

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
AND THE BOARD OF RESPIRATORY CARE PRACTITIONERS
STATE OF MONTANA

In the matter of the proposed amendment) NOTICE OF PUBLIC HEARING
of ARM 24.101.413 renewal dates and) ON PROPOSED AMENDMENT
requirements, 24.213.401 fee schedule,) AND REPEAL
24.213.402 application for licensure,)
24.213.412 renewals, 24.213.415 inactive)
status, 24.213.2101 continuing education)
requirements, 24.213.2107 traditional)
education by nonsponsored organizations,)
24.213.2121 waiver of continuing)
education requirement, and the proposed)
repeal of 24.213.405 temporary permit)

TO: All Concerned Persons

1. On June 5, 2007, at 10:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendment 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 Respiratory Care Practitioners (board) no later than 5:00 p.m., on June 1, 2007, to advise us of the nature of the accommodation that you need. Please contact Helena Lee, Board of Respiratory Care Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2385; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdrpc@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The department and board are proposing to modify rules pertaining to renewal within one notice to reduce costs associated with rulemaking and to ensure the changes are more efficient and timely. In addition, consolidating the rule changes into one notice will avoid a conflict between department and board rules on renewal frequency.

The 2005 Montana Legislature enacted Chapter 467, Laws of 2005 (House Bill 182), an act revising and consolidating professional and occupational licensing laws and distinguishing between department and board or program duties regarding licensure, examination, and fees. The board is amending the rules throughout to update board processes and revise terminology in compliance with the 2005 statutory changes and to further implement the legislation.

The board is proposing amendments throughout that are technical in nature such as substituting modern language for archaic phrasing, updating grammar and language choices, eliminating repetitive language, and substituting gender neutral for gender specific terms. Authority and implementation cites are also being

amended throughout to accurately reflect all statutes implemented through the rule, to provide the complete sources of the board's rulemaking authority, and to delete references to repealed statutes. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

4. The department is proposing to amend the following rule. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

24.101.413 RENEWAL DATES AND REQUIREMENTS (1) through (5)(ag) remain the same.

(ah)	Respiratory Care Practitioners	Respiratory Care Practitioners	Biennially, Even Numbered Years <u>Annually</u>	May 1
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(ai) through (7) remain the same.

AUTH: 37-1-101, 37-1-141, MCA
IMP: 37-1-101, 37-1-141, MCA

REASON: The department determined that there is reasonable necessity to amend this rule to change the renewal frequency from biennially to annually to coincide with amendments to ARM 24.213.412, the board's renewal rule. Annual collection of license revenue complies with the Department of Administration's new fiscal guidelines regarding recording revenue. Entities that renew on a biennial schedule and receive their entire renewal revenue in one year must hold half of the revenue and record it in the second year of the renewal cycle in order to avoid budget shortfalls. Annual renewal will eliminate the need to defer half the revenue until the following year, thereby simplifying the accounting process.

5. The board is proposing to amend the following rules. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.213.401 FEE SCHEDULE (1) The following fees are hereby adopted:

- (a) and (b) remain the same.
- (c) Renewal fee (annual) 100
- ~~(d) Temporary permit~~ 50
- ~~(e)~~ (d) Inactive license fee 50 ~~30~~
- (f) remains the same but is renumbered (e).

AUTH: ~~37-1-131~~, 37-1-134, 37-28-104, MCA
IMP: 37-1-134, 37-1-141, 37-28-104, 37-28-202, MCA

REASON: The board determined it is reasonably necessary to amend the rule changing from a biennial to annual renewal cycle. Annual collection of license revenue complies with the Department of Administration's new fiscal guidelines regarding recording revenue. Boards that renew on a biennial schedule and receive

their entire renewal revenue in one year must hold half of the revenue and record it in the second year of the renewal cycle in order to avoid budget shortfalls. Annual renewal will eliminate the need to defer half the revenue until the following year, thereby simplifying the accounting process.

The board is proposing to delete the temporary permit fee to coincide with the repeal of ARM 24.213.405 in this notice. Following the repeal, the board will no longer issue temporary permits.

The board is also proposing to maintain the renewal fee of \$100 for the new annual renewal period. This \$50 increase will affect approximately 454 licensees and increase annual revenue by \$22,700. The board is also increasing the inactive license fee from \$30 to \$50. This \$20 increase will affect approximately 20 licensees and increase annual revenue by \$400. The fee increases are needed to avoid a budgetary shortfall and to maintain fees that are commensurate with program costs as required by 37-1-134, MCA.

24.213.402 APPLICATION FOR LICENSURE (1) An application for a license ~~or temporary practice permit~~ must be made on a form provided by the ~~board~~ department and completed and signed by the applicant ~~with the signature acknowledged before a notary public.~~

(2) through (8) remain the same.

AUTH: 37-1-131, 37-28-104, MCA

IMP: 37-1-101, 37-28-201, 37-28-202, MCA

REASON: The department has determined and the board agrees that the requirement for notarized applications is not necessary. In anticipation of and to further facilitate the online submission of applications, the board will no longer require notarization of applications. The board is deleting the language regarding temporary practice permits to coincide with the repeal of ARM 24.213.405.

24.213.412 RENEWALS (1) remains the same.

(2) Licenses must be renewed ~~every even numbered year~~ on or before the renewal date set by ARM 24.101.413.

(3) remains the same.

AUTH: 37-1-131, ~~37-1-141~~, 37-28-104, MCA

IMP: 37-1-131, 37-1-141, MCA

REASON: It is reasonably necessary to amend this rule to change renewal frequency from biennially to annually to coincide with ARM 24.101.413, the department renewal rule, and to comply with the Department of Administration's new fiscal guidelines regarding recording revenue.

24.213.415 INACTIVE STATUS (1) A licensee who wishes to retain a license but who will not be practicing respiratory care may obtain inactive status by indicating this intention on the ~~biennial~~ annual renewal form or by submission of an application and payment of the appropriate fee. An individual licensed on inactive

status may not practice respiratory care during the period in which ~~he or she~~ the licensee remains on inactive status.

(2) An individual licensed on inactive status may convert ~~his or her~~ this license to active status by submission of an appropriate application and payment of the renewal fee for the year in question. The application must contain evidence of one of the following:

(a) remains the same.

(b) completion of a minimum of ~~24~~ 12 continuing education units within ~~two years~~ one year prior to application for reinstatement.

(3) In no case may an individual remain on inactive status for more than ~~three~~ two years. Documentation of the continuing education that would have been submitted had the license been renewed in a timely manner shall be required.

AUTH: 37-1-131, 37-1-319, ~~37-1-141~~, 37-28-104, MCA

IMP: 37-1-131, 37-1-141, 37-1-319, MCA

REASON: It is reasonably necessary to amend this rule to comply with the board's change to annual renewal periods. The amendment will limit the permissible time on inactive status to two years to be consistent with the timeframe for license termination set forth in 37-1-141, MCA.

24.213.2101 CONTINUING EDUCATION REQUIREMENTS (1) Upon ~~biennial~~ renewal of licensure, each respiratory care practitioner must affirm on the renewal form in each even numbered year beginning in 2008 that ~~he/she has the licensee will have~~ completed 24 continuing education units in the preceding 24 months. One continuing education unit is equivalent to 50 minutes in length.

(2) It is the sole responsibility of each licensee to meet the continuing education requirement, and to provide documentation of ~~his/her~~ this compliance if so requested during a random audit. The random audit will be conducted on a biennial basis. ~~The board will not permit excess units to be carried over from one licensing renewal cycle to the next.~~

(3) A licensee who fails to obtain a sufficient number of continuing education units may satisfy the requirement by taking and passing the National Board of Respiratory Care entry level exam ~~certified respiratory therapy technician examination~~ or the registered respiratory therapy advanced practitioner examination during the preceding 24 months.

(4) through (6) remain the same.

(7) If documentation of the continuing education requirement is improper or inadequate, the respiratory care practitioner shall correct the deficiency. If the requirement is not completed within 90 days, the license shall be ~~revoked~~ expired and the renewal fee forfeited. Misrepresentation of compliance shall constitute grounds for disciplinary action.

AUTH: 37-1-131, 37-1-319, 37-28-104, MCA

IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, 37-28-104, ~~37-28-203~~, MCA

REASON: The board determined it is reasonably necessary to amend this rule to align language with the board's shift to annual renewals and avoid confusion by clarifying that continuing education reporting will remain on a biennial basis beginning in 2008. The board does not permit the carryover of continuing education credits and is striking language regarding carryover as no longer necessary. The amendment also corrects reference to a 90-day nonrenewed license as expired rather than revoked. The board is updating the names of two examinations to the currently used titles.

24.213.2107 TRADITIONAL EDUCATION BY NONSPONSORED ORGANIZATIONS -- CATEGORY II (1) Continuing education activities which do not meet the definition of ARM 24.213.2104 may be submitted for review by the Montana Board of Respiratory Care Practitioners for prior approval.

(2) Approved activities in this category may include seminars, workshops, conferences, in-service programs, and correspondence courses accompanied by a study guide, syllabus, bibliography, and examination.

~~(3) All credit units derived from continuing education activities in this section must be attached to the renewal form. Documentation must include a statement of the activity, its title, name of instructor, the instructor's credentials and length of course.~~

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

AUTH: 37-1-131, 37-1-319, 37-28-104, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, 37-28-104, 37-28-203, MCA

REASON: It is reasonably necessary to amend this rule to delete the requirement for licensees to submit proof of continuing education at renewal. The board audits licensees for documentation of meeting the requirement and this step is no longer necessary. Furthermore, elimination of this requirement will facilitate online renewal.

24.213.2121 WAIVER OF CONTINUING EDUCATION REQUIREMENT

(1) In the event of hardship such as a disabling illness or other personal emergency which substantially interferes with a licensee's ability to meet the minimum requirement of ~~12 credit~~ 24 continuing education units prior to the deadline, the board may approve a waiver of the continuing education requirement. There must be a written request submitted to the board by before the renewal next continuing education reporting date set by ARM 24.401.413. Such request for approval for a waiver shall be in writing and shall set forth the reasons why the licensee was unable to earn the minimum number of credit units required prior to the deadline.

AUTH: 37-1-131, 37-1-319, 37-28-104, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, 37-28-104, MCA

REASON: The board determined it is reasonably necessary to amend this rule to align language with the requirement of biennial continuing education reporting and to correct from 12 to 24 the minimum number of continuing education units required.

The board has always required licensees obtain 24 credits over a two-year period and is amending the rule accordingly.

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

24.213.405 TEMPORARY PERMIT found at ARM page 24-24524.

AUTH: 37-28-104, MCA

IMP: 37-1-305, 37-28-206, MCA

REASON: The board determined it reasonably necessary to repeal the rule for temporary permits. Graduates from accredited respiratory care programs take the National Board for Respiratory Care (NBRC) national exam as part of their graduation requirement; therefore, the need for the board to issue a temporary permit in order to give graduates an opportunity to schedule, take, and await exam results is not necessary. Additionally the exam is computerized and examinees know when they leave the test site if they passed or failed the exam.

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 Respiratory Care Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdrpc@mt.gov, and must be received no later than 5:00 p.m., June 13, 2007.

8. 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.respcare.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.

9. The board and department maintain a list of interested persons who wish to receive notices of rulemaking actions proposed by this board and the department. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Respiratory Care Practitioners or department administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Respiratory Care Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to

dlibsdrpc@mt.gov, or made by completing a request form at any rules hearing held by the agency.

10. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified on April 16, 2007, by regular mail. For previous rule projects involving the same bill, the primary sponsor was given appropriate notice.

11. Anne O'Leary, attorney, has been designated to preside over and conduct this hearing.

BOARD OF RESPIRATORY CARE
PRACTITIONERS
EILEEN CARNEY, BOARD CHAIRPERSON

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

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

DEPARTMENT OF LABOR AND INDUSTRY

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

Certified to the Secretary of State April 30, 2007