(n)~~(o) maintaining an unsanitary or unsafe salon, shop, booth, or school or practicing under unsanitary or unsafe conditions;

~~(o)~~(p) performing services outside of the licensee's area of training, expertise, competence, or scope of practice or licensure unless such services are not licensed or inspected by the state of Montana;

~~(p)~~(q) failing to render adequate supervision, management, training, or control of auxiliary staff or other persons, including licensees or students practicing under the licensee's supervision or control, according to generally accepted standards of practice;

(q) remains the same but is renumbered (r).

~~(r)~~(s) damaging, destroying, or attempting to destroy property or equipment of a licensee or a member of the public in a salon, shop, booth, or school;

(s) through (2) remain the same but are renumbered (t) through (2).

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

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

REASON: The board is amending this rule to add practicing with an expired license to unprofessional conduct. Section 37-1-141, MCA, provides that practicing once a license has expired is practicing without a license and the board is amending this rule to clarify that such practice may subject the licensee to disciplinary action.

5. The proposed new rules provide as follows:

NEW RULE I ANONYMOUS COMPLAINTS (1) The board will not accept anonymous complaints.

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

IMP: 37-1-308, MCA

REASON: The board is adopting this new rule to specify that the board does not accept anonymous complaints. The board concluded that it is difficult to obtain any information regarding the licensee with no complainant to contact for such information and that it is extremely difficult to prosecute anonymous complaints.

NEW RULE II DISINFECTING AGENTS (1) All disinfecting agents must be registered with the EPA.

(2) Disinfecting agents must be available for inspection and clearly labeled to disclose contents and manufacturer's directions.

(3) All equipment and implements used in barbering, cosmetology, electrology, esthetics, or manicuring must be cleaned and disinfected, at a minimum, by complete immersion in a disinfectant that is mixed and used according to the manufacturer's directions as follows:

(a) a disinfectant that is effective against HIV-1, human Hepatitis B virus, and Tuberculocidal for equipment and implements that have come in contact with blood, bodily fluids, and/or mucous membrane; and

(b) a bactericidal, virucidal, fungicidal, and pseudomonacidal (formulated for hospitals) disinfectant for equipment and implements that have not come in contact with blood, bodily fluids, and/or mucous membrane.

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

IMP: 37-31-204, MCA

REASON: The board is adopting this new rule to clarify the disinfection process and specify for licensees which disinfecting agents are appropriate. While these are not new standards and were previously included in ARM 24.121.1513, the board is separating the sanitizing and disinfecting rules for clarity and to be consistent with amendments to ARM 24.121.301 and 24.121.1515.

NEW RULE III BLOOD SPILLS (1) If there is a blood spill or exposure to other body fluids during a service, licensees and students shall stop the service and:

(a) before returning to service, clean the wound with an antiseptic solution;

(b) cover the wound with a sterile bandage;

(c) if the wound is on a licensee's or student's hand in an area that can be covered by a glove or finger cover, the licensee or student shall wear a clean, fluid-proof protective glove or finger cover. If the wound is on the client, the licensee or student providing service to the client shall wear gloves on both hands;

(d) blood-stained tissue, cotton, or other blood-contaminated material shall be placed in a sealed plastic bag and that plastic bag shall be placed into another plastic bag (double bagged), labeled with a red or orange biohazard warning, and discarded;

(e) all implements, instruments, supplies, and equipment that have come in contact with blood or other body fluids shall be disinfected per [NEW RULE II]; and

(f) electrical equipment shall be disinfected in the same manner as nonimmersible equipment and metal implements per ARM 24.121.1511.

(2) The blood spill procedure must be posted in all salons, shops, and schools. A copy of the blood spill procedure is available at the board offices, 301 South Park Avenue, P.O. Box 200513, Helena, MT 59620-0513.

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

IMP: 37-31-204, MCA

REASON: It is reasonably necessary to adopt this new rule to incorporate and set forth all blood spill requirements in a single location within the board rules.

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) 841-2323, or by e-mail to dlibsdcos@mt.gov, and must be received no later than 5:00 p.m., November 6, 2007.

7. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at cosmetology.mt.gov. 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 of Barbers and Cosmetologists 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 the person wishes to receive notices regarding all Board of Barbers and Cosmetologists administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be mailed 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 (460) 841-2323, 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 notice requirements of 2-4-302, MCA, do not apply.

10. Anjeanette Christensen, attorney, has been designated to preside over and conduct this hearing.

BOARD OF BARBERS AND
COSMETOLOGISTS
WENDELL PETERSEN, PRESIDING OFFICER

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

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State September 24, 2007

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PUBLIC HEARING
amendment of ARM 36.12.101,)	ON PROPOSED AMENDMENT
definitions and ARM 36.12.107, filing fee)	AND ADOPTION
refunds and the adoption of New Rule I,)	
objection to application)	

To: All Concerned Persons

1. On November 5, 2007, at 9:00 a.m., the Department of Natural Resources and Conservation will hold a public hearing in the Department of Public Health and Human Services Auditorium, 111 North Sanders, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The 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 department no later than 5:00 p.m. on October 12, 2007, to advise us of the nature of the accommodation that you need. Please contact Kim Overcast, Montana Department of Natural Resources and Conservation, 1424 9th Avenue, Helena, MT 59620, telephone (406) 444-6614, fax (406) 444-5918, or e-mail to kovercast@mt.gov.

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

36.12.101 DEFINITIONS Unless the context requires otherwise, to aid in the implementation of the Montana Water Use Act and as used in these rules:

(1) through (4) remain the same.

(5) "Application" for purposes of ARM 36.12.120 through 36.12.122, 36.12.1301, 36.12.1401, 36.12.1501, and 36.12.1601 means an application for beneficial water use permit, Form No. 600, including criteria addendum form No. 600A, 600B, or 600ACF, or application to change a water right, Form No. 606, including criteria addendum Form No. 606A, 606B, 606ASW, or 606T.

(a) For the purposes of [NEW RULE I], "application" means an application filed under 85-2-302, 85-2-316, 85-2-402, 85-2-407, and 85-2-408, MCA.

(6) through (46) remain the same.

(47) remains the same but is renumbered (48).

(48) remains the same but is renumbered (49).

(49) remains the same but is renumbered (47).

(50) through (79) remain the same.

AUTH: 85-2-308, MCA

IMP: 85-2-308, MCA

36.12.107 FILING FEE REFUNDS

(1) through (4) remain the same.

(5) If an applicant inadvertently files the wrong form, the applicant may apply the fee paid to the fee required for the correct form, pay the difference due, or be entitled to a refund; if overpayment is made.

(6) If a water right application is withdrawn within 30 days after the objection deadline, the Objection to Application filing fee will be refunded.

(7) A refund of the Objection to Application filing fee will not be authorized if an objector does not correct the deficiencies identified in the Objection Deficiency Notice by the deadline specified in the notice.

(8) With the exception of (6), a refund of the Objection to Application filing fee will not be authorized.

AUTH: 85-2-302, MCA

IMP: 85-2-302, MCA

REASONABLE NECESSITY: The amendments are necessary to update definitions and to clearly set forth when a refund of filing fees will be authorized.

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

NEW RULE I OBJECTION TO APPLICATION (1) A person objecting to a proposed application under 85-2-308, MCA, must file an objection to an application on Form No. 611, Objection to Application, which can be obtained from the department, and must comply with the requirements set forth in this rule.

(2) A separate Objection to Application must be filed for each water right application.

(3) Persons owning separate water rights must each file their own Objection to Application form. For example, if person A owns a water right and B owns a different water right and both want to file an objection to the same application, owner A and owner B must each file separate objections.

(4) Co-owners (owners of a water right that is not split between the owners) of an undivided water right may file one Objection to Application form.

(5) Only a person whose signature appears on a valid Objection to Application will be allowed to participate in an administrative hearing. An entity filing objections must be represented by legal counsel in any administrative hearing before the department. One co-owner cannot represent another co-owner (see unauthorized practice of law 37-61-201, MCA).

(6) All corporations, limited liability companies, trusts, partnerships, associations, and groups of individuals (unless each person appears pro se) must be represented by an attorney licensed to practice in the state of Montana in order to participate in a formal proceeding before the department, including but not limited to a contested-case proceeding. This list is not exhaustive (see 37-61-201, MCA). Failure to retain required legal representation will result in dismissal of the Objection to Application.

(7) An Objection to Application is timely if the postmark date on the form is on or before the objection deadline stated in the public notice of the application.

(8) An Objection to Application filed with the department before an application has been published will not be accepted and will be returned.

(9) Upon receipt of an Objection to Application or response to an Objection Deficiency Notice, the department will place the envelope postmark date on the form. If the postmark date is not legible, the department will assign the date as two days prior to the department's receipt of the objection form. An objector is solely responsible for ensuring timeliness, a legible postmark, and filing of the objections.

(10) Fax or electronic mail (e-mail) submissions of the Objection to Application will not be accepted.

(11) An Objection to Application is correct and complete if it includes the following legible information:

- (a) filing fee;
- (b) objector's name and mailing address;
- (c) name of the water right applicant;
- (d) water right application number;

(e) if an objector is claiming the objector's water right will be adversely affected if the application were granted, the objector must provide the objector's department-assigned water right number. If the water right was exempt from the statewide water right filing requirements and is not on record with the department, the objector must provide the following information:

- (i) date of first use;
- (ii) name of the appropriator;
- (iii) source;
- (iv) type of use (stock or domestic);
- (v) the flow rate and volume of water used;
- (vi) the point of diversion; and

(f) facts indicating that the application does not meet one or more of the applicable criteria set forth in 85-2-302, 85-2-311, 85-2-316, 85-2-402, 85-2-407, or 85-2-408, MCA. The facts provided must specifically describe why or how one or more of the criteria are not met;

(g) facts explaining how the objector has standing to object. To have standing, an objector must have property, water rights, or other interests that would be adversely affected were the application granted. The objection must describe how the objector's property, water rights, or interests will be adversely affected if the water right application were granted; and

(h) notarized signature of the objector or the objector's legal representative. If a representative of the objector other than objector's attorney signs the Objection to Application affidavit, the representative shall state the relationship of the representative to the objector on the form and provide documentation demonstrating the authenticity of that relationship, such as a copy of a power of attorney.

(12) An objection that is deemed correct and complete and valid pursuant to 85-2-308(3) and (6), MCA, may proceed to an administrative hearing. The administrative hearing will be limited to the criteria objected to in the objection. An objector may participate in the administrative hearing only on the criteria to which the objector specifically objected and which is determined valid by the department.

(13) The department will mail notice to the objector of any deficiencies in the objection. The information requested in the Objection Deficiency Notice must be postmarked or hand delivered to the department within 15 days from the date on the Objection Deficiency Notice.

(14) If the objector does not correct the deficiencies as determined by the department by the deadline, the objection will be terminated without further notice.

(15) The department will document a valid objection by completing an objection validity form.

(16) The department will determine on which criteria the objector has filed a valid objection.

(17) An objection may be withdrawn at any time in writing. A party withdrawing an objection will not be considered a party by the department to any hearing that may be held by the department.

(18) An applicant is not required to meet a water quality criterion when a valid water quality objection is not raised or is withdrawn.

(19) Private agreements between applicants and objectors which provide for the withdrawal of objections and include conditions that must be met by an applicant or objector may not be recognized by the department or included in a granted application. The department will only place a condition on a granted application if the department determines the condition is necessary to meet the application criteria.

AUTH: 85-2-308, MCA

IMP: 85-2-308, MCA

REASONABLE NECESSITY: This rule is necessary to delineate the components of a correct and complete objection for both applicants and objectors and is required by 85-2-308(5), MCA. The rules also help to ensure that applicants, objectors, and the department understand how receipt of objections to applications will be administered.

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 in writing to Kim Overcast, Department of Natural Resources and Conservation, 1424 9th Avenue, Helena, MT 59620; fax (406) 444-5918; or e-mail kovercast@mt.gov, and must be postmarked no later than November 5, 2007.

6. Jan Langel, Department of Natural Resources and Conservation, has been designated to preside over and conduct the hearing.

7. An electronic copy of this Notice of Proposed Amendment is available through the department's site on the World Wide Web at <http://www.dnrc.mt.gov>. The department strives to make the electronic copy of this Notice of Public Hearing on Proposed Amendment and Adoption 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.

8. The department 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, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be sent 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 department.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The bill sponsor was notified by regular mail on July 20, 2007.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton
MARY SEXTON
Director
Natural Resources and Conservation

/s/ Anne Yates
ANNE YATES
Rule Reviewer

Certified to the Secretary of State September 24, 2007.

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

In the matter of the amendment ARM)	NOTICE OF PUBLIC HEARING
37.70.401, 37.70.402, 37.70.406,)	ON PROPOSED AMENDMENT
37.70.408, 37.70.601, 37.70.602,)	
37.70.607, and 37.71.602 pertaining to)	
Low Income Energy Assistance)	
Program (LIEAP) and Low Income)	
Weatherization Assistance Program)	
(LIWAP))	

TO: All Interested Persons

1. On October 24, 2007, at 10:30 a.m., the Department of Public Health and Human Services will hold a public hearing in the Sapphire Conference Room, of the Department of Public Health and Human Services Building, 2401 Colonial Drive, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process (including reasonable accommodations at the hearing site) or who need an alternative accessible format of this notice. If you need an accommodation, contact the department no later than 5:00 p.m. on October 12, 2007. Please contact Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210; telephone (406)444-4094; fax (406)444-1970; e-mail dphhslegal@mt.gov.

3. The rules as proposed to be amended provide as follows. New matter is underlined. Matter to be deleted is interlined.

37.70.401 DEFINITIONS (1) "Annual gross income" means all nonexcluded income including but not limited to wages, salaries, commissions, tips, profits, gifts, interest or dividends, retirement pay, workers' compensation, unemployment compensation, social security retirement and disability payments, supplemental security income payments, veterans administration payments, cash public assistance benefits such as temporary assistance for needy families or tribal, state, or county general relief, and capital gains received by the members of the household in the 12 months immediately preceding the month of application.

(a) through (14) remain the same.

(15) "Nonrecurring lump sum payment" means a single, one time sum of money paid at one time rather than in two or more separate payments.

(15) through (23) remain the same but are renumbered (16) through (24).

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.402 ELIGIBILITY REQUIREMENTS FOR CERTAIN TYPES OF INDIVIDUALS AND HOUSEHOLDS (1) through (4) remain the same.

(5) Households that are eligible for or that have received LIEAP benefits through an Indian tribal program funded by the U.S. Department of Health and Human Services may not receive LIEAP benefits from the department for the same heating season, unless the household changes residence during the heating season and the household is no longer eligible for tribal LIEAP benefits; in that case, the household may apply for a prorated LIEAP benefit based on the household's new circumstances as provided in ARM 37.70.602. Additionally, any individual who was a member of a household that received LIEAP benefits through an Indian tribal program funded by the U.S. Department of Health and Human Services may not receive LIEAP benefits from the department for the same heating season unless the individual leaves the household that received tribal LIEAP benefits during the heating season and is no longer eligible for tribal LIEAP benefits; in that case the individual may apply for a prorated LIEAP benefit from the department for the same heating season based on the circumstances of the individual's new household as provided in ARM 37.70.602.

~~(5) Households deemed to be within the service population of an Indian tribe which received direct funding from the department to run its own program shall not be eligible for further LIEAP benefits from the state within the current heating season.~~

(6) and (7) remain the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.406 INCOME STANDARDS (1) Households with annual gross income at or below 150% of the ~~2006~~ 2007 U.S. Department of Health and Human Services poverty guidelines are eligible for low income energy assistance on the basis of income. Households with an annual gross income above 150% of the ~~2006~~ 2007 poverty guidelines are ineligible for low income energy assistance, unless the household is automatically financially eligible for LIEAP benefits as provided in ARM 37.70.402 because all members of the household are receiving SSI, TANF-funded cash assistance, or county or tribal general assistance.

(2) The table of income standards for households of various sizes for the ~~2006~~ 2007 heating season may be accessed at the department's web site at www.dphhs.mt.gov, or a copy may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, Intergovernmental Human Services Bureau, P.O. Box 202956, Helena, MT 59620.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.408 RESOURCES (1) through (3) remain the same.

(4) In state fiscal year ~~2006~~ 2008, a household will be eligible if its total countable nonbusiness resources do not exceed ~~\$9,105~~ \$9,378 for a single person, ~~\$13,664~~ \$14,071 for two persons, and an amount equal to ~~\$13,664~~ \$14,071 plus

\$914 ~~\$938~~ for each additional household member, up to a maximum of ~~\$18,213~~ \$18,759 per household. In addition, the household may have business assets whose equity value does not exceed \$12,500.

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

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.601 BENEFIT AWARD (1) The benefit matrices in (1)(c) and (1)(d) are used to establish the benefit payable to an eligible household for a full heating season. The benefit varies by household income level, type of primary heating fuel, the type of dwelling (single family unit, multi-family unit, mobile home), the number of bedrooms in the dwelling, and the heating districts in which the household is located, to account for climatic differences across the state.

(a) and (b) remain the same.

(c) The following table of base benefit levels takes into account the number of bedrooms in a house, the type of dwelling structure, and the type of fuel used as a primary source of heating:

TABLE OF BENEFIT LEVELS

(i) SINGLE FAMILY

# BEDROOMS	NATURAL					
	GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	\$ 382	\$ 417	\$ 549	\$ 710	\$ 297	\$ 169
TWO	555	606	798	1,032	432	246
THREE	756	825	1,087	1,406	588	335
FOUR	1,040	1,135	1,495	1,934	809	461

# BEDROOMS	NATURAL					
	GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	<u>\$ 359</u>	<u>\$ 438</u>	<u>\$ 549</u>	<u>\$ 676</u>	<u>\$ 367</u>	<u>\$ 184</u>
TWO	<u>522</u>	<u>637</u>	<u>798</u>	<u>982</u>	<u>533</u>	<u>268</u>
THREE	<u>712</u>	<u>868</u>	<u>1,087</u>	<u>1,339</u>	<u>726</u>	<u>365</u>
FOUR	<u>979</u>	<u>1,194</u>	<u>1,496</u>	<u>1,842</u>	<u>999</u>	<u>502</u>

(ii) MULTI-FAMILY

# BEDROOMS	NATURAL					
	GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	\$ 323	\$ 352	\$ 464	\$ 754	\$ 251	\$ 143
TWO	486	530	699	1,136	378	215
THREE	714	778	1,025	1,667	554	316

FOUR	834	909	1,198	1,947	647	369
	<u>NATURAL</u>					
<u># BEDROOMS</u>	<u>GAS</u>	<u>ELECTRIC</u>	<u>PROPANE</u>	<u>FUEL OIL</u>	<u>WOOD</u>	<u>COAL</u>
<u>ONE</u>	<u>\$ 304</u>	<u>\$ 371</u>	<u>\$ 464</u>	<u>\$ 718</u>	<u>\$ 310</u>	<u>\$ 156</u>
<u>TWO</u>	<u>458</u>	<u>558</u>	<u>699</u>	<u>1,082</u>	<u>466</u>	<u>234</u>
<u>THREE</u>	<u>672</u>	<u>819</u>	<u>1,026</u>	<u>1,587</u>	<u>684</u>	<u>344</u>
<u>FOUR</u>	<u>785</u>	<u>957</u>	<u>1,199</u>	<u>1,854</u>	<u>799</u>	<u>402</u>

(iii) MOBILE HOME

	<u>NATURAL</u>					
<u># BEDROOMS</u>	<u>GAS</u>	<u>ELECTRIC</u>	<u>PROPANE</u>	<u>FUEL OIL</u>	<u>WOOD</u>	<u>COAL</u>
<u>ONE</u>	<u>\$ 322</u>	<u>\$ 351</u>	<u>\$ 462</u>	<u>\$ 627</u>	<u>\$ 250</u>	<u>\$ 143</u>
<u>TWO</u>	<u>470</u>	<u>513</u>	<u>676</u>	<u>917</u>	<u>366</u>	<u>208</u>
<u>THREE</u>	<u>624</u>	<u>680</u>	<u>896</u>	<u>1,215</u>	<u>485</u>	<u>276</u>
<u>FOUR</u>	<u>696</u>	<u>759</u>	<u>1,000</u>	<u>1,356</u>	<u>541</u>	<u>308</u>

	<u>NATURAL</u>					
<u># BEDROOMS</u>	<u>GAS</u>	<u>ELECTRIC</u>	<u>PROPANE</u>	<u>FUEL OIL</u>	<u>WOOD</u>	<u>COAL</u>
<u>ONE</u>	<u>\$ 303</u>	<u>\$ 369</u>	<u>\$ 463</u>	<u>\$ 597</u>	<u>\$ 309</u>	<u>\$ 155</u>
<u>TWO</u>	<u>443</u>	<u>540</u>	<u>676</u>	<u>873</u>	<u>452</u>	<u>227</u>
<u>THREE</u>	<u>587</u>	<u>716</u>	<u>897</u>	<u>1,157</u>	<u>599</u>	<u>301</u>
<u>FOUR</u>	<u>655</u>	<u>799</u>	<u>1,001</u>	<u>1,291</u>	<u>668</u>	<u>336</u>

(d) remains the same.

AUTH: 53-2-201, MCA
IMP: 53-2-201, MCA

37.70.602 BENEFIT AWARDS: MISCELLANEOUS (1) and (2) remain the same.

(3) When a household changes residence or type of primary fuel during the heating season, the household may request to have its benefit award recomputed for the new circumstances. ~~When the household changes residence, a new application must be filed. The benefit award for the new circumstances must file a new application. The household's benefit award will then be recomputed based on its new circumstances, and the new benefit will be equal to the benefit award the household would have received had its original application been for the new circumstances prorated from the date of the change of residence or type of primary fuel. The Any unused portion of the original benefit award reverts to the department.~~ When a household changes type of primary heating fuel during the heating season, the household is not required to file a new application but must have its benefit award recomputed based on the new type of fuel. The new benefit will be prorated

from the date of the change of type of fuel. Any unused portion of the original benefit reverts to the department.

(4) remains the same.

(5) When a household changes primary fuel vendors any remaining LIEAP attributable credit balance will be returned to the department by the original fuel vendor. The unused portion of the benefit award may be forwarded to the new fuel vendor or reimbursed to the household as outlined in ARM 37.70.607.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.607 AMOUNT AND METHOD OF PAYMENT (1) through (4)(c) remain the same.

(5) If an otherwise eligible household resides in publicly subsidized housing, is responsible for its heating costs, and receives a utility subsidy from the subsidized housing agency to defray heating energy costs, either as a payment directly to the household or as a payment to the household's primary fuel vendor, the household's eligibility for a LIEAP benefit shall be computed as follows:

(a) The household's benefit computed in accordance with ARM 37.70.601 shall be divided by the number of months in the heating season to determine the household's monthly LIEAP benefit. The amount of the household's monthly utility subsidy shall then be subtracted from the monthly LIEAP benefit.

(i) If the figure obtained when the monthly utility subsidy is subtracted from the monthly LIEAP benefit is greater than \$0, the household is eligible for a monthly LIEAP benefit in that amount.

(ii) If the figure obtained when the monthly utility subsidy is subtracted from the monthly LIEAP benefit is less than \$0, the household is not eligible for a LIEAP benefit.

(b) If the household is eligible for a LIEAP benefit as determined in accordance with (5)(a), a total benefit calculated by multiplying the monthly LIEAP benefit by the number of months in the heating season will be paid to the household's primary fuel vendor.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.71.602 DETERMINING LOW INCOME WEATHERIZATION ASSISTANCE (1) Weatherization assistance will be made to eligible households in accordance with the state standard of prioritized measures for sample dwellings as established in ~~(3)~~ (4).

(2) Dwellings chosen to be weatherized shall receive those measures determined to be cost effective as defined in 10 CFR, part 440, as amended through February 1, 2002. The department hereby adopts and incorporates by reference 10 CFR, part 440, as amended through February 1, 2002. A copy of these federal regulations may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, 111 N. Jackson St., P.O. Box 202925, Helena, MT 59620-2925.

(3) The designated local contractor may reorder a standard for any of the following reasons:

(a) A local contractor completes the department approved energy audit and the audit reveals the cost-benefit ratio would be higher by reordering the standards as prioritized in ~~(3)~~ (4) below. It must be noted in the client file that the reordering is the most appropriate cost-effective measure in this case and signed off by the weatherization coordinator.

(b) and (4) remain the same.

AUTH: 53-2-201, 90-4-201, MCA

IMP: 53-2-201, 90-4-201, 90-4-202, MCA

4. The Low Income Energy Assistance Program (LIEAP) is a federally funded program to help low income households pay their home heating costs. The department's administrative rules governing LIEAP are at ARM 37.70.101, et seq. ARM 37.70.401 defines terms used in the LIEAP rules. Section (1), which defines "annual gross income," contains a list of types of income, such as wages, salaries, and commissions but specifically states that the list of types of income is not all inclusive. Nevertheless, in the past the department was involved in litigation in which a LIEAP applicant asserted that his Social Security retirement benefits should not be counted as income because the rule did not mention Social Security retirement benefits at that time. In the interest of avoiding future litigation, the department recently amended the definition of gross annual income to add other types of income to the list, such as Social Security retirement and disability benefits and public assistance benefits like Supplemental Security Income (SSI) and Temporary Assistance for Needy Families (TANF) payments.

The department inadvertently failed to list Veterans Administration (VA) payments in section (1) at that time, however. Applicants for LIEAP benefits who receive Veterans Administration payments such as pensions or disability payments occasionally ask what the legal basis is for counting their VA payments as income. The department is therefore adding this to the list of payments which constitute income for LIEAP purposes so that LIEAP clients can see that VA payments must be counted as income. This does not represent a change in policy as the department has always considered these payments to be income.

A definition of the term "nonrecurring lump sum payment," which is used in ARM 37.70.407, is also being added to ARM 37.70.401. ARM 37.70.407(1)(x) provides that in some cases nonrecurring lump sum payments are not counted as income. Although the department had assumed it was self-evident that only a one-time payment can be considered a nonrecurring lump sum payment, LIEAP applicants have from time to time contended that a payment which is made in more than one installment should be considered an excludable nonrecurring lump sum payment. It is therefore necessary to define the term in order to avoid disputes on this issue. This amendment merely clarifies and does not change the department's policy on lump sum payments.

ARM 37.70.402 specifies certain situations where households are automatically eligible for LIEAP and also specifies circumstances under which an otherwise eligible household is not eligible for LIEAP benefits. ARM 37.70.402(5) currently provides that households that are eligible for LIEAP benefits through an Indian tribal program funded directly by the department may not receive LIEAP benefits from the department for the same heating season. The purpose of this provision is to prevent households from receiving double benefits by applying to both LIEAP programs. The department now proposes to provide in addition that a person who was a member of a household that received benefits from a tribal LIEAP program cannot receive LIEAP benefits from the department for the same season. This provision is necessary to ensure that if the person who was eligible for and received tribal LIEAP benefits leaves the household during the heating season, the remaining members of the household, who may not be eligible for tribal LIEAP, are not entitled to LIEAP benefits from the department, which again would result in duplicate benefits.

The department proposes to provide exceptions to the general rule prohibiting receipt of benefits from both a tribal and the department's program in the case of households or individuals who move during the heating season. ARM 37.70.602(3) provides that when a household moves during the heating season, the household may receive a benefit based on its new circumstances prorated from the date of the change. ARM 37.70.602 further provides that in such a case the unused portion of the original benefit reverts to the department, so the household does not get double benefits. Similarly, if a household that received tribal LIEAP benefits moves during the heating season and is no longer eligible for tribal benefits, there is no reason why the household should not receive a prorated LIEAP benefit from the department, because this will not result in duplicate benefits. Likewise, if the person who lived in a household that received tribal benefits moves out of the household during the heating season, that person should be allowed to receive a prorated benefit because this will not result in duplicate benefits. Without a provision allowing a person who moves out of a household that already received tribal benefits to get a prorated benefit from the department, victims of domestic violence or other persons who move during the heating season for circumstances beyond their control will not be able to get help to pay their heating costs for their new home.

The maximum income standards used to determine whether a household is eligible for LIEAP benefits are contained in ARM 37.70.406. These income standards are computed as a specified percentage of the federal poverty guidelines issued annually by the U.S. Department of Health and Human Services (HHS). The standards currently in ARM 37.70.406 are based on the HHS poverty guidelines for 2006.

HHS updates the poverty guidelines each year to take into account increases in the cost of living. It has been the long standing practice of the department to amend ARM 37.70.406 annually to provide that the updated version of the poverty guidelines will be used to set the income standards and benefit amounts for the current heating season. The department uses the updated version of the guidelines because they are higher than the guidelines for the previous year. If the department

did not use the updated guidelines, some households might be ineligible for benefits or receive a smaller benefit due to inflationary increases in the household's income which do not reflect an increase in actual buying power. Thus, ARM 37.70.406 is now being amended to provide that the 2007 rather than the 2006 poverty guidelines will be used for the 2006-2007 heating season.

In determining eligibility for LIEAP, the department considers not only income but also what assets (known as "resources") the household has that can be used to pay heating costs. ARM 37.70.408 specifies the rules relating to resources. Section (4) currently specifies the maximum amount of nonbusiness resources that households of varying sizes can have and still qualify for LIEAP in state fiscal year 2007. Since section (5) states that the dollar limits on nonbusiness resources will be revised annually to adjust for inflation, it is necessary to amend section (4) to increase the dollar amounts for fiscal year 2008, that is, the year that runs from July 1, 2007 through June 30, 2008. Section (5) provides that the revised nonbusiness resource limits shall be computed by multiplying the current dollar limits by the percentage increase in the national consumer price index (CPI) for the previous calendar year or by 3%, whichever is less. The CPI for 2006 was 3.2%, so the department is increasing the dollar amounts in section (4) by 3%.

ARM 37.70.601 contains tables of benefit amounts which are used to establish the amount of benefits an eligible household will receive. As previously discussed, the amount of the household's benefit depends on multiple factors, including income level, type of primary heating fuel, the type of dwelling and number of bedrooms, and the heating district in which the household is located.

The benefit amounts in the table are also revised annually to take into account the amount of funds available to pay LIEAP benefits for the current heating season, as well as fuel cost projections and an estimate of the number of households that will apply and be found eligible for LIEAP for the heating season.

The department estimates that Montana's federal LIEAP appropriation for the 2007-2008 heating season will be \$11,842,000. In addition to the federal appropriation, there are also \$446,842 of funds carried over from 2006-2007 available to pay LIEAP benefits in 2007-2008. Thus, benefits for 2007-2008 are calculated based on total funding of \$12,289,462. This compares to total funding of \$13,660,738 for 2006-2007, which included federal appropriations of \$13,248,143 (including \$1,709,512 carried over from the 2005-2006 program year) and \$412,595 in state funds appropriated for LIEAP by the Montana Legislature in House Bill 2. Total LIEAP funding for 2007-2008 is therefore estimated to be \$1,371,276 less than funding for 2006-2007.

The department estimates that 20,006 households will qualify for LIEAP benefits for the current heating season, which would be a 5% increase over the number of households that received LIEAP last year. Since the total funds available to pay benefits are less than last year, and the estimated number of eligible households is greater, benefits will be smaller for the 2007-2008 heating season than in the

previous year. It is estimated that the average household will receive a LIEAP benefit for the current heating season which is \$11 less than last year's benefit.

As discussed above in connection with the amendment of ARM 37.70.402, ARM 37.70.602 provides that when a household changes residence or type of primary heating fuel during the heating season the household may request to have its benefits recomputed based on its new circumstances. The benefit will be prorated from the date of the change in circumstances, and the rule requires that any unused portion of the original LIEAP benefit be repaid to the department. The rule provides that when a household changes its residence the household must file a new application. This is necessary because a household's benefits are based on a number of factors as specified in ARM 37.70.601, which may change when the family moves, such as the type of home (single family, multi family, or mobile home), type of heating fuel used, the family's income level, and the part of the state in which the home is located. Thus, for the department to accurately determine the new benefit amount based on the household's new circumstances, it must have a new application which provides detailed information about the household's new circumstances.

ARM 37.70.602 currently does not state whether a household that changes its type of heating fuel must file a new application. Language is being added to specifically state that in such a case the household does not have to file a new application. This is being added merely for clarification and does not indicate a change in policy. There is no reason for the household to fill out a new application with detailed information about who lives in the household, what income and resources they have and so on in a case where the only change is the type of fuel used to heat the home.

A provision is also being added to ARM 37.70.602 to specify that when a household does not move its residence but changes fuel vendors any credit balance will be returned to the department by the original fuel vendor. It further provides that the unused portion of the benefit may be sent to the new fuel vendor or reimbursed to the household as provided in ARM 37.70.602. This policy regarding for the treatment of credit balances is mandated by federal regulations governing LIEAP and is not a new policy. It is being stated in the rule at this time so that the public will be aware of the policy.

The department proposes to add a new section, section (5), to ARM 37.70.607 in regard to the method for calculating the benefits of households that reside in publicly subsidized housing. Residents of publicly subsidized housing are eligible for LIEAP benefits if they are responsible for paying their own heating costs. In some cases they receive a utility subsidy from the public housing authority to help them pay their energy costs. The rule currently does not provide that the LIEAP benefit paid to residents of subsidized housing who get a utility subsidy should be computed taking into consideration the fact that they are receiving assistance with their heating costs from another source. A provision is therefore being added to state that LIEAP benefits for these households will be computed in accordance with the usual method for computing benefits in ARM 37.70.601, but the amount of the utility subsidy will be

deducted to determine whether they will receive a LIEAP benefit, and, if so, what the amount of the benefit will be. The provision provides that benefits for these households will be computed on a monthly basis because the utility subsidy is a monthly payment. This provision is necessary to prevent duplication of benefits; without this provision households in subsidized housing receiving a utility subsidy would be getting payments from two separate sources to pay their utility costs. This would be unfair to other LIEAP households that receive energy assistance only from LIEAP.

The Low Income Weatherization Assistance Program (LIWAP) is a federally funded program to help low income households reduce their energy bills by providing services such as the installation of insulation that make their homes more energy efficient. The rules governing LIWAP are in ARM 37.71.101, et seq.. ARM 37.71.602 contains standards for determining what weatherization measures will be given the highest priority when homes are receiving weatherization services. ARM 37.71.602 is now being amended to correct an error which has come to the department's attention. Section (1) provides that weatherization assistance will be made available to eligible households in accordance with the state standard of prioritized measures established in section (3). Subsection (3)(a) also refers to standards as prioritized in section (3). In both cases, the reference should be to section (4), rather than (3), as section (4) contains the standard of prioritized measures for weatherizing eligible homes.

5. Interested persons may submit comments orally or in writing at the hearing. Written comments may also be submitted to Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on November 1, 2007. Comments may also be faxed to (406)444-1970 or e-mailed to dphhslegal@mt.gov. The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. To be included on such a list, please notify this same person or complete a request form at the hearing.

6. 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 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. The web site may be unavailable at times, due to system maintenance or technical problems.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

8. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct the hearing.

/s/ Barbara Hoffmann
Rule Reviewer

/s/ Joan Miles
Director, Public Health and
Human Services

Certified to the Secretary of State September 24, 2007.

BEFORE THE BOARD OF HOUSING
DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION
Rules I through III pertaining to the)
low income housing tax credit)
program)

TO: All Concerned Persons

1. On August 9, 2007, the Department of Commerce and the Board of Housing published MAR Notice No. 8-111-58 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1061 of the 2007 Montana Administrative Register, Issue Number 15.

2. The department and board have adopted New Rule I (8.111.601), New Rule II (8.111.602), and New Rule III (8.111.603) as proposed.

3. No comments or testimony were received.

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

/s/ ANTHONY J. PREITE
ANTHONY J. PREITE
Director
Department of Commerce

Certified to the Secretary of State September 24, 2007.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
23.16.209, 23.16.2102, and 23.16.2105)
concerning possession and display of)
antique slot machines, approved)
accounting and reporting system)
availability date, and general)
specifications of approved automated)
accounting and reporting systems)

TO: All Concerned Persons

1. On August 23, 2007, the Department of Justice published MAR Notice No. 23-16-188 regarding the public hearing on the proposed amendment of the above-stated rules at page 1149, 2007 Montana Administrative Register, Issue Number 16.

2. The Department of Justice has amended ARM 23.16.209, 23.16.2102, and 23.16.2105 exactly as proposed.

3. A public hearing was held on September 13, 2007. No adverse comments or suggestions were offered at the public hearing and no changes have been made to the proposed rules.

By: /s/ Mike McGrath
MIKE McGRATH
Attorney General, Department of Justice

/s/ Jon Ellingson
JON ELLINGSON
Rule Reviewer

Certified to the Secretary of State September 24, 2007.

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 June 30, 2007. This table includes those rules adopted during the period July 1 through September 30, 2007, and any proposed rule action that was pending during the past six-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 June 30, 2007, 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 2006 and 2007 Montana Administrative Register.

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