

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

In the matter of the amendment of ARM) NOTICE OF PUBLIC HEARING ON
24.121.301, 24.121.403, 24.121.405,) PROPOSED AMENDMENT,
24.121.407, 24.121.1301, 24.121.1501,) ADOPTION, AND REPEAL
24.121.1505, 24.121.1507,)
24.121.1509, 24.121.1511,)
24.121.1517, 24.121.1522,)
24.121.2101, 24.121.2301; the)
adoption of New Rules I through III; and)
the repeal of 24.121.1503 pertaining to)
salons, shops, mobile salons or shops,)
schools, definitions, general application)
and license display requirements,)
variance requests, general)
requirements and prohibitions, license)
general information, premises, fixtures,)
general sanitation, restrooms, sinks,)
sanitizers, containers, cabinets,)
implements, instruments, supplies,)
equipment, sanitizing, disinfecting,)
preparation storage, handling,)
prohibited items, blood spills, continuing)
education instructors, unprofessional)
conduct, inspections, name change,)
closure, change of ownership,)
operation standards, and lighting)

TO: All Concerned Persons

1. On August 3, 2021, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed amendment, adoption, and repeal of the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/83255888370>
Meeting ID: 832 5588 8370, Passcode: 522337
- OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 832 5588 8370, Passcode: 522337

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

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 no later than 5:00 p.m., on July 27, 2021, to advise us of the nature of the accommodation that you need. Please contact Lucy Richards, Board of Barbers and Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdcos@mt.gov (board's e-mail).

3. GENERAL REASON: The board currently licenses salons and shops and sets minimum operating and safety standards for those facilities. Historically these facilities have all been in fixed locations. With recent changes in the industry across the United States, mobile salons and shops as regulated by licensing bodies are becoming more common.

The full board has discussed the appropriate regulation of mobile salons and shops in Montana for the last several years. Licensees, the public, and board members have all expressed a need to allow more flexibility for licensees to safely practice outside fixed locations. Board members and staff have also researched other states' mobile salon/shop licensing requirements to ensure adequate public protection while allowing licensees flexibility in providing services under their individual scopes of practice. Review of the board's statutory authority during this time confirmed that the board has the authority to set requirements for mobile salons and shops in administrative rule.

Therefore, the board determined it is reasonably necessary to amend and repeal several rules and adopt new rules to establish clear operational and safety requirements for mobile salons and shops. The board is also amending rules to achieve consistency, simplicity, better organization, and ease of use for licensees, educators, program administrators, and the public. Authority and implementation citations are being updated throughout to accurately reflect the statutes implemented through the rules and provide the complete and current sources of the board's rulemaking authority. 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 are as follows, stricken matter interlined, new matter underlined:

24.121.301 DEFINITIONS (1) through (8) remain the same.

(9) "Change in ownership" means when more than 50 percent of the equitable ownership of a salon, shop, mobile salon or shop, or school is transferred to one or more persons or any other legal entity, in a single transaction or in a related series of transactions.

(9) through (18) remain the same but are renumbered (10) through (19).

~~(19)~~ (20) "Employee" means a person employed by a salon, shop, mobile salon or shop, or school and paid wages and/or commissions in accordance with federal, state, and local regulations.

(20) through (29) remain the same but are renumbered (21) through (30).

(31) "Mobile salon or shop" means a salon or shop as defined in 37-31-101, MCA, that is readily movable and where barbering, barbering nonchemical, cosmetology, electrology, esthetics, or manicuring are practiced other than at a fixed location.

~~(30)~~ (32) "Needles" mean single-use, presterilized, and disposable needles of various sizes, which are stored in a manner that will maintain the sterile conditions of contents, away from wetness or extreme humidity.

(a) Needles may not be recapped, bent, or otherwise manipulated by hand prior to disposal, to avoid accidental puncture injury.

(b) Needles must be placed in a puncture-resistant sharps container immediately after use, when damaged, when contaminated before use, or when not used before the preprinted expiration date.

(31) through (37) remain the same but are renumbered (33) through (39).

~~(38)~~ (40) "Working area" means the area of a salon, shop, mobile salon or shop, or school where students or licensees perform services upon clients or members of the public.

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

IMP: ~~37-1-131~~, 37-31-101, 37-31-203, 37-31-204, 37-31-302, 37-31-303, 37-31-305, 37-31-309, 37-31-311, MCA

REASON: For years staff have received questions on what exactly constitutes a change of ownership of a salon, shop, or school since the specifics are not set forth in current statute or rule. Noting that statute does require a facility having a change in ownership to obtain a new license, the board determined it is reasonably necessary to define this term. The definition in (9) is consistent with that used by other Montana licensing boards that have similar statutory requirements for facility licensure and change of ownership. Defining the term will address staff and licensee confusion and noncompliance with board licensing laws while increasing overall efficiencies.

24.121.403 GENERAL APPLICATION AND LICENSE DISPLAY

REQUIREMENTS ~~(1) Applicants for all licensure types shall submit to the board a completed application, on forms prescribed by the board, including all required fees and documentation.~~

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

~~(3) (1) All licensees, including salons, shops, mobile salons or shops, and schools shall display all current licenses conspicuously for members of the in public to view. The address on the personal license Addresses on personal licenses may be covered.~~

~~(a) (2) Booth renters shall display conspicuously at their working areas all current licenses and also:~~

~~(a) post a clear legible sign, of at least six inches by three inches, stating that the booth/station is a booth rental and is rented by the booth renter; and~~

~~(b) Booth renters shall clearly label all other areas of the salon or shop maintained by the renter including, but not limited to, retail, "roll-abouts," carts, and manicure tables.~~

~~(3) Mobile salons or shops shall also conspicuously post the mobile salon or shop license on the exterior of the mobile salon or shop.~~

~~(4) Licensees shall ensure that their correct name and current mailing address is on file with the board by notifying the board of changes in name or address in writing within 30 days, and including the licensee's name, profession, and license number.~~

~~(5) Licenses must not be defaced or altered.~~

~~(6) Licensees shall immediately notify the board of lost, damaged, or destroyed licenses and obtain a duplicate license by submitting a written request and appropriate fees to the board or through the board's web site.~~

~~(7) All licensees practicing barbering, cosmetology, electrology, esthetics, or manicuring shall provide a suitable place equipped to provide adequate services to clients, as specified in rule, and subject to inspection by the department or board designee.~~

~~(8) through (10) remain the same but are renumbered (4) through (6).~~

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

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

REASON: The board determined it is reasonably necessary to amend this rule for simplicity, better organization, clarity, and ease of use for the reader. The board is eliminating the general application provisions in (1) and (2) because the department administers a standardized application process applicable to all licensing boards.

The board is striking (4) as the requirement for updating licensee contact information is already set forth in ARM 24.121.612. The board is eliminating (6) as unnecessary since licensees now print their own licenses using an online system. The board is deleting (7) as the specific minimum requirements for salons and shops are set forth in other rules and this general statement is not necessary.

24.121.405 VARIANCES VARIANCE REQUESTS – SALONS, SHOPS, MOBILE SALONS OR SHOPS, AND SCHOOLS (1) Applicants for licensure of a salon, shop, mobile salon or shop, or school may submit a variance request from licensing requirements related to safety and sanitation on forms provided by the department. Completed variance requests include appropriate fees and required documentation. ~~Upon application, the~~ The board may only grant a variance from requirements of the safety and sanitation rules upon the board's determination that:

(a) and (b) remain the same.

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

IMP: ~~37-1-134~~, 37-31-204, MCA

REASON: The board is also amending this rule to address consistent questions regarding variance requests to board staff by setting forth the requirements more clearly.

24.121.407 PREMISES AND GENERAL REQUIREMENTS AND PROHIBITIONS – SALONS, SHOPS, MOBILE SALONS OR SHOPS, AND SCHOOLS (1) The premises of all salons, shops, mobile salons or shops, and schools must be kept in clean and safe conditions at all times per the requirements in statute and this chapter.

(2) No services connected with a salon, shop, mobile salon or shop, or school can be conducted in any room used as living or sleeping quarters.

(3) No other business, service, or practice may be conducted or provided in a salon, shop, mobile salon or shop, or school unless separated by a full-length partition, except those:

(a) regulated by the board; or

(b) related to the industries regulated by the board, ~~unless separated by a full-length partition~~.

~~(4) Salons, shops, and schools must provide direct entry into the salon, shop, or school from a public access area.~~

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

~~(6) (4) Animals are permitted on the premises of a salon, or shop, or mobile salon or shop only as follows:~~

~~(a) through (b)(ii) remain the same.~~

~~(iii) posts a legible sign at or near the entrance of the salon, or shop, or mobile salon or shop indicating that there is a dog present on the premises.~~

~~(c) remains the same.~~

~~(d) All other animals are prohibited on the premises of salons, or shops, or mobile salons or shops at any time, unless the licensee has submitted a request for a variance that has been approved by the board as provided in rule.~~

~~(7) Single service disposable drinking cups may be available for clients.~~

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

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

REASON: The board is relocating the provisions from (4) and (5) to ARM 24.121.1501 as a more appropriate location. It is reasonably necessary to strike (7) as unnecessary as the board does not regulate food or drink specifically as it does not pertain to the practice. Specific safety and sanitation standards are addressed in other board statutes and rules.

24.121.1301 SALONS/BOOTH RENTAL SALON, SHOP, MOBILE SALON OR SHOP LICENSES – GENERAL INFORMATION (1) Applications for a salon, shop, or mobile salon or shop must include a blueprint or detailed scale drawing of the floor plan which includes the locations of the required fixtures described in these rules.

(2) Applicants for licensure of an existing salon, shop, or mobile salon or shop with a change in ownership as defined in ARM 24.121.301 must submit a new application as described in ARM 24.121.403, [NEW RULE II], and this rule.

(3) A temporary operating permit may be granted to an applicant for a salon, shop, or mobile salon or shop prior to initial inspection as described in [NEW RULE I] if all other licensing requirements have been met.

~~(1) Each salon and shop shall be located in a structure that meets all applicable local and state building codes requirements.~~

~~(2) The board shall initially and annually, or when a complaint is received, inspect and approve all salons, shops, and booths. Within ten days of an annual or complaint-driven inspection, the salon or shop owner, booth renter, or manager shall respond to all inspection report violations by submitting a detailed written response, including any corrective action taken, to the board office.~~

~~(3) Applicants shall furnish the board with a blueprint or detailed scale drawing of the floor plan when filing a salon or shop application.~~

~~(4) Minimum requirements for a licensed salon or shop are as follows:~~

~~(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 a 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 24.121.1514 (uncovered sanitizing agents may be used, provided the sanitizing agent is changed after each use);~~

~~(c) one covered soiled linen container;~~

~~(d) one covered garbage container; and~~

~~(e) one enclosed dust free cabinet for the storage of cleaned towels.~~

~~(5) In addition to the above requirements, electrology salons or shops shall have:~~

~~(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) needles in assorted sizes;~~

~~(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) four fine pointed epilation forceps; and~~

~~(e) six draping sheets or towels.~~

~~(6) All residential salons and shops shall have:~~

~~(a) outside entrances with doors; and~~

~~(b) a separate restroom within the confines of the salon that is not available for the personal use of the residents.~~

~~(7) Salon and shop licenses are not transferable. Upon a change in ownership and/or location, the salon or shop shall submit a new salon or shop application accompanied by the appropriate fees.~~

~~(8) A new salon or shop may be granted a temporary operating permit pending an initial inspection. No prior notice of the inspection is required. A~~

~~temporary operating permit shall terminate and a license shall not be granted without board review, unless the salon or shop provides the board with a response within 30 days of the date of the inspection that indicates all the inspection violations have been corrected to the inspector's satisfaction. If a temporary permit terminates, the salon or shop must cease operation until the application is granted by the board and a license issued. A subsequent temporary operating permit is not available unless the application times out pursuant to ARM 24.121.403 and a new application is filed.~~

~~(9) Holders of salon or shop licenses shall be responsible for safety and sanitation in the salon or shop except sanitation and safety violations caused by the booth renter taking place in the working area.~~

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

~~(11) It is the responsibility of the salon or shop to ensure that all personnel comply with the board's statutes and rules.~~

~~(12) A practice license is a condition to holding a booth rental license. All alleged violations arising against the booth renter shall be processed against the practice license, and a separate action against the corresponding booth rental license is unnecessary. Any final orders resulting from formal disciplinary action or an administrative suspension of an individual's practice license shall also be reflected against the individual's booth rental license.~~

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

IMP: ~~37-1-131, 37-31-204, 37-31-302, 37-31-309, 37-31-312, MCA~~

REASON: The board is amending this rule to relocate language pertaining to operating standards from (1) through (5) to NEW RULE III as a more appropriate location. For the same reasons, the board is moving provisions on wet sanitizer and linen/garbage containers to ARM 24.121.1507, provisions on unprofessional conduct to ARM 24.121.2301, and inspection provisions to NEW RULE II. Further amendments will eliminate outdated, redundant, and unnecessary provisions.

24.121.1501 PREMISES, FIXTURES, AND GENERAL SANITATION – SALONS, SHOPS, MOBILE SALONS OR SHOPS, AND SCHOOLS ~~(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 the salon, shop, or school, carpeted flooring must be removed and replaced with appropriate, nonabsorbent floor covering.~~

(1) The following applies to salons, shops, mobile salons or shops, and schools:

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

(b) all areas within the facility must be adequately lighted and light fixtures must be kept clean;

(c) there must be direct entry from a public access area; and
(d) furniture must be kept in clean and safe conditions at all times.
(2) Carpeting is prohibited in the working areas, dispensaries, and restrooms of all salons, shops, mobile salons or shops, and schools licensed on or after November 19, 2004.

(a) Salons, shops, and schools licensed prior to this date must use appropriate, nonabsorbent floor covering to cover the existing carpet.

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

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

IMP: 37-31-204, MCA

REASON: The board is relocating provisions on entrances, fixtures, and general sanitation from ARM 24.121.407 to this rule as a more appropriate location.

24.121.1505 RESTROOMS (1) At least one restroom with a hand washing basin must be located:

(a) on or near the premises of the a salon or shop; or

(b) within the confines of the mobile salon or shop.

(a) remains the same but is renumbered (2).

(3) Restrooms must contain:

~~(2) (a) Hand posted hand washing signage must be posted in each restroom;~~

(b) a soap dispenser containing liquid soap;

(c) single service towels or an air dryer; and

(d) a covered waste container.

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

~~(4) (5) If restrooms are Restrooms used for chemical storage, a closet or cabinet shall be provided and must be locked if used to store chemicals must contain a locked closet or cabinet to store the chemicals.~~

~~(5) Single service towels or an air dryer is required.~~

~~(6) A soap dispenser containing liquid soap must be provided.~~

~~(7) A covered waste container must be provided.~~

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

IMP: 37-31-204, MCA

24.121.1507 SINKS, SANITIZERS, CONTAINERS, AND CABINETS – SALONS, SHOPS, MOBILE SALONS OR SHOPS, AND SCHOOLS HAND

WASHING FACILITIES (1) Every shop, salon, mobile salon or shop, and school must have:

(a) a hand washing facility one sink that is convenient to the work areas, but not located in a restroom.

~~(a) (i) The hand washing facility sink must have hot and cold running water, and be connected to a sewer or septic system.~~

(A) The sink in a salon, shop, or school must be connected to a sewer or septic system.

(B) The sink in a mobile salon or shop must be connected to a wastewater holding tank and/or meet any state or local laws pertaining to wastewater.

~~(b)~~ (ii) A soap dispenser containing soap must be provided is required.

(c) remains the same but is renumbered (iii).

(b) one covered wet sanitizer of suitable size and depth, and appropriate sanitizing and disinfecting agents as defined in ARM 24.121.1513 and 24.121.1514 (uncovered sanitizing agents may be used, provided the sanitizing agent is changed after each use);

(c) one covered soiled linen container;

(d) one covered garbage container; and

(e) one enclosed dust free cabinet for the storage of cleaned towels.

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

IMP: 37-31-204, MCA

REASON: The board is moving provisions on wet sanitizer and linen/garbage containers from ARM 24.121.1301 to (1)(b) through (e) as a more appropriate location.

24.121.1509 IMPLEMENTS, INSTRUMENTS, SUPPLIES, AND EQUIPMENT – SALONS, SHOPS, MOBILE SALONS OR SHOPS, AND SCHOOLS

~~(1) It is the responsibility of all licensees to~~ Licensees must ensure that the machines, and devices, and implements they are using use fall within their scope(s) of practice.

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

(a) remains the same.

(b) maintained in sanitary and safe conditions at all times.

(3) Salons, shops, mobile salons or shops, and schools must maintain copies of the manufacturers'/owners' manuals on-site for all equipment in service.

(4) ~~Only~~ For the practice of manicuring, only electric file machines specifically manufactured for use in the nail industry are ~~allowed to be used in nail services permitted~~. Modified craft or hobby tools are prohibited.

(a) and (b) remain the same.

(5) For the practice of esthetics:

~~(a)~~ Only only microdermabrasion machines specifically manufactured for use in esthetics services are permitted. Modified or medical machines may not be used.

~~(a)~~ Microdermabrasion machines ~~for use in esthetics services~~ must be:

(i) remains the same.

(ii) ~~kept~~ maintained in sanitary and safe conditions at all times, including but not limited to changing filters in accordance with OSHA and manufacturer requirements; and

(iii) used only in accordance with specific manufacturer directions;.

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

(c) ~~The the use of abrasive tips are allowed if used and sterilized in accordance with specific manufacturer directions.;~~ and

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

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

(6) ~~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 freezes are prohibited. This does not include single-use lancets used during noninvasive procedures.~~

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

(9) ~~The use of any teeth whitening products is prohibited.~~

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

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

REASON: It is reasonably necessary to relocate unprofessional conduct provisions in (6) through (9) to ARM 24.121.2301 as a more appropriate location.

24.121.1511 SANITIZING AND DISINFECTING IMPLEMENTS AND EQUIPMENT – SALONS, SHOPS, MOBILE SALONS OR SHOPS, AND SCHOOLS

(1) All implements, equipment, and electrical instruments must be thoroughly cleaned and subjected to ~~an approved sanitizing and disinfecting process before being reused~~ processes as described in this rule and ARM 24.121.1513 and 24.121.1514.

(2) through (4) remain the same.

(5) Electrical equipment, whether professional or consumer designed, which provides circulating, whirlpool, or vacuum effects shall be:

(a) cleaned and disinfected after each use.; and

(b) ~~Such equipment shall also be flushed, cleaned, and disinfected on a regular basis. A record of such cleaning shall be kept on forms provided by the board and available upon client request or any salon inspection. The licensee must maintain cleaning records which document the following:~~

(i) licensee name;

(ii) client name;

(iii) date;

(iv) cleaning service start and end times;

(v) whether the item was cleaned; and

(vi) whether the item was disinfected.

(6) In addition to the ~~above~~ requirements in (1) through (5), the following ~~rules apply~~ applies to the practice of electrology:

(a) through (b)(i) remain the same.

(ii) sterilizing packets with dry heat lab oven, 340°F for 60 minutes;

(c) remains the same.

(d) ~~each month a monthly log must be maintained~~ licensees must maintain records consisting of date and sterile packet strip; and

(e) outside biological monitors shall be used to ensure proper mechanical function of sterilizers on no less than a quarterly basis. ~~Results shall be maintained in a log.~~ The licensee must maintain records of the results.

(7) through (12) remain the same.

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

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

REASON: The board determined it is reasonably necessary to set forth the electrical equipment recordkeeping requirements in rule as opposed to a department-generated form for consistency, clarity, and ease of use for licensees. This rule already describes the recordkeeping requirements with regard to electrology in (6). The board concluded that these amendments will provide greater clarity for department staff, licensees, and the public and increase staff efficiencies by not requiring the department to create and maintain a specific form.

24.121.1517 SALON PREPARATION STORAGE, AND HANDLING, AND PROHIBITED ITEMS – SALONS, SHOPS, MOBILE SALONS OR SHOPS, AND SCHOOLS (1) All salon, shop, mobile salon or shop, and school preparations must be:

(a) and (b) remain the same.

(2) Safety Data Sheets (SDS) relative to product ingredients, proper use, storage, disposal, and hazards for products in use at salons, shops, mobile salons or shops, and schools, shall be kept on the premises and available upon need or request by the public, the board, or the board-designated inspector.

~~(3)~~ (7) Possession or use of the following items by a licensee and/or on the premises of a salon, shop, or mobile salon or shop, or school is prohibited:

(a) through (c) remain the same.

(d) methyl methacrylate monomers for artificial nails; ~~and~~

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

(iv) Jessner's solution; ~~and~~

~~(4)~~ (f) ~~No salon, shop, or school shall have on the premises~~ cosmetic products containing hazardous substances which have been banned by the U.S. Food and Drug Administration (FDA) for use in cosmetic products.

(5) through (8) remain the same but are renumbered (3) through (6).

~~(9) Board inspectors may take a sample of a product used or sold in a salon, shop, or school for the purpose of examining or testing the sample on-site to determine whether this subchapter has been violated.~~

~~(10)~~ (8) If the board inspector obtains evidence that a product or item prohibited by this rule is being used in a salon, shop, mobile salon or shop, or

school, the inspector may seize the product or item and remove it from the facility immediately. If a prohibited product or item is seized by an inspector, the licensee will be responsible for the costs of disposing of the product or item. The licensee will be mailed a notice that sets forth the disposal costs incurred by the board in relation to the product or item, and the licensee shall pay such costs within 30 days of the date the notice is mailed to the licensee.

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

REASON: The board is striking the provisions of (9) to align with standardized department inspection and investigation procedures and protocols as they apply to all DLI licensing boards and programs.

24.121.1522 BLOOD SPILLS (1) remains the same.

(2) The blood spill procedure described in this rule must be posted in all salons, shops, mobile salons or 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: The board is removing obsolete language from (2).

24.121.2101 CONTINUING EDUCATION – INSTRUCTORS (1) ~~Active instructors shall~~ Instructors are required to complete 30 hours of board-approved continuing education (CE) per renewal period to maintain active status licensure, of which eight Eight of the 30 hours must be in teaching methodology pursuant to ARM 24.121.1105.

(2) Licensees shall affirm an understanding of their recurring duty to comply with CE requirements as a part of license renewal.

(3) CE requirements will not apply until after the licensee's first renewal.

(4) Licensees are responsible for selecting quality programs that focus on protecting the health, safety, and welfare of the public and contribute to licensees' professional knowledge and competence. Acceptable CE activities:

(a) directly relate to the licensee's scope of practice as defined in board statute or rule;

(b) review existing concepts and techniques;

(c) convey information beyond the basic professional education;

(d) update knowledge on the practice and advances in the profession; or

(e) reinforce professional conduct or ethical obligations of the licensee.

(5) CE hours will not be granted to a licensee teaching a course.

(6) Board meetings are approved as CE.

(a) A licensee must attend at least half of a meeting to obtain credit.

(b) A board meeting is worth two hours of CE credit.

(7) The department may randomly audit up to 50 percent of renewed licensees.

(8) Licensees must maintain documentation of completed CE for three years and provide documentation to the board upon request. Documentation must include the following information:

(a) licensee name;

(b) course title and description of content;

(c) presenter or sponsor;

(d) course date(s); and

(e) number of CE hours earned.

(9) Licensees found to be in noncompliance with CE requirements may be subject to administrative suspension. Licensees may not apply CE hours used to complete delinquent CE requirements for the next education reporting period.

(10) Any CE hours required by disciplinary order do not apply toward the 30 hours that are required per renewal period under this rule.

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

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

~~(4) CE courses must be completed prior to applying for renewal of an active instructor license.~~

~~(5) Licensees shall maintain records of their CE hours for a minimum of three years.~~

~~(6) Credit will be granted only for the actual hours attended. Attendance will be recorded in half-hour increments.~~

~~(7) Continuing education hours will not be granted to an instructor teaching the course.~~

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

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

~~(10) Course approval may be revoked for cause.~~

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

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

IMP: 37-1-141, 37-1-306, 37-1-319, 37-1-321, MCA

REASON: The board is amending this rule to align with and facilitate the department's standardized application, renewal, and audit procedures, and streamline the rule for better organization and ease of use for the reader. As a part of the standardization, the board is placing the responsibility on instructor licensees to select quality CE programs that contribute to their professional knowledge and competence. Following amendment, the board will no longer approve sponsors or courses as the licensees must choose CE that meets the education objectives described in this rule.

Following a recommendation by department legal staff, the board is adding (2) and striking (4) to align the affirmation of CE requirements at renewal with the provisions of 37-1-306, MCA. The amendments fall within standardized department procedures that licensees with mandatory CE affirm an understanding of their CE requirements, as part of a complete renewal application, instead of affirming CE completion.

It is reasonably necessary to specify in (6)(b) that board meeting attendance is worth two CE hours regardless of the meeting's length. Since the length of a board meeting and the amount of time someone attends both vary, the board has determined it is necessary to set a minimum amount of attendance and standard number of CE hours to provide consistency for both licensees and department audit staff. Based on average meeting length, there are generally two hours of business relating directly to the ongoing regulatory education.

The board is adding (7) to allow flexibility in conducting random CE audits. This amendment will allow the department to respond to staffing and budget issues by adjusting the number of licensees audited, while remaining consistent with the statutory maximum of 50 percent in 37-1-306, MCA.

The board is clarifying in (9) that licensees not in compliance with CE may be subject to administrative suspension per 37-1-321, MCA, and in accordance with standardized department audit processes.

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

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

(p) performing services or using machines and devices 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; This includes, but is not limited to:

(i) use of implements, equipment and instruments for performing dermaplaning and dermabrasion procedures including but not limited to blades, knives, scalpels, wires, and diamond fizzes. This does not include single-use lancets used during noninvasive procedures;

(ii) "surgery," as defined in ARM 24.156.501 as surgery constitutes the practice of medicine and is prohibited for all individuals licensed under this chapter;

(iii) the use of roller or roll-on waxing systems; and

(iv) use of any teeth whitening products;

(q) remains the same.

(r) failure of a salon, shop, mobile salon or shop to ensure that all personnel comply with the board's statutes and rules, including safety and sanitation rules, except when safety violations are committed at a booth by the booth renter;

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

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

(t) through (aa) remain the same but are renumbered (u) through (ab).

(2) remains the same.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-31-203, MCA
IMP: 37-1-136, 37-1-137, ~~37-1-144~~, 37-1-316, 37-1-319, 37-31-301, 37-31-331, MCA

REASON: The board is amending this rule to relocate unprofessional conduct provisions previously in ARM 24.121.1301 and 24.121.1509 as a more appropriate location.

5. The proposed new rules are as follows:

NEW RULE I INSPECTIONS – SALONS, SHOPS, AND MOBILE SALONS OR SHOPS (1) A board-designated inspector will conduct annual on-site inspections of all licensed salons, shops, booths, and mobile salons or shops.

(a) Inspections may be conducted with or without advance notice to the licensee.

(b) Results of the inspection will be provided to the licensee.

(c) If there are any items of noncompliance, the licensee must submit a written response which addresses those items of noncompliance. The response must be received by the board within ten days of the licensee receiving notification of noncompliance.

(d) A report of significant noncompliance will be reviewed by the board screening panel per the department's standard compliance process.

(2) The following inspection process applies to applicants for licensure as a salon, shop, and mobile salon or shop.

(a) Applicants who meet all license requirements with the exception of having passed an initial inspection may be issued a temporary operating permit per 37-31-312, MCA.

(b) Applicants must pass an initial inspection of the facility by a board-designated inspector prior to a license being issued.

(c) Results of the inspection will be provided to the applicant or licensee.

(d) If there are any items of noncompliance, the applicant or licensee must submit a written response which addresses those items of noncompliance. The response must be received by the department within 30 days of receiving notification of noncompliance.

(e) If issues of noncompliance are not corrected within 30 days of the date of notice of noncompliance the temporary operating permit shall terminate and a license shall not be granted without board review.

(i) When a temporary permit terminates, the salon, shop, or mobile salon or shop must cease operation unless a license is issued by the board.

(ii) A subsequent temporary operating permit is not available unless the application times out pursuant to ARM 24.121.403 and a new application is filed.

AUTH: 37-31-203, 37-31-204, MCA
IMP: 37-31-101, 37-31-203, 37-31-204, 37-31-302, 37-31-309, 37-31-312, MCA

REASON: The board is adopting NEW RULE I to consolidate all inspection provisions and standard procedures relating to salons, shops, and mobile salons or shops in one location for consistency, simplicity, better organization, and ease of use for licensees, educators, program administrators, and the public. Inspection provisions pertaining to these license types are being relocated from ARM 24.121.1301 to this rule along with language clarifying initial versus annual inspections.

NEW RULE II NAME CHANGE, CLOSURE, OR CHANGE OF OWNERSHIP

(1) Using forms provided by the department, salons, shops, mobile salons or shops, and schools must notify the board within ten days of any of the following occurring:

- (a) change of business name;
- (b) closure; and
- (c) change of ownership as defined in these rules.

(2) When there is a change in ownership the license issued to the previous owner is void. The new owner must apply for a license per the applicable requirements in this chapter.

AUTH: 37-31-203, MCA

IMP: 37-31-203, MCA

REASON: The board is adopting NEW RULE II to standardize the process for board notification of business name change, closure, or sale. The board concluded these changes will ensure the board receives adequate data and increase department efficiencies.

NEW RULE III SALON, SHOP, BOOTH RENTAL, AND MOBILE SALON OR SHOP OPERATION STANDARDS

(1) A salon, shop, or mobile salon or shop:

- (a) cannot operate unless a license or temporary permit has been issued to the owner;
- (b) must meet the sanitary and operation standards described in ARM Title 24, chapter 121, subchapter 15; and
- (c) must contain a restroom per the requirements in ARM 24.121.1501 and 24.121.1505.

(2) In addition to the requirements in (1):

- (a) a salon or shop must be located in a structure that meets all applicable local and state building codes requirements unless it is a mobile salon or shop as defined in ARM 24.121.301;
- (b) a salon or shop located in a residence must have outside entrances with doors separate from the entrances to the residence; and
- (c) a salon or shop where electrology is practiced must:
 - (i) be located in a structure that meets all applicable local and state building codes requirements unless it is a mobile salon or shop as defined in ARM 24.121.301;

(ii) have 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 electrolysis treatments);

(iii) have needles as defined in ARM 24.121.301. Only presterilized, disposable needles as defined in ARM 24.121.301 may be used for electrolysis services on any individual in a licensed salon, shop, or mobile salon or shop unless a properly installed, serviced, and operated autoclave is utilized for sterilization of reusable needles.

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

(v) have fine-pointed epilation forceps; and

(vi) have draping sheets or towels.

(3) In addition to the requirements in (1) and (2), a mobile salon or shop must:

(a) meet all applicable local and state laws for mobile businesses, including but not limited to operating permits;

(b) provide and maintain a physical address and mailing address for the owner(s) of the mobile salon or shop. The applicant or licensee must notify the board of any change of address of the responsible person(s) within ten days of the change of address.

(4) A booth as defined by 37-31-101, MCA, is part of a salon, shop, or mobile salon or shop, and a booth rental license is subject to the sanitary operating standards for salons and shops as defined in these statutes and rules.

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

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

REASON: The board is adopting this rule to consolidate operating requirements for salons, shops, and mobile salons or shops for better consistency, simplicity, better organization, and ease of use for licensees, educators, program administrators, and the public. Current operating provisions in ARM 24.121.407 and 24.121.1301 are being relocated to this rule so that all operating standards are in one location.

In addition to existing requirements for fixed-location salons and shops, the board is establishing specific operating standards for mobile salons and shops. For example, mobile shop/salon licensees must maintain physical and mailing addresses so department staff, including inspectors, can contact and locate them. The board also determined it is reasonably necessary to require mobile salons and shops to comply with applicable state and local laws for mobile businesses in addition to board regulations. These requirements are consistent with the standards and general regulatory model for mobile salons and shops in other jurisdictions to ensure protection of public health and safety.

6. The rule proposed to be repealed is as follows:

24.121.1503 LIGHTING

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

IMP: 37-31-204, MCA

REASON: It is reasonably necessary to repeal this unnecessary rule as adequate salon and shop lighting is now required in ARM 24.121.1501.

7. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Barbers and Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdcos@mt.gov, and must be received no later than 5:00 p.m., August 6, 2021.

8. An electronic copy of this notice of public hearing is available at <https://boards.bsd.dli.mt.gov/barber-and-cosmetologists/> (department and board's web site). Although the department strives to keep its web sites accessible at all times, concerned persons should be aware that web sites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a web site do not excuse late submission of comments.

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

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

11. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.121.301, 24.121.403, 24.121.405, 24.121.407, 24.121.1301, 24.121.1501, 24.121.1505, 24.121.1507, 24.121.1509, 24.121.1511, 24.121.1517, 24.121.1522, 24.121.2101, and 24.121.2301 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the adoption of New Rules I through III will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.121.1503 will not significantly and directly impact small businesses.

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

Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; facsimile (406) 841-2305; or to dlibsdcos@mt.gov.

12. Lucy Richards, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF BARBERS AND
COSMETOLOGISTS
ANGELA PRINTZ, PRESIDENT

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

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 29, 2021.