

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

In the matter of the amendment of)
ARM 24.216.402 fee schedule,)
24.216.503 examination, 24.216.506)
sanitarian-in-training, 24.216.2102)
continuing education, 24.216.2104)
inactive status and conversion from)
inactive to active status, and)
24.216.2301 unprofessional conduct,)
and the repeal of 24.216.401 board)
meetings, 24.216.403 seal of the)
board, 24.216.501 applications, and)
24.216.2101 renewal)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
REPEAL

TO: All Concerned Persons

1. On June 6, 2018, at 9:00 a.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 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 Sanitarians (board) no later than 5:00 p.m., on May 30, 2018, to advise us of the nature of the accommodation that you need. Please contact Steve Gallus, Board of Sanitarians, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2370; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdsan@mt.gov (board's e-mail).

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

24.216.402 FEE SCHEDULE

(1) remains the same.

~~(2) Examination~~ _____ 350

~~(3) Reexamination~~ _____ 350

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

~~(9) The board may approve an outside vendor to administer exams; in those cases, there is a vendor fee set by the exam vendor. Current fee amounts for the sanitarian examination are available at the board office.~~

~~(10) Examination and reexamination fees in (2) and (3) apply only to those exams given in paper format at the board office.~~

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 determined it is reasonably necessary to amend this rule and repeal the examination and reexamination fees. The board is amending ARM 24.216.503 to specify a national exam and no longer collects fees for examination or reexamination. Because the board has not collected any exam fees for several years, these changes will have no discernable fiscal impact on applicants.

The board is repealing (9) and (10) to align with proposed amendments to ARM 24.216.503. The board will no longer contract with an exam vendor, and no longer administers exams in paper format at the board office.

24.216.503 EXAMINATION (1) Except as provided in ~~(6)~~ (3), all applicants must pass ~~an~~ the National Environmental Health Association (NEHA) examination approved by the board prior to licensure. ~~Upon approval of the application set forth in ARM 24.216.501 and 24.216.506, unless the applicant has already passed the examination as provided in (7), the applicant shall pay the examination fee and make arrangements to take the examination approved by the board.~~ Examination candidates are responsible for complying with any requirements of the testing agency.

~~(2) An overall score of 68 percent will be required to pass the examination.~~

~~(3) The board shall inform candidates of the result of their examinations in writing within ten days of receipt of the results from the testing agency. No score will be released over the telephone or via facsimile. The board staff shall discuss score-related matters with the candidate or the candidate's legal representative only.~~

~~(4) (2) Applicants who fail the examination and wish to reschedule to take the examination must pay the reexamination fee, and schedule and sit for the examination. Applicants who fail the examination twice shall wait 60 days before taking the examination again must meet the standards for reexamination set by NEHA.~~

~~(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 but is renumbered (3).

~~(7) An applicant who provides proof the applicant has already achieved the score provided in (2) on the board-approved examination is not required to retake the examination.~~

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

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

REASON: Following a rule review and board process analysis, the board is amending this rule to specify the approved licensure examination, which the board has accepted for many years. Because the board does not create or administer the exam, and has no control over the passing rate, it is reasonably necessary to amend this rule to remove these provisions, which are established and directed by the examination provider.

24.216.506 SANITARIAN-IN-TRAINING (1) remains the same.

~~(2) A sanitarian-in-training must work under the supervision of a licensed sanitarian. The supervising sanitarian must submit a plan for supervision for approval by the board. The supervising sanitarian must file quarterly reports with the board regarding the status and progress of the sanitarian-in-training. As part of the application, an applicant for sanitarian-in-training shall include a plan of supervision, signed by the supervising sanitarian.~~

(a) The plan of supervision shall include:

~~(i) an estimate of time of supervision provided~~ the estimated start and end date of supervision;

~~(ii) number of hours of supervision and/or training to be provided per month;~~
and

~~(iii) method of maintaining contact and supervision, including an alternate supervisor in cases of unavailability of designated supervisor; and~~

~~(iv) an affirmation that the supervision and/or training must be conducted pursuant to practicing the profession of a sanitarian, as defined in 37-40-101(3), MCA.~~

~~(b) A sanitarian-in-training who satisfies the requirements of ARM 24.216.502(3) shall inform the board regarding his or her participation in a general microbiology course.~~

~~(b) A record of supervision must be maintained by the sanitarian-in-training and submitted to the board at the end of the supervision relationship. The record of supervision must include:~~

~~(i) dates of supervision and/or training;~~

~~(ii) content summary, reflecting the training and supervision the sanitarian-in-training received regarding practicing the profession of a sanitarian as defined in 37-40-101(3), MCA; and~~

~~(iii) attestation of the record by the supervising sanitarian. Falsification or misrepresentation of the record of supervision shall be considered unprofessional conduct and may result in discipline of the supervisor's license.~~

(3) remains the same.

(4) A sanitarian-in-training permit is valid for a period of one year. A sanitarian-in-training who meets all the minimum standards for licensure is eligible to take the examination in Montana. ~~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, 37-40-203, MCA

IMP: 37-1-131, 37-40-101, 37-40-203, MCA

REASON: The board is amending and reorganizing this rule to address numerous questions from sanitarians-in-training and supervising sanitarians about reporting requirements and the board's expectations for supervision plans.

Following discussion, the board is amending (2) to no longer require that supervisors submit quarterly status reports. The board decided that it is more relevant to require sanitarians-in-training to maintain supervision records and submit

them at the end of the supervision period. The board is specifying the required contents of the supervision record in (2)(b).

Following amendment, sanitarians-in-training will no longer report their participation in the microbiology course. Because the course is a requirement for registered sanitarian licensure and is included as part of the application, the board is striking this unnecessary requirement from this rule.

The board is amending (4) to align with the proposed changes to ARM 24.216.503 to use the National Environmental Health Association (NEHA) examination standards and procedures. After amendment, all examination applicants will be subject to the same exam standards and processes, including sanitarians-in-training.

24.216.2102 CONTINUING EDUCATION (1) through (5) remain the same.

(6) The following continuing education programs are approved by the board for continuing education credit:

(a) Workshops, seminars, and educational conferences, and course work related to the practice of a registered sanitarian sponsored by the National Environmental Health Association, the Montana Environmental Health Association, ~~the~~ Montana Department of Environmental Quality, Centers for Disease Control, Food and Drug Administration, 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) remains the same but is renumbered (7).

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

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

REASON: The board is amending this continuing education rule to address questions and confusion as to whether the board accepts all programs sponsored by the listed agencies, or just those relating to sanitarian practice. Following discussion, the board is updating and reorganizing the rule to display current approved providers and expand the acceptable methods of CE delivery.

24.216.2104 INACTIVE STATUS AND CONVERSION FROM INACTIVE TO ACTIVE STATUS (1) remains the same.

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

(3) remains the same.

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

IMP: 37-1-319, 37-40-301, 37-40-302, MCA

REASON: Following a board member's inquiry, the board determined it is reasonably necessary to amend this rule and clarify that licensees may not use the initials R.S. while on inactive status and not actively practicing. Licensees on inactive status may not practice, and 37-40-301 and 37-40-302, MCA, require an active license to represent oneself as a registered sanitarian.

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

24.216.2301 UNPROFESSIONAL CONDUCT (1) through (1)(c) remain the same.

(d) failure to properly supervise a sanitarian-in-training in accordance with the ~~board approved plan~~ ARM 24.216.506;

(e) remains the same.

~~(f) failure to display current sanitarian license in a conspicuous place.~~

(f) falsification or misrepresentation of the record of supervision by the supervising sanitarian.

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

IMP: 37-1-316, 37-1-319, 37-40-203, 37-40-307, MCA

REASON: The board determined it is reasonably necessary to amend this rule to update the actions considered by the board as unprofessional conduct. The board is amending the rule at (1)(d) and (f) to align with and implement the changes proposed to the supervision requirements in ARM 24.216.506.

The board is also amending this rule to remove the requirement to display a current license in a conspicuous place. Noting that many sanitarians perform most duties away from an office setting where a license is displayed, the board also concluded that the requirement to provide proof of licensure upon request in (1)(e) makes this requirement unnecessary.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule and delete reference to a repealed statute.

4. The rules proposed to be repealed are as follows:

24.216.401 BOARD MEETINGS

AUTH: 37-40-203, MCA

IMP: 37-40-201, MCA

REASON: The board is repealing this unnecessary rule as the department, in providing administrative services to the licensing boards, conducts all board meetings in an efficient, standardized manner.

24.216.403 SEAL OF THE BOARD

AUTH: 37-40-203, MCA

IMP: 37-40-203, MCA

REASON: The board is repealing this outdated and unnecessary rule, as the board no longer uses a seal in current board practices.

24.216.501 APPLICATIONS

AUTH: 37-40-203, MCA
IMP: 37-40-301, 37-40-302, MCA

REASON: The board is repealing this unnecessary rule because the department administers standardized application and licensure processes for all professional and occupational licensure boards.

24.216.2101 RENEWAL

AUTH: 37-1-141, 37-40-203, MCA
IMP: 37-1-141, MCA

REASON: The board is repealing this unnecessary rule because the department administers a standardized renewal process for all professional and occupational licensing boards, and this rule merely references the department rules on renewals.

5. 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) 841-2305, or e-mail to dlibsdsan@mt.gov, and must be received no later than 5:00 p.m., June 8, 2018.

6. An electronic copy of this notice of public hearing is available at www.sanitarian.mt.gov (department and board's web site). Although the department strives to keep its web sites accessible at all times, concerned persons should be aware that web sites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a web site do not excuse late submission of comments.

7. 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 Sanitarians, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdsan@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

9. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.216.402, 24.216.503, 24.216.506, 24.216.2102, 24.216.2104, and 24.216.2301 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.216.401, 24.216.403, 24.216.501, and 24.216.2101 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Sanitarians, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2370; facsimile (406) 841-2305; or to dlibsdsan@mt.gov.

10. Steve Gallus, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF SANITARIANS
SUSAN FOSTER, R.S.
PRESIDING OFFICER

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

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State May 1, 2018.