

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.216.402 fee schedule)

TO: All Concerned Persons

1. On March 12, 2015, the Board of Sanitarians (board) published MAR Notice No. 24-216-22 regarding the public hearing on the proposed amendment of the above-stated rule, at page 262 of the 2015 Montana Administrative Register, Issue No. 5.

2. On April 3, 2015, a public hearing was held on the proposed amendment of the above-stated rule in Helena. Several comments were received by the April 10, 2015, deadline.

3. The board has thoroughly considered the comments. A summary of the comments and the board responses are as follows:

ARM 24.216.402 FEE SCHEDULE:

COMMENT 1: Some commenters suggested that the board should balance its budget by enacting cost saving measures.

RESPONSE 1: The board has enacted cost saving measures by minimizing expenses, including holding meetings by teleconference when feasible. The board cannot reduce certain fixed costs. The Economic Affairs Interim Committee (EAIC) will study fees for licensing boards in the interim, and interested parties are urged to communicate during that process.

COMMENT 2: A number of commenters noted the fees for sanitarians and sanitarians-in-training are higher than fees for other professionals who make comparable or higher wages.

RESPONSE 2: The board is required to set fees commensurate with board costs and cannot consider licensee salaries or fees paid by other professionals.

COMMENT 3: Some persons commented that the fees charged for licenses exceed the value of services received by licensees.

RESPONSE 3: The board is directly charged for and pays for the services it receives. However, the board is unable to change this process.

COMMENT 4: Some commenters indicated communication between the board and professionals is poor.

RESPONSE 4: The board understands the commenters' concerns and invites all interested persons and licensees to attend its meetings and access minutes and other information pertaining to board activities.

COMMENT 5: A commenter asserted that several calls to the board office concerning the rule proposal were not returned.

RESPONSE 5: While the comment is beyond the scope of this rule proposal, as board office procedures are not addressed in this notice, the board apologizes for any oversight that may have inadvertently occurred.

COMMENT 6: Several persons asserted that the board does not promptly review and approve applications for licenses and continuing education approval.

RESPONSE 6: The board balances the need to provide services to the public and profession in a timely way, with the need to be efficient and save money, by meeting as infrequently as necessary to conduct the business of the board. This comment is beyond the scope of this rule proposal, in that board application procedures are not addressed in the notice.

COMMENT 7: Some commenters observed that when sanitarian-in-training applications are not approved in a timely way, their employers suffer increased labor costs due to the need for a licensee to accompany the applicant until the application is approved.

RESPONSE 7: This comment is beyond the authority of the board. The board meets less often in an attempt to save money, and tries to group applications and issues in order to increase efficiency.

COMMENT 8: A number of commenters noted many public health agencies do not pay for their employees' license application and renewal fees, and the fees are not affordable for the individual employees who are required to pay them.

RESPONSE 8: Statutorily, the board must set fees commensurate with costs and cannot consider the way other agencies are funded or the source of fees paid by licensees and applicants.

COMMENT 9: Some commenters stated that increasing fees for inactive licensees will result in fewer individuals maintaining inactive licenses and lower revenue for the board.

RESPONSE 9: The board did consider this, but ultimately determined that the proposed fee accurately reflects the cost of processing and maintaining inactive licenses.

COMMENT 10: Several commenters suggested that higher fees will hinder workforce maintenance and development, because qualified persons will seek licensure in other professions, resulting in a smaller and less qualified pool of individuals interested in becoming registered sanitarians.

RESPONSE 10: The board sets fees commensurate with associated board costs as necessary to carry out its duty to protect the public.

COMMENT 11: Some commenters stated that requiring a microbiology course as a prerequisite for licensure increases the expense of becoming licensed as a sanitarian.

RESPONSE 11: This comment is beyond the scope of this rule proposal. The board contends that microbiology is an important aspect of what a registered sanitarian does and is an important part of the curriculum for an environmental health degree.

COMMENT 12: Some commenters observed that Montana licensure fees exceed fees charged by other similar states.

RESPONSE 12: The board must set fees commensurate with costs and cannot consider fees charged by other states when setting its license fees.

COMMENT 13: Several commenters noted that if the board allowed the department to process more license applications and streamlined the approval process for continuing education, the board could meet less often and would save money through these efficiencies.

RESPONSE 13: The continuing education review process does not drive a significant part of expense. The board will continue to review ways to allow the department to process routine applications and continuing education applications. This rulemaking does not provide for or adjust fees related to continuing education.

COMMENT 14: Some commenters stated that the board should use technology to reduce travel costs by having fewer in-person meetings and consider using e-mail to review applications.

RESPONSE 14: Current law does not permit this type of technology and communication, because it interferes with the public's right to participate and know. It also violates statute on necessity of a quorum to conduct official business.

COMMENT 15: Commenters contended the current licensing system is unnecessarily redundant, because it duplicates the work performed by the hiring agency in establishing the applicant's qualifications to act as a registered sanitarian.

RESPONSE 15: This comment is beyond the scope of this rule proposal. Current statute requires sanitarians to be licensed by the board.

COMMENT 16: One commenter requested a breakdown of the board's expenses and an explanation of how the fee increase would address those costs.

RESPONSE 16: Information on the board's budget is discussed at open board meetings and is available to the public upon request.

COMMENT 17: Some commenters alleged that the board did not provide adequate notice regarding the proposed rule amendment, because the rule proposal was not sent to all licensees.

RESPONSE 17: The board sent timely notification to all persons on the interested parties list and posted rule in a timely manner on its web site as required by the Montana Administrative Procedure Act.

COMMENT 18: Some commenters stated the board should set fees on an equitable basis, rather than an equal basis, pursuant to 37-1-101(6), MCA. These commenters contended that, to set fees on an equitable basis, consideration should be given to the earning potential of one profession versus another and the size of the pool of applicants and licensees.

RESPONSE 18: Assessing costs on an equitable basis falls under the broader authority of the department and the board has no authority over the department's interpretation of "equitable." Further, the named statute does not apply to a board setting licensure and renewal fees.

COMMENT 19: Some commenters stated that the department had reason to anticipate the board's budget problems and did not satisfy its duty under 37-1-101(9)(c), MCA, to make recommendations to the appropriate legislative interim committee concerning the board's financial situation.

RESPONSE 19: The department did present a report to the interim committee. The department has been carefully monitoring and reporting the board's budget and financial status, but still concluded that a fee increase is necessary.

COMMENT 20: One commenter observed that increasing fees to achieve a savings equivalent to one year of operating expenses is not reasonable or necessary as the board had stated in the proposal notice.

RESPONSE 20: Common practice for fiscal stability recommends a cash reserve and state law allows reserves exceeding what is recommended. Reserves allow boards to cover unanticipated costs without taking more costly measures to make up deficits. It is common practice and sound fiscal planning allowed by law.

COMMENT 21: A few commenters asserted that delay in approving sanitarian-in-training applications results in lost time and resources for public health

agencies, diminishes employees' self-confidence and enthusiasm, and negatively impacts workplace morale and employee turnover.

RESPONSE 21: This comment is beyond the scope of this rule proposal. The board tries to schedule meetings to reduce costs and balance this interest against the need to provide services to applicants, the public, and the profession.

COMMENT 22: A commenter stated that the proposed fee increase is unreasonably high and an unfair burden for sanitarians.

RESPONSE 22: The board operates in a manner of fees commensurate with costs.

COMMENT 23: A commenter noted that sanitarian licensing fees are already high and will become disproportionately high if the fee increase is adopted.

RESPONSE 23: The board operates in a manner of fees commensurate with costs.

COMMENT 24: Some commenters suggested the board seek other solutions to cut costs and reduce fees, including pursuing a merger with another board or legislative changes to control licensing costs.

RESPONSE 24: The board previously considered this option, surveyed licensees, and found they were opposed to such action. This comment is beyond the scope of this rule proposal, but interested parties are encouraged to follow Senate Bill 390 and provide comments to the EAIC during the interim.

CONTINUING EDUCATION:

COMMENT 25: Numerous commenters stated that when sanitarian continuing education (CE) courses are not approved quickly, and those approved are limited, public agencies that pay for sanitarians to attend training are forced to waste tax dollars on education that is repetitive or not approved.

RESPONSE 25: This comment is beyond the scope of this rule proposal. If a course is germane to the profession, it is generally approved. The board automatically approves CE courses provided by the Department of Public Health and Human Services (DPHHS) and the Department of Environmental Quality (DEQ), as well as other courses offered through other state and federal agencies as provided in ARM 24.216.2102.

COMMENT 26: Several commenters opined that the board's CE course approval system is difficult to understand, results in fewer courses available to expand the capabilities and professionalism of sanitarians, and has a negative effect on public health.

RESPONSE 26: This comment is beyond the scope of this rule proposal; however, the board appreciates the concerns. The board invites all interested parties to consider sending proposals for changing CE to the board for further consideration.

COMMENT 27: Some commenters suggested that the board should give blanket approval for CE provided by other government agencies.

RESPONSE 27: While this comment is beyond the scope of this rule proposal, the board does automatically approve CE courses provided by DPHHS and DEQ, as well as other courses offered through other state and federal agencies as provided in ARM 24.216.2102.

NEHA RECIPROCITY:

COMMENT 28: Numerous commenters stated that the board should determine that a National Environmental Health Association (NEHA) registered environmental health specialist/registered sanitarian is equivalent to the requirements for becoming a registered sanitarian in Montana and allow reciprocity.

RESPONSE 28: This comment is beyond the scope of this rule proposal. The board has reviewed NEHA and its requirements are no longer equivalent to a Bachelor of Science degree in environmental health as required by 37-40-302, MCA.

COMMENT 29: Some commenters contended NEHA reciprocity would make it easier for Montana licensees to obtain licenses elsewhere, and simpler for NEHA-certified sanitarians from other states to obtain a license in Montana.

RESPONSE 29: This comment is beyond the scope of this rule proposal.

COMMENT 30: Several commenters indicated NEHA reciprocity would give the board access to more resources.

RESPONSE 30: This comment is beyond the scope of this rule proposal; however, the board does communicate with NEHA on a regular basis and draw on its resources when needed.

COMMENT 31: Some commenters asserted that NEHA reciprocity should be considered as an alternative to current licensing requirements if the board is unable to reduce costs under the current licensing regime.

RESPONSE 31: This comment is beyond the scope of this rule proposal. Under current law, the requirements of 37-40-302, MCA, exceed NEHA's requirements.

COMMENT 32: Some commenters noted that, because Montana's requirements for registered sanitarians do not match NEHA requirements, those who

wish to have the option of becoming licensed in another state are required to pay the cost of both maintaining Montana registration and NEHA certification.

RESPONSE 32: This comment is beyond the scope of this rule proposal. A Montana license is required to practice as a sanitarian or sanitarian-in-training in Montana. NEHA certification is not required.

COMMENT 33: Multiple commenters observed that NEHA maintains a high standard of professionalism, and several other states having excellent public health programs recognize and accept NEHA certification as satisfying the requirements for licensure.

RESPONSE 33: This comment is beyond the scope of this rule proposal. A license is required and the requirements are set in statute at 37-40-302, MCA. The board cannot set standards based on a comparison of laws in other jurisdictions or the requirements of NEHA.

4. The board has amended ARM 24.216.402 exactly as proposed.

BOARD OF SANITARIANS
JIM ZABROCKI, RS, 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 May 4, 2015