

BEFORE THE BOARD OF FUNERAL SERVICE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 24.147.1101 crematory)	PROPOSED AMENDMENT,
operation standards, 24.147.1102)	ADOPTION, AND REPEAL
casket/containers, 24.147.1110)	
integrity of identification process,)	
24.147.1111 cremation procedures,)	
24.147.1112 crematory prohibitions,)	
the adoption of New Rule I)	
transportation and custody of human)	
remains, II crematory records, III)	
cremation authorizations, IV military)	
training or experience, and the repeal)	
of ARM 24.147.1103 shipping)	
cremated human remains)	

TO: All Concerned Persons

1. On April 18, 2014, at 2:00 p.m., a public hearing will be held in the Small Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment, adoption, and repeal 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 Funeral Service (board) no later than 5:00 p.m., on April 11, 2014, to advise us of the nature of the accommodation that you need. Please contact Cheryl Brandt, Board of Funeral Service, 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; dlibsdfnr@mt.gov (board's e-mail).

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

24.147.1101 CREMATORY OPERATION STANDARDS FACILITY
~~REGULATION~~ (1) ~~Each location of a crematory facility is considered a separate location and must be licensed separately from a mortuary, even though they may share the same common building.~~

(2) (1) The All crematory facility facilities shall:

(a) comply with all applicable local, state, and federal laws and rules pertaining to the operation of a crematory, and maintain for inspection permits relating to business, zoning, building codes (including plumbing, electrical, and mechanical), fire codes, air quality, and water quality;-

(b) notify the board in writing of any changes in equipment from that reported on the application and maintain for inspection maintenance and repair schedules of equipment;

~~(3) (c) A licensed crematory shall designate a crematory operator-in-charge and notify the board office promptly, in writing, within ten days of any change of crematory operator. in that designation;~~

~~(4) (d) The telephone number of the fire department or rural fire district serving the crematory facility shall be posted in large bold numbers in a conspicuous place near all telephones in the crematory facility as well as in the office, if attached to a mortuary facility. post signs near telephones and in the vicinity of the retort to direct staff to call 911 in a fire or other emergency;~~

~~(e) display the facility and personal licenses of licensed staff in plain view for members of the public to view. Personal addresses on licenses may be covered;~~

~~(5) (f) The crematory operator is responsible for the conduct appropriate maintenance and safe operation of equipment used in cremations.;~~

~~(6) (g) All crematory facilities shall be kept and maintained maintain the crematory and all related cremation equipment after each use in a clean and sanitary condition; and all appliances used in the cremation process of dead human bodies shall be thoroughly cleansed and disinfected.~~

~~(7) (h) Floors have floors and walls shall be constructed of an impervious material to allow cleaning and disinfection of these surfaces.;~~

~~(i) have procedures to identify remains awaiting cremation, remains in the cremation chamber, cremated remains in the processing station, and the urns or containers holding the cremated remains; and~~

~~(j) have procedures to ensure the proper authorization to cremate exists.~~

(2) All crematory facilities shall comply with the requirements of ARM 24.147.403 that are applicable to mortuaries regarding transfers, inspections, and eligibility for a temporary permit to operate a crematory, and ARM 24.147.903 regarding name change, closure, or sale of a crematory facility.

~~(8) Used caskets or casket parts shall be placed in a storage room not available to the public view.~~

~~(9) When the crematory facility is unable to cremate human remains immediately upon taking custody, the human remains shall be placed in a holding area which shall be marked "private" or "authorized personnel only."~~

~~(10) Prior to beginning the cremation process, the crematory must have in its possession, written authorization(s) bearing the original, photocopied, or facsimile signatures of the authorizing agent and, if the death occurred in Montana, the coroner having jurisdiction or the state medical examiner. In addition, the following information must be included in the authorization and kept on record:~~

~~(a) identification of the decedent;~~

~~(b) identification and relationship of the authorizing agent;~~

~~(c) hazardous implants or other medical devices;~~

~~(d) personal property and disposition thereof;~~

~~(e) disposition of cremated remains;~~

~~(f) a description of the cremation process;~~

~~(g) a release from liability per 37-19-707, MCA; and~~

~~(h) any other information pertinent to the individual cremation.~~

~~(11) Unauthorized persons may not be permitted in the cremation chamber area while any human remains are being placed within the cremation chamber, being cremated, or being removed from the cremation chamber. For this purpose authorization may be provided by the licensee performing the cremation or the authorizing agent.~~

AUTH: 37-1-131, 37-19-202, 37-19-703, MCA

IMP: 37-19-702, 37-19-703, 37-19-704, 37-19-705, MCA

REASON: In this rule and throughout this notice, the board determined it is reasonably necessary to eliminate wordiness and redundancy, eliminate passive voice, and better organize and make easier to understand and enforce the board's regulations. The board is also amending (1) to eliminate language that unnecessarily repeats the statute and is incongruent in its substance to the operating standards in the remainder of the rule.

The board is amending (1)(a) to clarify the vague requirement to comply with "applicable" regulations by specifying the particular health and safety standards and requiring the facility to show proof of compliance by means of a permit where applicable. Crematory license applicants are required by 37-19-703, MCA, to provide a description of the type of structure and equipment to be used in the crematory, which helps the board ensure that equipment is approved for human disposal and that maintenance occurs as directed to reduce fire hazards and environmental concerns related to air quality. The board is amending (1)(b) to clarify the reason the information has historically been requested on the initial application and logically carry through to track any changes to that equipment.

The board is amending (1)(c) to specify that crematory facilities must notify the board when the crematory operator in charge of the facility changes. This amendment will further implement 37-19-702, MCA, ensure that crematories are operated only by licensed crematory operators, and establish a contact person who is knowledgeable of the operations and will act as a proper liaison to the board.

It is reasonably necessary to amend (1)(d) to acknowledge that 911 has replaced posting of telephone numbers as the best practice regarding potential fire or other emergencies. Because the same requirement exists for mortuaries, the board is adding (1)(e) to require that crematories display licenses for public view. This language repeats the concept in 37-19-702, MCA, but also defines what "conspicuous" means in the statute and clarifies that both crematory operator and technician licenses must be posted. Placing these requirements in rule as well as statute serves to create a complete inspection "checklist."

The board is deleting from (1)(f) the reference to "crematory operator" to further the concept that the facility license, as well as any given operator or technician, may be held accountable for safety. It is reasonably necessary to amend (1)(g) and (h) to clarify the requirements necessary to maintain sanitary conditions, including avoiding the commingling of cremated remains. The board is adding (1)(i) and (j) to specify crematory procedures that are necessary to effectuate the major purposes behind cremation industry regulation: ensuring the appropriate identity of persons cremated and that cremated remains are returned to their next of kin, and

identifying each stage of the cremation process as a point when identification errors may occur.

It is reasonably necessary to add (2) and apply the same requirements for crematories as mortuaries regarding inspections, temporary permits, name changes, ownership transfer, or closure of the facility.

The board is relocating the substance of (9) and (11) to ARM 24.147.1111. The board is incorporating (10) into New Rule III, "Cremation Authorizations."

24.147.1102 CASKET/CONTAINERS (1) All caskets and alternative containers holding human remains presented at a crematory for cremation shall meet the following standards:

(a) ~~be able to~~ be closed to provide a complete covering for the human remains;

(b) and (c) remain the same.

(d) ~~be sufficient~~ sufficiently rigid for handling with ease;

(e) ~~be able to~~ provide protection for the health and safety of crematory personnel; and

(f) have the name of the deceased affixed to it in a permanent, plainly visible manner.

(2) The crematory facility, ~~at its discretion, has the right to~~ may, as notified or disclosed on a cremation authorization form, remove noncombustible materials such as handles or rails from caskets or containers prior to cremation and ~~to discard them with similar materials from other cremations and other refuse~~ in a nonrecoverable manner.

(3) A crematory that sells urns and combustible containers directly to the public is deemed to be providing "funeral services" and "funeral goods" and must comply with the funeral rule referenced at ARM 24.147.406.

AUTH: 37-19-202, 37-19-703, MCA

IMP: 37-19-705, MCA

REASON: The board determined it is reasonably necessary to add (1)(f) to clarify that containers must come to the crematory with identification already affixed, and must be closed, rather than just having the ability to be closed. The quality that enables a container to be handled is its rigidity, therefore the board is adding that term to (1)(d) for clarity.

The board is amending (2) to clarify that crematories may remove noncombustible materials, such as handles and rails, only if properly notified or disclosed on a cremation authorization form. The board is further amending (2) to clarify the intent that these materials be removed before cremation takes place.

The board is adding (3) to clarify an ambiguity the board has dealt with previously regarding the applicability of the Federal Trade Commission's "funeral rule" to independent crematories and is necessary to be compliant with federal law.

24.147.1110 INTEGRITY OF IDENTIFICATION PROCESS IDENTIFYING METAL DISC (1) ~~It shall be the responsibility of the crematory operator, crematory technician or mortician to see that an identifying metal disc is attached to each~~

~~receptacle containing human remains. When remains are to be cremated, the disc initially shall be secured to the top of the head end of the casket or alternate container. During the cremation process the disc shall be placed on the control panel, outside the retort.~~

~~(2) The identifying metal disc shall be held on the outside control panel of the retort. The disc shall then be placed with the cremated remains inside the urn and the plastic liner.~~

~~(3) The number of the identifying metal disc shall be written plainly and permanently on the outside of each receptacle containing human remains when the remains are delivered to a cemetery, columbarium or mausoleum.~~

(1) A crematory may not accept or cremate human remains until it has received warranties of truthfulness regarding the identity of the remains to be cremated and regarding the authority of the signer to order cremation. A cremation authorization form provided by the board, properly executed, shall satisfy these warranties.

(2) A crematory operator must develop and require crematory staff to strictly follow procedures to accurately maintain the identification of the remains throughout the cremation process, including, at a minimum, the following:

(a) Upon receipt of the remains in a container described at ARM 24.147.1102, staff shall examine the cremation authorization, any preneed cremation authorization, and the ART forms, and maintain them together with the container.

(b) Prior to the cremation, using sequentially numbered metal tags, staff shall assign a number to the human remains and record the number on the cremation documents, a separate log, or both.

(c) Staff shall place the metal tag on the outside of the retort during the cremation process. During final processing, staff shall place the metal tag on the container or tray containing the human remains.

(d) After the cremation process, staff shall either place the metal tag with the cremated remains in a securely fastened plastic bag or securely fasten the tag to the exterior of the bag.

(e) Staff shall affix an identification label to the sealed urn or container in a permanent manner that ensures the integrity of the identification of the remains.

~~(4) (3) In the case of scattering of~~ When directed by the cremation authorization, and agreed to by the crematory to scatter cremated remains, the licensee, shall maintain the identifying metal disc shall be made tag as a part of the licensee's permanent record of the facility.

AUTH: 37-19-202, 37-19-703, MCA

IMP: 37-19-703, 37-19-704, 37-19-705, 37-19-707, 37-19-708, MCA

REASON: The board determined it is reasonably necessary to amend this rule to reflect best practices that have developed in the industry since the rule was adopted in 1993. The board has received complaints about wrongful cremations and is amending this rule to clearly establish the acceptable means of identification of human remains for licensees, staff, and the public. The rule incorporates specific statutory language regarding the authority on which the cremation is premised and

describes the cremation process in chronological detail, concentrating attention on the procedures for ensuring proper identification of human remains.

The board is amending new (3) to clearly establish that scattering remains is subject to both written authorization by the authorizing agent and agreement by the crematory operator. Implementation citations are amended to accurately reflect all statutes implemented through the rule.

24.147.1111 CREMATION PROCEDURES PROCESSING OF CREMATED REMAINS (1) ~~Upon completion of the cremation process, the recoverable residual of the cremation process shall be removed from the cremation chamber and the cremation chamber swept clean. All nonhuman residue shall be separated from the residue of human remains and placed in an enclosed, puncture-resistant container, and securely taped or capped to prevent the loss or exposure of contents during waste disposal. The residual cremated human remains shall be placed within a container or tray in such a way that will ensure against commingling with other cremated remains. The identifying metal disc shall be removed from the control panel area and attached to the container or tray of cremated human remains to await final processing.~~

~~(a) The authorizing agent may specify that recoverable nonhuman residue that can be identified, in a manner satisfactory to the crematory operator in charge, as being related to that cremation may be returned to the custody of the authorizing agent.~~

~~(2) The recoverable residual of the cremation process shall undergo final processing.~~

(1) As set forth in 37-19-704 through 37-19-706, MCA, a crematory shall comply with the procedures further described in this rule.

(2) Prior to the beginning of the cremation process, the crematory must have in its possession written authorizations to cremate bearing the original, photocopied, electronic, or facsimile signatures from:

(a) the authorizing agent; or

(b) the coroner having jurisdiction or the state medical examiner, if the death occurred in Montana.

(3) Whenever a crematory is unable to cremate human remains immediately upon taking custody, but in no case less than 24 hours after the time of death, the crematory shall hold human remains in a holding area marked "private" or "authorized personnel only," that is secure from access by unauthorized persons.

(4) A crematory may not hold unembalmed human remains longer than 48 hours after the time of death outside of a refrigerated facility. Individual circumstances, however, may dictate that refrigeration at approximately 35 degrees Fahrenheit or less begins sooner than 48 hours after the time of death.

(5) Except for persons having the right of disposition who request to witness the crematory procedure, board inspectors, or persons authorized by the crematory operator-in-charge to be present, unauthorized persons may not be permitted in the cremation chamber area while any human remains are being placed within the cremation chamber, being cremated, or being removed from the cremation chamber. This section may not be construed to allow a crematory that is not attached to a mortuary to:

- (a) conduct a viewing of the body on the crematory premises; or
- (b) hold or charge to hold a funeral or memorial service.
- (6) As described by 37-19-705, MCA, in processing cremated human remains, crematory staff shall:
 - (a) commingle cremated human remains only if the authorizing agent provides written authorization for a simultaneous cremation of more than one person;
 - (b) remove the recoverable residual of the cremation process from the chamber and sweep it clean;
 - (c) separate, collect, and secure for permanent waste disposal in a container designed to avoid loss or exposure of the contents, any nonhuman residue, such as dental fillings or nonhazardous medical implants, unless such items, if reasonably identifiable, are directed to be returned to the authorizing agent;
 - (d) process remaining bone fragments to unidentifiable particles;
 - (e) place the bone particles, together with the remaining residue and metal identification tag in a securely fastened plastic bag;
 - (f) place the bag in a sturdy, properly sealed temporary container, or in an urn provided by the authorizing agent, with the name of the deceased person and other proper identification affixed to the outside of the containers; and
 - (g) clean all containers or trays used in the cremation process to avoid commingling of cremated remains.
- ~~(3) (7) Should If the cremated remains or processed remains do not adequately fill the container's interior dimensions, staff may fill the extra space may be filled with packing material that will not become intermingled with the cremated remains or processed remains, and then securely closed.~~
- ~~(4) When a temporary container is used to return the cremated remains or processed remains, the container shall be placed within a sturdy box and all box seams taped closed to increase the security and integrity of that container. The outside of the container shall be clearly identified with the name of the deceased person whose cremated remains are contained there.~~
- (8) If cremated remains do not fit within one container, staff shall use an additional container, similarly sealed and affixed with identification, and marked "1 of 2" and "2 of 2."
- (9) When requested to ship cremated remains, the crematory shall place the temporary container or container holding the urn in a single, sturdy, pressure-resistant, and properly sealed shipping box. Multiple containers of cremated remains of a single person shall be placed in one shipping box as described. The crematory shall label the container "CREMATED REMAINS" and ship using an internal tracing system that requires a signature by the person taking delivery of the cremated remains and a return receipt to the crematory.
- (10) If the authorizing agent does not claim the cremated remains within 90 days from the date of cremation, the crematory may dispose of the cremated remains in any manner permitted by law. "Any manner permitted by law" does not include scattering, but rather means disposal in a recoverable manner, such as burial in a grave, crypt, or niche. The crematory must maintain a record of the disposition made and may issue an invoice to the authorizing agent to recover the costs of the disposition.

AUTH: 37-19-202, 37-19-703, MCA

IMP: 37-19-703, 37-19-704, 37-19-705, 37-19-706, 46-4-122, 50-15-405,
MCA

REASON: The board is amending this rule throughout to clearly delineate the steps of the cremation process into separate and distinct checklists, improve how the rule reads, provide specific information about applicable regulations, and elaborate on the intended meaning of specific terms, such as "residue," "residual," and "nonresidue."

The last sentence in (1) is being moved to ARM 24.147.1110, as it is a specific identification procedure and is more appropriately located within that rule. The board is adding (2) to distinguish between two types of cremation authorization: that of the coroner to rule out criminal conduct and that of the next-of-kin's permission to proceed with cremation.

The board is relocating the substance of ARM 24.147.1101(9) and (11) to this rule at (3) and (5), respectively, to further clarify that family members may request to observe the crematory procedures.

The board determined it is reasonably necessary to clarify in (10) that "any manner permitted by law" does not include scattering, since the law requires express written authority for the crematory operator to dispose of cremated remains in that manner. This rule assumes that scattering authorization was not provided nor agreed to by the crematory operator. Therefore, if the crematory operator has cremated remains in his or her possession, it is because the authorizing agent has not directed scattering as a means of disposition, but has stated they or another party will claim the remains.

Implementation citations are amended to accurately reflect all statutes implemented through the rule.

24.147.1112 CREMATORY PROHIBITIONS (1) It is prohibited to No crematory facility, operator, or technician shall do any of the following, unless also licensed as a mortician:

(a) transport human remains, make arrangements, engage in funeral directing, or engage in mortuary science, as such terms are defined in 37-19-101, MCA;

(b) cremate fetuses, limbs, and body parts from private or public health agencies, medical doctors or colleges and universities, unless appropriate permits and releases are provided to the crematory facility. without proper permits and cremation authorizations;

(c) use or allow the use of the same cremation chamber for the cremation of human remains and animals;

(d) accept prepayment for cremation services, unless covered in a prepaid funeral agreement executed by a mortician;

(e) require that human remains be placed in any particular container other than a basic combustible container, e.g., a casket, before cremation; or require that cremated remains be placed in a cremation urn, cremation vault, or receptacle designed to permanently encase the cremated remains;

(f) remove any dental gold, jewelry, medical devices, body parts, or other items of value from human remains prior to the cremation or from the cremated remains after cremation, unless the cremation authorization form specifically authorizes such removal; or

(g) remove a potentially hazardous implant from human remains or knowingly cremate human remains with a potentially hazardous implant in place.

~~(2) Copies of such permits and releases shall remain with the crematory facility and the parties contracting for the cremation services.~~

~~(3) Cremation of animals or pets of any type, is strictly prohibited in a crematory facility designed for cremation of human remains.~~

(2) A hazardous implant may only be removed by a mortician at a mortuary or branch mortuary establishment with a preparation room, unless removal has taken place at a medical facility by appropriate medical personnel. The mortician shall keep a record of the removal and disposition of the implant. Crematories must recycle hazardous implants if such service is available, and may only discard them in accordance with federal, state, and local laws and regulations.

(3) This rule may not be construed to prohibit an independent crematory not associated with a mortician from discussing cremation procedures with customers or selling combustible containers or cremation urns. If such funeral goods and services are sold, they may only be paid for by the consumer "at need" and not as preneed funeral goods and services, which may only be offered, negotiated, or sold by a licensed mortician. An independent crematory operator who sells funeral goods must comply with the funeral rule and have a general price list (GPL).

AUTH: 37-19-202, 37-19-703, MCA

IMP: 37-19-101, 37-19-703, 37-19-704, 37-19-705, 37-19-706, 37-19-707, 37-19-708, MCA

REASON: The board determined it is reasonably necessary to amend (1)(a) by delineating the narrow scope of practice of a crematory operator or owner of a crematory facility to reflect existing law and the department's successful litigation involving a crematory operator attempting to engage in activities only morticians are allowed to engage in. The rule is further necessary, given the board's recognition of an authorizing agent's right of final disposition, to transport a deceased next of kin directly to a crematory under the conditions set forth in statute and these rules. The board is adding (1)(d) to underscore that such authorizing agents may only contract for an at-need cremation and no other services or preneed funeral sales.

The board concluded it is in the best interest of public protection to further amend (1) and educate licensees, staff, and the public on unprofessional activities that have been associated with the industry. The board is adding (1)(g) and (2) to specifically emphasize that the law allows hazardous implants to be removed only by a mortician in a mortuary—a matter which was also recently and successfully litigated. The board is also proposing requirements that information be gathered and retained about who has removed an implant, and that the mortuary properly discard or recycle implants, as these constitute best practices and are already followed by some mortuaries.

It is reasonably necessary to add (3) to clarify that the law allows only a mortician to offer, sell, or negotiate preneed contracts, and that the sale of funeral goods and the provision of crematory services together render an independent crematory operator subject to the Federal Trade Commission "funeral rule."

Implementation citations are amended to accurately reflect all statutes implemented through the rule.

4. The proposed new rules provide as follows:

NEW RULE I TRANSPORTATION AND CUSTODY OF HUMAN REMAINS

(1) Upon authorization specified at 50-15-405, MCA, by a physician, physician designee, coroner, or mortician to remove and transport human remains, only a coroner, mortician, or employee of a mortuary who is properly trained and supervised by the mortician-in-charge may transport the body to either a mortuary, coroner's morgue, or, in cases in which direct cremation or burial is legally permissible and authorized, directly to a crematory or cemetery.

(2) Nothing in these rules shall be construed to apply to transportation, custody, preparation, funeral arrangements, or disposition carried out individually by an authorizing agent, subject to such agent's compliance with all applicable state and local laws and regulations, including, but not limited to:

(a) Department of Public Health and Human Services laws and regulations on infectious disease and vital statistics, including the filing of death certificates; and

(b) Department of Labor and Industry laws and regulations regarding proper identification of the remains, health and safety requirements, and the execution of appropriate disclosures and authorizations.

(3) In no case may an authorizing agent delegate the activities set forth in (2), unless to a mortician employed by a mortuary.

AUTH: 37-19-202, 37-19-703, MCA

IMP: 37-19-101, 37-19-301, 37-19-302, 37-19-703, 37-19-704, 50-15-405, MCA

REASON: The board determined it is reasonably necessary to adopt New Rule I to summarize numerous definitions and statutes that together dictate the legal procedures to transport a dead human body. The board notes that while the Department of Public Health and Human Services' (DPHHS) laws and regulations address infectious disease issues regarding transportation of a dead human body, the laws and regulations of the Department of Labor and Industry and the board define and regulate persons who are legally authorized to transport and safeguard the custody and care of a deceased person to final disposition, including the appropriate identification and filing of vital statistics records.

The board is addressing the issue of to whom the mortician may delegate transportation of a body in new (1). The board has been presented with evidence that some morticians are contracting with or paying for ambulance services to remove deceased persons from the place of death. The board does not condone this practice as the provisions of Title 50, chapter 6 authorize an ambulance to transport "patients," not dead human bodies. The board asserts that public health,

safety, and welfare require that a mortician be legally responsible under the theory of respondent superior for the acts or omissions of mortuary employees who transport bodies under the mortician's authority. The board has further concern that allowing a mortician to hire a contractor (even an ambulance service) suggests that legally, the contractor or ambulance service has independent legal authority to transport dead human bodies, when in fact that authority is limited to morticians, coroners, and the authorizing agent of the deceased.

Regarding authorizing agents, the new rule clarifies that such persons, defined by statute as having rights to control the disposition of a deceased person, may themselves, individually, wish to handle the removal and transport of a deceased family member without aid of a mortuary, as long as the family completes all proper documentation and complies with applicable state and local regulations. The rule emphasizes that such persons may only contract away their duty through licensed mortuaries.

NEW RULE II CREMATORY RECORDS (1) Each crematory shall maintain on a permanent basis a record of each cremation, including:

(a) original, photocopy, or facsimile copies of the following approved forms with validated electronic signatures or physical signatures:

(i) removal authorization as provided by 50-15-405, MCA; and

(ii) coroner cremation authorization as provided by 46-4-122, MCA.

(b) a cremation authorization form approved by the board and signed by an authorizing agent;

(c) as applicable, a preneed cremation authorization executed in accordance with 37-19-708, MCA, or disposition directions executed in accordance with 37-19-903, MCA;

(d) a cremation log showing the decedent's name, date, and time the body was received, metal tag number, date and times of refrigeration, if applicable, date and time of cremation, and identification of the staff member performing the cremation;

(e) a copy of the receipt of the date, time, and place of the delivery of the cremated remains with dual signatures of the recipient and crematory representative; and

(f) as applicable, shipping and tracking forms.

(2) In the case of cremated remains that have been abandoned by the authorizing agent, the crematory operator may, after 90 days, maintain or dispose of such remains in a recoverable manner, such as burial or entombment, and shall maintain the identifying metal tag and the location of burial as a permanent record.

(3) In addition to the records above, if the crematory is independent of a mortuary, the crematory must maintain price lists and otherwise comply with the Federal Trade Commission (FTC) funeral rule if it sells funeral goods. The crematory shall also maintain copies of invoices or contracts as prescribed by these rules.

AUTH: 37-19-202, 37-19-703, MCA

IMP: 37-19-702, 37-19-703, 37-19-706, 37-19-708, 37-19-903, 46-4-122, 50-15-405, MCA

REASON: The board is adopting New Rule II to adequately and accurately guide board staff and inspectors as to the types of records that are required to be maintained by a crematory. Former rules only required that the crematory "keep a record of cremations."

The board is relocating to this rule the provisions on the "original, photocopied, or facsimile" coroner's cremation authorization previously in ARM 24.147.1101(10), because of evidence that funeral practitioners were not requiring the coroner to enter a password into the online DPHHS vital statistics system and, instead, were entering the coroner's authorization to cremate with a verbal or telephonic approval. Working with the board, DPHHS created the ability, when the ART form is printed, to distinguish whether the coroner accessed the registry via a password (thereby creating an electronic authorization) or did not gain access to the registry. In the latter case, the printed form will indicate the requirement for the funeral practitioner to obtain the physical signature of the coroner, whether via fax, hand-delivery, or scanned image. The funeral practitioner will be required in either case to print and maintain copies of the ART form and death certificate. These changes in rule are necessary to ensure that a single individual may not enter the online vital statistics system and authorize cremation or create a death certificate unilaterally and aid compliance auditing.

The board is proposing (2) to provide direction to crematories in handling cremated remains when the authorizing agent or designee fails, as previously indicated and directed, to return to retrieve the cremated remains. New (3) will clarify that a crematory provides "funeral service," even in the limited sense of maintaining custody of a dead body and, if it sells "funeral goods," is subject to the FTC funeral rule, including the requirement to maintain a general price list. The board does not intend for this rule to authorize the sale of preneed contracts by independent crematory operators.

NEW RULE III CREMATION AUTHORIZATIONS (1) A "cremation authorization" is a separate form and does not include a contract for payment of cremation services, and is distinguished from the "coroner's authorization to cremate" under 46-4-122, MCA, set forth on the Authorization for Removal and Transport (ART) form.

(2) A "cremation authorization" must be executed on a board-approved form by an authorizing agent and may not conflict with any preneed cremation authorization executed by the decedent in accordance with 37-19-708, MCA, or disposition directions made in accordance with 37-19-903, MCA.

(3) The statutory authority to allow an individual or authorizing agent to execute a preneed cremation authorization does not authorize a crematory operator or facility to present, negotiate, or sell prearranged funeral or related services.

(4) The board-approved cremation authorization form must include:

(a) full identification of the decedent;

(b) warranty of positive identification of the decedent by the authorizing agent or personal representative of the authorizing agent;

(c) the authorizing agent's relationship to the deceased;

(d) the superiority of the authorizing agent's authority among competing rights to act as the authorizing agent;

(e) disclosure by the authorizing agent familiar with the decedent of any potentially hazardous implants or other medical devices;

(f) disclosures and authorizations regarding the casket or alternative container;

(g) disclosures and authorizations regarding multiple cremations;

(h) disclosures and authorizations regarding witnessing;

(i) disclosures and descriptions regarding the cremation process;

(j) authorization to cremate;

(k) disclosures and selections regarding containers;

(l) disclosures, authorizations, and selections regarding final disposition of cremated remains;

(m) directions regarding disposition of personal property;

(n) disclosures regarding the time and place of cremation and whether the decedent is to be embalmed; and

(o) a release from liability per 37-19-707, MCA.

(5) The cremation authorization form shall include the following certification by a mortician on behalf of a mortuary that:

(a) the remains presented to the crematory are those of the decedent identified by the authorizing agent;

(b) the mortician has taken reasonable precautions to ensure the removal of any hazardous implants; and

(c) the personal property identified in the cremation authorization has been removed from the remains of the decedent and delivered to the authorizing agent.

(6) Morticians must exercise due diligence in determining the presence of a potentially hazardous implant in and identification of human remains to be cremated. If a mortician is not involved in the disposition, the person with the right of disposition (i.e., the authorizing agent) for the cremation must warrant the absence of any known pacemaker or potentially hazardous implant or that it has been removed at a medical facility by appropriate medical personnel.

AUTH: 37-19-202, 37-19-703, 37-19-708, MCA

IMP: 37-19-703, 37-19-704, 37-19-707, 37-19-708, 37-19-903, 46-4-122, MCA

REASON: The board is proposing (1) and (2) to explain and distinguish the types of cremation authorizations and specify that, even though a preneed cremation authorization may be executed, a cremation authorization form, containing all of the proper disclosures and warranties, including independent identification of the dead body, must also be executed. This new rule is necessary to address recent attempts by crematory facilities that are not attached to a mortuary, to market cremation services directly to the public without involvement by a mortician. In requiring specified content of a cremation authorization to include certifications by a mortician, both the public and licensees will be on notice of this legal requirement.

The specific information contained in the required form not only helps the public understand the cremation process, it may further reduce misunderstandings

between funeral providers and the public. The rule is further intended to highlight the distinctions between cremation authorizations and to underscore that entering into a preneed cremation authorization does not allow a crematory operator to sell preneed funeral arrangements.

Although an agency is often given the discretion to create the content of various forms, the information in the cremation authorization is specialized and requires the expertise of professionals on the board, and will ensure some continuity to the form in terms of its scope and coverage.

NEW RULE IV 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 morticians, mortician interns, crematory operators, and crematory technicians.

(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 morticians, mortician interns, crematory operators, and crematory technicians. 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 IV to coincide with and further implement the legislation.

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

24.147.1103 SHIPPING CREMATED HUMAN REMAINS

AUTH: 37-19-202, 37-19-703, MCA

IMP: 37-19-705, MCA

REASON: The provisions of 37-19-705, MCA, clearly set forth the shipping requirements of cremated remains and only require a "method that has an internal tracing system available and that provides a receipt signed by the person accepting delivery," so there is no reason to repeat this requirement, particularly if it is done in an incomplete fashion as is the case in the present rule. The board is also repealing (3) as there is no legal authority to require shipping costs to be paid by the authorizing agent. Specific information about the shipping of cremated remains is set forth in ARM 24.147.1111.

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 Funeral Service, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdfnr@mt.gov, and must be received no later than 5:00 p.m., April 25, 2014.

7. An electronic copy of this notice of public hearing is available at www.funeral.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 Funeral Service, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdfnr@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 24.147.1101, 24.147.1102, 24.147.1110, 24.147.1111, and 24.147.1112 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-IV will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.147.1103 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Funeral Service, 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; dlibsdfnr@mt.gov (board's e-mail).

11. Colleen White, attorney, has been designated to preside over and conduct this hearing.

BOARD OF FUNERAL SERVICE
R.J. (DICK) BROWN, CHAIRPERSON

/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 17, 2014