

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

In the matter of the amendment of)
ARM 24.121.605 application for)
postsecondary school licensure and)
24.121.807 school curricula, and the)
adoption of NEW RULE I)
postsecondary education status and)
NEW RULE II military training or)
experience)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
ADOPTION

TO: All Concerned Persons

1. On April 3, 2014, at 3:00 p.m., a public hearing will be held in the Small Conference Room, 4th Floor, 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 March 28, 2014, to advise us of the nature of the accommodation that you need. Please contact Dennis Clark, Board of Barbers and Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdcos@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The board licenses and regulates the schools that offer education and training in the areas of barbering, cosmetology, electrology, esthetics, and manicuring in Montana. Currently, students attending schools licensed by the board may qualify for federal student aid under Title IV of the Higher Education Act of 1965. Title IV federal student aid is an important means to assist students to pay for their education and training.

On October 29, 2010, the United States Department of Education (DOE) published final regulations that are commonly referred to as "State authorization regulations." These regulations require education programs, such as those licensed by the board, to meet certain criteria for their students to qualify for Title IV federal student aid. The deadline for complying with the state authorization regulations is July 1, 2014. The DOE has encouraged states to communicate with the DOE to determine whether their processes would meet the state authorization regulations. Through that process, the board received confirmation that the proposed amendments to ARM 24.121.605 and 24.121.807 and the adoption of NEW RULE I will bring those schools regulated by the board into compliance with the state

authorization regulations. The board is amending the implementation citations to accurately reflect all statutes implemented through the rules.

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

24.121.605 APPLICATION FOR POSTSECONDARY SCHOOL LICENSURE

(1) through (8) remain the same.

(9) To qualify for licensure, a school shall be recognized by the board as an institution of postsecondary study under [NEW RULE I].

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

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

24.121.807 SCHOOL CURRICULA (1) and (2) remain the same.

(a) 1500 hours of training, of which at least 150 hours is₁ in theory, distributed as follows:

(i) through (4) remain the same.

(a) 600 hours of training, of which at least 120 hours is₂ in theory, distributed as follows:

(i) through (6)(a)(ii) remain the same.

(iii) manicures (including water, oil, hand₁ and arm massage), pedicures (including foot, ankle, and lower leg massage), polish applications, paraffin wax treatments, and the proper use of manicuring implements including the electric nail file, 35 hours; and

(iv) through (7) remain the same.

~~(8) The board shall not grant credit for hours earned by students for postsecondary education under any circumstances.~~

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

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

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

NEW RULE I POSTSECONDARY EDUCATION STATUS (1) A school shall be recognized by the board as an institution of "postsecondary study," authorized to offer one or more training programs beyond the secondary level only upon meeting each of the following conditions:

(a) the school shall admit as regular students only those individuals who:

(i) have earned a recognized high school diploma or the equivalent of a recognized high school diploma; or

(ii) are beyond the age of compulsory education as provided in 20-5-102, MCA;

(b) no more than 50 percent of a school's enrolled students may be admitted who have not been granted a high school diploma or the recognized equivalent of a high school diploma; and

(c) each school shall report annually to the board the number of enrolled students and whether the students were admitted on the basis of being beyond the age of compulsory education or on the basis of having been granted a high school diploma or the recognized equivalent of a high school diploma. The report shall be submitted on a form approved by the board prior to the annual school licensure renewal date.

(2) A school whose enrollment exceeds the limitation provided in (1)(b) may be summarily suspended pending proceedings for revocation.

(3) Failure to timely submit the report required in (1)(c) shall subject the school to a disciplinary action.

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

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

NEW RULE II MILITARY TRAINING OR EXPERIENCE (1) Pursuant to 37-1-145, MCA, the board shall accept relevant military training, service, or education toward the requirements for licensure as a barber, cosmetologist, electrologist, manicurist, or esthetician.

(2) Relevant military training, service, or education must be completed by an applicant while a member of either:

- (a) United States Armed Forces;
- (b) United States Reserves;
- (c) state national guard; or
- (d) military reserves.

(3) An applicant must submit satisfactory evidence of receiving military training, service, or education that is equivalent to relevant licensure requirements as a barber, cosmetologist, electrologist, manicurist, or esthetician. At a minimum, satisfactory evidence shall include:

- (a) a copy of the applicant's military discharge document (DD 214);
- (b) a document that clearly shows all relevant training, certification, service, or education the applicant received while in the military, including dates of training and completion or graduation; and
- (c) any other documentation as required by the board.

(4) The board shall consider all documentation received to determine whether an applicant's military training, service, or education is equivalent to relevant licensure requirements.

AUTH: 37-1-145, MCA

IMP: 37-1-145, MCA

REASON: The 2013 Montana Legislature enacted House Bill 259 and Senate Bill 183, acts requiring the professional and occupational licensing boards and programs to accept satisfactory evidence of relevant military education, training, or service to satisfy licensing or certification requirements. The bill was signed by the Governor and became effective on April 26, 2013, and is codified at 37-1-145, MCA.

The new statute requires each licensing board and program to adopt rules providing that certification or licensure requirements of the board or program may be

met by relevant military training, service, or education, completed as a member of the armed forces or reserves of the United States, a state's national guard, or the military reserves. In consulting with the bill sponsors regarding the rulemaking, it was clarified that the sponsor received input on the bill draft from Montana military personnel and the U.S. Department of Defense. The sponsor was assured that the bill language, as reflected in this proposed rule, is intended to include relevant military training, service, or education received while serving in all branches of the military and reserves, including the U.S. Coast Guard. It is reasonably necessary for the board to adopt New Rule II to coincide with and further implement the legislation.

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Barbers and Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdcos@mt.gov, and must be received no later than 5:00 p.m., April 11, 2014.

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

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

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were contacted on December 16, 2013, by electronic mail.

10. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.121.605 and 24.121.807 will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the adoption of New Rules I and II will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination 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) 841-2390; facsimile (406) 841-2305; or e-mail dlibsdcos@mt.gov.

11. Darcee L. Moe, attorney, has been designated to preside over and conduct this hearing.

BOARD OF BARBERS AND
COSMETOLOGISTS
DARLENE BATTAIOLA, PRESIDENT

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

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

Certified to the Secretary of State March 3, 2014