

BEFORE THE BOARD OF PROFESSIONAL ENGINEERS  
AND PROFESSIONAL LAND SURVEYORS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of )  
ARM 24.183.408 authorization, )  
24.183.502 applications, 24.183.509 )  
examination procedures, 24.183.2105 )  
continuing education, and )  
24.183.2401 screening panel )

NOTICE OF PUBLIC HEARING ON  
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On October 1, 2009, at 1:00 p.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendment 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 Professional Engineers and Professional Land Surveyors (board) no later than 5:00 p.m., on September 25, 2009, to advise us of the nature of the accommodation that you need. Please contact Brooke Jasmin, Board of Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2351; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdpels@mt.gov.

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

24.183.408 CERTIFICATE OF AUTHORIZATION (1) Applications received by the department must be on a board approved form and accompanied by the appropriate fees. An application not accompanied by the appropriate fees or not completed in its entirety with all required information shall be returned to the applicant with instructions.

(a) The application must:

(i) designate the Montana licensed professional engineer or the Montana licensed professional land surveyor in responsible charge; and

(ii) include proof that the sole proprietorship, firm, partnership, or corporation is registered with the Montana Secretary of State's office.

(1) and (2) remain the same but are renumbered (2) and (3).

AUTH: 37-1-131, ~~37-67-201~~, 37-67-202, MCA

IMP: 37-1-131, 37-67-320, MCA

REASON: The board determined it is reasonably necessary to amend this rule to clarify the certificate of authorization (COA) application requirements in accordance with 37-67-320, MCA. The COA initial licensure requirements are not new, but were not previously set forth in rule. The board is now adding these requirements to the renewal provisions already in rule.

The board is also amending this rule to require that entities applying for a Montana COA are registered with the Montana Secretary of State's office and are authorized to provide business services within the state. Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule, delete reference to an erroneous cite, and provide the complete sources of the board's rulemaking authority.

24.183.502 APPLICATIONS (1) Applications received by the department must be on a board approved form and accompanied by appropriate fees. An application not accompanied by the appropriate fees or not completed in its entirety with all required information shall be returned to the applicant with instructions. Fees will be deposited as received.

(2) Professional engineer and professional land surveyor applicants must complete and submit the board's law and rule questionnaire as part of the application process. Incomplete questionnaires will be returned.

(3) Applications for foreign-educated professional engineer applicants must include a foreign degree evaluation. The applicant must arrange for the evaluation and shall be solely responsible for its cost.

(a) The evaluation must:

(i) be performed by a board-approved foreign degree evaluator;

(ii) be sent directly to the board by the evaluator; and

(iii) indicate whether the foreign degree is equivalent to an engineering or engineering technology program accredited by the Accreditation Board for Engineering and Technology (ABET).

(b) The board maintains a list of approved foreign degree evaluators.

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

AUTH: 37-1-131, 37-67-202, MCA

IMP: 37-67-303, 37-67-306, MCA

REASON: The board is amending this rule to require all professional engineer and professional land surveyor applicants to complete the law and rule questionnaire. The board concluded that this amendment will ensure that applicants are adequately familiar with the board statutes and administrative rules prior to licensure.

The board is adding (3) to set forth the requirements for the evaluation of education obtained outside the United States in response to an increasing number of foreign educated applicants. Because the board lacks the expertise to compare foreign programs to ABET accredited ones, the board is amending this rule to allow the board to select qualified evaluators to determine the equivalency.

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

24.183.509 EXAMINATION PROCEDURES (1) and (2) remain the same.

(3) An applicant who is approved by the board must take the examination at a location in Montana.

~~(3) (4) A passing grade of 70 percent in each part of the examination set by the National Council of Examiners for Engineering and Surveying (NCEES) will be required.~~

(4) through (6) remain the same but are renumbered (5) through (7).

AUTH: 37-1-131, 37-67-202, MCA

IMP: 37-1-131, 37-1-134, 37-67-311, MCA

REASON: The board has noticed a substantial increase in the number of applicants with no connection to Montana, but who apply in the state because they are prohibited from taking the examination in another state. These applicants can evade such prohibitions and still take the examination in their home state by applying in Montana and requesting an out-of-state proctor. This practice creates an additional burden for the board and staff to review and process applications of individuals who have no intention to practice in Montana. Following amendment, no out-of-state proctor requests will be granted.

The board is also amending this rule to eliminate the 70 percent passing grade because NCEES no longer scores numerically, but on a pass/fail basis.

24.183.2105 CONTINUING PROFESSIONAL COMPETENCY - CONTINUING EDUCATION (1) Every licensee shall meet the continuing professional competency (continuing education) requirements of these regulations for professional development as a condition for licensure renewal. The board will accept continuing professional competency education courses that are preapproved by one or more of the associations on the list maintained by the board.

(2) remains the same.

(a) "Professional development hour (PDH)" means a contact hour (nominal) of instruction ~~or presentation~~;

(b) remains the same.

~~(c) "College/unit semester/quarter hour" means credit for courses in ABET approved programs or other related college courses approved in accordance with (5), below;~~

(d) and (e) remain the same but are renumbered (c) and (d).

(3) Every licensee is required to obtain 30 PDH units during the two-year renewal period. If a licensee exceeds the annual requirement in any renewal period, a maximum of ~~15~~ five PDH units may be carried forward into the subsequent renewal period. ~~PDH units may be earned as follows:~~

~~(a) successful completion of college courses;~~

~~(b) successful completion of continuing education courses;~~

~~(c) successful completion of correspondence, televised, videotaped and other short courses/tutorials;~~

~~(d) presenting or attending qualifying seminars, in-house courses, workshops or professional or technical presentations made at meetings, conventions or conferences;~~

- ~~(e) teaching or instruction in (a) through (d), above;~~
- ~~(f) authoring published papers, articles or books;~~
- ~~(g) active participation in professional or technical societies;~~
- ~~(h) patents.~~

~~(4) The conversion of other units of credit to PDH units is as follows:~~

- ~~(a) one college or unit semester hour ..... 45 PDH~~
- ~~(b) one college or unit quarter hour ..... 30 PDH~~
- ~~(c) one continuing education unit ..... 10 PDH~~
- ~~(d) one hour of professional development in course work, seminars or~~

~~professional or technical presentations made at meetings, conventions or conferences ..... 1 PDH~~

~~(e) each published paper, article or book ..... 10 PDH~~

~~(f) active participation in professional and technical society (each organization) ..... 2 PDH~~

~~(g) each patent ..... 10 PDH~~

~~(h) for teaching apply multiple of two. (Teaching credit is valid for teaching a course or seminar for the first time only. Teaching credit does not apply to full-time faculty.)~~

~~(i) self study ..... 10 PDH~~

~~(A maximum of 10 PDH will be allowed per renewal cycle for self study. Self study is considered a formatted review of new subject matter or technical information such as video tapes series, Internet courses that do not include a final examination, etc.)~~

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

~~(a) Credit for college or community college approved courses will be based upon course credit established by the college.~~

~~(b) remains the same but is renumbered (a).~~

~~(c) Credit determination for each published paper, article or book and each patent is the responsibility of the licensee (subject to review as required by the board).~~

~~(d) Credit for active participation in professional and technical societies (limited to two PDH per organization) requires that a licensee serve as an officer and/or actively participate in a committee of the organization. PDH credits are not earned until the end of each year of service is completed.~~

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

~~(a) a log showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name and PDH credits earned;~~

~~(b) remains the same but is renumbered (a).~~

~~(c) (b) records as maintained by the professional development registry for engineers and surveyors (PDRES) or other similar repositories. These records must be maintained for a period of ~~three~~ four years and copies may be requested by the board for audit verification purposes.~~

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

~~(a) New licensees by way of examination or comity shall be exempt from accruing PDHs for the first renewal cycle ~~12 months~~ following licensure, after which ~~7.5~~ PDHs are required for each six-month period of licensure until the first renewal period that occurs on or after June 30, 2008;~~

~~(b) and (c) remain the same.~~

(d) Licensees who list their occupation as "retired" on the request emeritus status on a board-approved renewal form and who further certify that they are no longer receiving any remuneration from providing professional engineering or land surveying services shall be exempt from the professional development hours required. In the event such a person elects to return to active practice of professional engineering or land surveying, professional development hours must be earned before returning to active practice for each year exempted not to exceed the annual requirement for two years.

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

AUTH: 37-1-319, MCA

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

REASON: The board determined it is reasonably necessary to amend this rule to specify that acceptable continuing education (CE) courses are those that are preapproved by board approved affiliations and associations. The board concluded that requiring CE courses from board approved entities will further the public's protection because the acceptable courses will relate directly to the professional engineering and professional land surveying practices.

The board is amending this rule throughout to clarify continuing education requirements and streamline the random audit process. Noting that the current rule is burdensome and confusing for staff and licensees, the board is simplifying the rule to comply with the change in (1) to CE courses from board approved entities.

The board is reducing the number of allowable carryover PDH units from 15 to five per CE period because with online renewals, licensees no longer submit actual hard copy proof of meeting the CE requirements. The board determined that allowing only five carryover PDH units is more reasonable and manageable for staff to track during random CE audits.

The board is increasing the time that licensees must maintain CE records from three to four years. The board concluded that because the CE reporting periods are two years in length, it is reasonable to require records to be kept for a full two reporting periods.

The board is amending the provision for new licensees' CE requirements as the current provision is confusing and difficult to administer. Following amendment, new licensees will be exempt from any CE requirements for the first renewal cycle.

24.183.2401 SCREENING PANEL (1) The board screening panel shall consist of ~~one~~ three professional engineer board member ~~members~~; one land surveyor board member; and one public board member, as chosen by the presiding officer. The presiding officer may reappoint screening panel members, or replace screening panel members as necessary at the presiding officer's discretion.

AUTH: 37-67-202, MCA

IMP: 37-1-307, MCA

REASON: The board is amending this rule by adding two members to the board's screening panel. Noting an increase in complaints filed, the board is amending this

rule to ensure the presence of a quorum when more than two members cannot attend a scheduled meeting.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to [dlibsdpels@mt.gov](mailto:dlibsdpels@mt.gov), and must be received no later than 5:00 p.m., October 9, 2009.

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

6. 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 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 Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2309, e-mailed to [dlibsdpels@mt.gov](mailto:dlibsdpels@mt.gov), or made by completing a request form at any rules hearing held by the agency.

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

8. Don Harris, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PROFESSIONAL ENGINEERS  
AND PROFESSIONAL LAND SURVEYORS  
DAVID ELIAS, PRESIDING OFFICER

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

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

Certified to the Secretary of State August 31, 2009