

BEFORE THE BOARD OF SANITARIANS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 24.216.402 fee schedule,)	PROPOSED AMENDMENT,
24.216.501 applications, 24.216.502)	AMENDMENT AND TRANSFER,
minimum licensure standards,)	AND ADOPTION
24.216.503 examination, 24.216.2102)	
continuing education, amendment)	
and transfer of 24.216.2103)	
sanitarian-in-training, and the)	
adoption of NEW RULE I inactive)	
status licensure)	

TO: All Concerned Persons

1. On April 14, 2011, at 10:00 a.m., a public hearing will be held in room B-07, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment, amendment and transfer, 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 Sanitarians (board) no later than 5:00 p.m., on April 8, 2011, to advise us of the nature of the accommodation that you need. Please contact Susan Wevley, Board of Sanitarians, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2348; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdsan@mt.gov.

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

24.216.402 FEE SCHEDULE
 (1) through (4) remain the same.
(5) Inactive renewal 90
 (5) remains the same, but is renumbered (6).
(7) Sanitarian-in-training (NEHA registered) application fee 100
 (6) through (9) remain the same, but are renumbered (8) through (11).

AUTH: 37-1-134, 37-40-203, MCA
IMP: 37-1-134, 37-1-141, 37-40-301, 37-40-302, MCA

REASON: The board is proposing New Rule I to establish inactive licensure status for sanitarians. It is reasonably necessary to set a reduced fee for inactive license renewal, as board staff will not monitor any continuing education requirements for

them. The board estimates that 20 licensees will be affected by the new fee, and the board's annual revenue will be reduced by \$1,800.

The board is adding (7) to set a reduced sanitarian-in-training application fee for National Environmental Health Association (NEHA) registered applicants. Following amendment of ARM 24.216.502, the board concluded a lesser fee is appropriate since NEHA-registered applicants will only provide proof of a general microbiology class, while other applicants must submit a supervision plan. The board estimates that approximately two individuals will be affected by this new fee, with a reduction in overall annual revenue of \$200.

24.216.501 APPLICATIONS (1) An application for original license, renewal, examination, or reinstatement must be made on a form provided by the board and completed and signed by the applicant, ~~with the signature acknowledged before a notary public.~~

(2) remains the same.

~~(3) The board shall require the applicant to submit a recent, passport-type photograph of the applicant.~~

(4) ~~(3)~~ The board shall review ~~fully-completed~~ complete applications for compliance with board law and rules. The board may request additional information or clarification of information provided in the application as it deems reasonably necessary. Incomplete applications may be returned to the applicant with a statement regarding incomplete portions.

~~(5) (4)~~ The applicant shall correct any deficiencies and ~~resubmit the application~~ as requested. Failure to ~~resubmit the application~~ correct any deficiencies within 60 days shall be treated as a voluntary withdrawal of the application. After voluntary withdrawal, an applicant will be required to submit an entirely new application to begin the process again.

~~(6) The board shall notify the applicant in writing of the results of the evaluation of the application and schedule the applicant to sit for the examination within 30 days of the approval date.~~

~~(7) (5)~~ All requests for reasonable accommodations under the Americans with Disabilities Act of 1990, as 42 USC section 12101, et seq., with regard to a board-administered licensing examination, must be made on forms provided by the board and submitted with the application prior to any application deadline set by the board.

AUTH: 37-40-203, MCA

IMP: 37-40-301, 37-40-302, MCA

REASON: The board determined it is reasonably necessary to amend (1) and no longer require notary acknowledgment of an applicant's signature, as the applicant's identity is verified through other methods. The board is also eliminating the unnecessary requirement for a passport photograph in (3) to reduce nonelectronic storage costs and because identity is already verified. The board concluded that having duplicate applications is unnecessarily redundant and increases storage costs, and is amending (5) so applicants will not have to resubmit a full application when correcting deficiencies. To align board processes with those of other

department boards, the board is deleting (6). This amendment will facilitate electronic notification and acknowledges that some circumstances prevent exam scheduling within 30 days.

24.216.502 MINIMUM STANDARDS FOR LICENSURE SANITARIANS AND SANITARIANS-IN-TRAINING (1) The board may accept graduation from an accredited college or university with a bachelor's degree, and including a minimum of 45 quarter or 30 semester hours in the physical and biological sciences, including courses in chemistry, microbiology, and biology, and at least one general microbiology course as an equivalent qualification of a bachelor's degree in environmental health as required by 37-40-302, MCA. "General microbiology course" means an accredited course that focuses on the basic concepts of microbiology and the activities of bacteria, viruses, and other microorganisms, and their impact on humans. Courses that focus primarily on cellular biochemistry, cellular genetics, and intracellular functions are not general microbiology courses for the purpose of this rule.

~~(2) A holder of current National Environmental Health Association (NEHA) registration is qualified to be registered as a sanitarian in the state of Montana.~~

(2) A person meeting the minimum standards for licensure, with the exception of approved microbiology credits, may be approved as a sanitarian-in-training, but must satisfactorily complete the microbiology course during the one-year sanitarian-in-training permit period provided for in 37-40-101(6), MCA.

(3) A holder of a current National Environmental Health Association (NEHA) registration, who also has not completed a general microbiology course, is qualified to be a sanitarian-in-training. A holder of a current NEHA registration, who has taken the required general microbiology course, is qualified to be registered as a sanitarian in the state of Montana.

AUTH: 37-1-131, 37-40-203, MCA

IMP: 37-40-302, MCA

REASON: The board determined it is reasonably necessary to amend (1) to further specify the microbiology course required for equivalency to a bachelor's degree in environmental health under 37-40-302, MCA. Although microbiology is currently required for equivalency, the board is clarifying the course content now to address applicant confusion and ensure adequate education for alternate degree applicants.

The board is adding new (2) to allow applicants without the required general microbiology course to complete a course during the sanitarians-in-training permit period, and clarify licensure requirements for NEHA-registered applicants in new (3). Noting that most applicants are missing the general microbiology course, the board concluded that sanitarians-in-training may complete the microbiology course when they are supervised by registered sanitarians during their permit period. Having concluded that microbiology is required for environmental health degree equivalency, and noting that NEHA registration no longer requires a general microbiology class, the board is specifying in (3) that NEHA certificate holders must also complete a general microbiology course. Further, NEHA certificate holders

without the microbiology course qualify as sanitarians-in-training and may complete the course during the supervised permit period.

24.216.503 EXAMINATION (1) Upon approval of the application set forth in ARM 24.216.501 ~~or and 24.216.2103~~ 24.216.506, the applicant shall submit an examination fee and make an appointment with the board office to sit for the written examination within 30 days of the application approval, or once the applicant receives an admissions letter from the board office, the applicant shall submit the examination fee and schedule a time to sit for the written examination with the vendor testing service within 30 days of the application approval. Examination candidates must present photo identification prior to being admitted to the examination.

(2) through (4) remain the same.

(5) If, after one year of receipt of an application, an applicant has not passed the examination, a new application and application fee will be required to sit for the examination.

(6) remains the same.

AUTH: 37-1-131, 37-40-203, MCA

IMP: 37-1-131, 37-40-302, MCA

REASON: The board is amending (1) to reflect the current procedure in which some examination candidates elect to take the examination from an approved vendor, rather than directly from the board. The board is also updating this rule to reflect a transferred rule elsewhere in this notice.

24.216.2102 CONTINUING EDUCATION (1) Continuing education is that education obtained after registration of a sanitarian, which is in addition to the educational requirements set by statute for licensure. Continuing education must be related to the practice of the profession of a sanitarian.

(2) A licensee must affirm on the licensee's license renewal form that the licensee has obtained a minimum of 15 clock hours (50 to 60 minutes per hour) or 1.5 continuing education units with the licensee's renewal form each odd-numbered year.

(3) and (4) remain the same.

(5) Credit for any continuing education courses, workshops, seminars, educational conferences, and other programs is subject to approval by the board.

(6) remains the same.

(a) Workshops, seminars, and educational conferences sponsored by the National Environmental Health Association, the Montana Environmental Health Association, the Montana Department of Environmental Quality, and the Montana Department of Public Health and Human Services; and

(b) remains the same.

(7) Continuing education may be obtained by correspondence course work through the National Environmental Health Association, Centers for Disease Control, Food and Drug Administration, and other organizations, subject to approval by the board.

(8) Any continuing education which has been obtained in another state that meets the continuing education requirements of that state may be approved for credit by the board.

~~(9) The board may approve a waiver of the continuing education requirement of a registered sanitarian who has retired from active practice of the profession and submits a written request to the board before the renewal date.~~

AUTH: 37-1-319, 37-40-203, MCA

IMP: 37-1-306, 37-40-203, MCA

REASON: The board is amending (6) to reflect the board's decision that Montana Department of Environmental Quality workshops, seminars, and conferences are important to public safety, and therefore do not need special board approval. This amendment will also simplify the continuing education (CE) approval process. The board is deleting the provision for board waiver of CE for retired sanitarians in (9), as there is no retired license status. Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

4. The rule as proposed to be amended and transferred provides as follows, stricken matter interlined, new matter underlined:

24.216.2103 (24.216.506) SANITARIAN-IN-TRAINING (1) On a form prescribed by the board, an applicant shall apply for and the board may issue a sanitarian-in-training ~~exemption~~ permit to an applicant who meets the minimum educational requirements for a registered sanitarian under 37-40-301 and 37-40-302, MCA, and ARM 24.216.502. A person who has not completed an approved general microbiology course, but who otherwise meets the minimum standards for licensure, may be approved as a sanitarian-in-training.

(2) through (2)(a)(iii) remain the same.

(b) A sanitarian-in-training who satisfies the requirements of ARM

24.216.502(3):

(i) shall inform the board regarding his or her participation in a general microbiology course; and

(ii) is not required to complete a separate plan of supervision if the sanitarian-in-training submits the information required in (2)(b)(i).

(3) "Supervision," for purposes of this rule, means the availability of a licensed sanitarian for purposes of immediate communication and consultation on a weekly and as-needed basis as identified in the approved plan of supervision.

(4) A sanitarian-in-training ~~exemption~~ permit is valid for a period of one year. ~~While practicing under a valid sanitarian-in-training exemption, the sanitarian-in-training is eligible to sit for the examination.~~ A sanitarian-in-training who meets all the minimum standards for licensure is eligible to take the examination. There is no limit to the number of times a sanitarian-in-training may take the examination during the one-year exemption period.

AUTH: 37-1-131, ~~37-1-319~~, 37-40-203, MCA

IMP: 37-1-131, ~~37-1-305~~, 37-40-101, 37-40-203, ~~37-40-301~~, ~~37-40-302~~,
MCA

REASON: The board is amending this rule to align with amendments to ARM 24.216.502 and address sanitarian-in-training licensure for applicants with current NEHA registration, but without a general microbiology course. These applicants will be required to provide proof of participation in a general microbiology course, but will not need a plan of supervision. The board is amending (4) to clarify that sanitarians-in-training must meet all minimum licensure standards to be eligible to take the exam to answer questions and diminish confusion among applicants.

The board is replacing "exemption" with "permit" throughout the rule to align with statutory terminology. The board is transferring the rule to properly place the rule in subchapter five with the other licensing rules. Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

5. The proposed new rule provides as follows:

NEW RULE I INACTIVE STATUS AND CONVERSION FROM INACTIVE TO ACTIVE STATUS

(1) A licensee may place the license on inactive status by either indicating on the renewal form or by informing the board office, in writing, that an inactive status license is desired. It is the sole responsibility of the inactive licensee to keep the board informed as to any change of address during the period of time the license remains on inactive status. Inactive licensees must pay the renewal fee annually to maintain license status.

(2) A licensee may not practice as a sanitarian in the state of Montana while the license is on inactive status.

(3) To convert an inactive status license to active status, an applicant shall complete an application and must:

(a) signify to the board, in writing, that upon issuance of the active license, the applicant intends to be an active practitioner in the state of Montana; and

(b) present satisfactory evidence that the applicant has attended 15 hours of continuing education within the last two years prior to reactivation, which comply with the continuing education rules of the board.

AUTH: 37-1-319, 37-40-203, MCA

IMP: 37-1-319, MCA

REASON: The board determined it is reasonably necessary to establish an inactive licensure status for licensees not actively working as sanitarians or those working outside Montana. The board notes that a number of licensees would like to retain licensure, but are currently considering retirement or not actively working in the state. To convert back to active status, licensees must notify the board in writing and prove 15 hours of continuing education within the last two years, which the board concluded will ensure adequate public protection.

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 Sanitarians, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsdsan@mt.gov, and must be received no later than 5:00 p.m., April 22, 2011.

7. 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.sanitarian.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.

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 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 Sanitarians, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2309; e-mailed to dlibsdsan@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, do not apply.

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

BOARD OF SANITARIANS
JIM ZABROCKI, RS, CHAIRPERSON

/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 March 14, 2011