

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 24.131.402, 24.131.405,)	PROPOSED AMENDMENT
24.131.410, and 24.131.501)	
pertaining to fees, training programs,)	
variances, and requirements for)	
construction blaster licensing)	

TO: All Concerned Persons

1. On February 11, 2021, at 10:00 a.m., a public hearing will be held via remote conferencing to consider the proposed amendment of the above-stated rules. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the coronavirus, there will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/92728672482>, Meeting ID: 927 2867 2482, Passcode: 051763; or
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656, Meeting ID: 927 2867 2482, Passcode: 051763.

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

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 department no later than 5:00 p.m., on February 4, 2021, to advise us of the nature of the accommodation that you need. Please contact Carrie Baker, Construction Blaster License Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2004; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or e-mail cbaker@mt.gov.

3. GENERAL REASON: Following a January 2020 internal transfer of the Construction Blaster License Program (program) from the Building Codes Program to the Professional Licensing Bureau, department staff performed an in-depth review of the program's statutes and administrative rules. The department determined it is reasonably necessary to amend several program rules at this time to align with and gain efficiencies from standardized department procedures, remove conflicts between statutes and the implemented rules, and streamline the rules for better organization and ease of use for the reader. Where a more specific reason for a proposed amendment exists, the department will identify those reasons immediately following that rule.

Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the department's rulemaking authority.

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

24.131.402 FEES (1) The following fees must be paid to the bureau and are nonrefundable:

(a) application fee	\$ 35 <u>75</u>
(b) examination fee	25
(c) license fee	40
(d) remains the same but is renumbered (b).	
(e) reexamination fee	35
(2) remains the same.	

AUTH: 37-1-134, 37-72-202, MCA

IMP: 37-1-134, 37-1-141, 37-72-202, MCA

REASON: During the statute and administrative rule review, staff noted that 37-72-301, MCA, the general qualifications statute, does not require an examination for construction blaster licensure. Further, the department does not have a licensure examination to provide. The department determined it is reasonably necessary to strike the examination and reexamination fees from this rule. Because the department has never administered nor charged for an exam, the elimination of the fees will not impact the program's annual revenue.

The department is also amending this rule to combine the separate application and license fees into a single application fee. The total cost for a license is not changing and this approach is consistent with the other department licensing programs and boards.

24.131.405 TRAINING PROGRAMS (1) Training programs in construction blasting must be recognized by the explosives and construction industry and approved by the bureau. The training program must offer comprehensive instruction in safe use of explosives, methods and purposes of their use, and safety procedures for storage. These training programs shall be at least 24 hours to obtain a ~~Class 1, Class 2, or Class 3~~ license, and ~~eight hours to obtain a Class 4~~ license, or be approved by the bureau based on content and quality of the course.

(2) The Construction Blasters Program maintains a list of approved training courses which can be obtained by contacting the Construction Blasters Program at 301 South Park, P.O. Box 200513, Helena, MT 59620-0513, or e-mail ~~dlibsdbla@mt.gov~~ dlibsdhelp@mt.gov.

(3) remains the same.

AUTH: 37-72-202, MCA

IMP: 37-72-202, 37-72-302, MCA

REASON: The construction blaster licensing statutes originally provided for several licensure classes. Several years ago, staff discovered that while the statutes had been changed to only a single construction blaster license type, the administrative rules had not been adjusted. While the department has issued only the single license for years, it is reasonably necessary to amend this rule to align with the statutes and licensure processes.

The department is amending (2) to correct the program's contact e-mail address.

24.131.410 VARIANCES (1) A variance request must be as follows:

~~(a) The request must be on an department-provided affidavit of completed by a licensed construction blaster who is an employee of the state of Montana or one of its political subdivisions and is requesting a variance for public work.~~

~~(b) The request must show that compliance with specific rules concerning the use of explosives would be impractical.~~

~~(c) The request must show the specific method to be utilized regarding the use of explosives and that this method will not constitute a danger to property or public safety.~~

(2) A variance will be granted or denied by letter in writing to the requestor for variance after a determination is made by the bureau based on (1) above. If the variance is approved, restrictions and time of variance must be stated if applicable; and if denied, reasons for denial must be stated. The letter must be signed by the bureau chief or his the bureau chief's designated representative.

~~(3) A variance request from a licensed construction blaster who is not an employee of the state of Montana or one of its political subdivisions requesting a variance for public work must be directed to the Occupational Safety and Health Administration for processing.~~

AUTH: 37-72-201, 37-72-202, MCA

IMP: 37-72-201, MCA

REASON: The implemented statute, 37-72-201, MCA, does not limit variances to only public works projects as requested by construction blasters employed by the state of Montana. It is reasonably necessary to amend this rule to align with the statutory provisions.

The department is striking (1)(b) and (c) as unnecessarily duplicating the statutory language of 37-72-201, MCA.

24.131.501 CONSTRUCTION BLASTER LICENSE REQUIREMENTS

(1) remains the same.

~~(2) The following construction blasters' licenses are issued:~~

~~(a) Class 1 — construction — blasting for all types of construction except demolition (see Class 3).~~

~~(b) Class 2 — construction — restricted blasting for construction with blast designs up to millisecond delay systems and single initiation source.~~

~~(c) Class 3 — demolition — blasting for reducing, destroying or weakening any residential, commercial or other building or structure.~~

~~(d) Class 4 utility blasting not exceeding ten pounds of explosives and generally limited to single hole, single shot applications.~~

~~(3) (2)~~ The bureau shall issue a construction blaster's license to each applicant who:

(a) and (b) remain the same.

(c) has successfully completed a training program approved by the bureau in accordance with ARM 24.131.405; and

~~(d) has two year's years' field experience in construction blasting; and~~

~~(e) achieves a grade of 80 percent or higher on an examination administered by the bureau based upon the adopted standards and regulations regarding the use of explosives.~~

~~(4) (3)~~ Construction blasters' licenses are not transferable and must be renewed on or before the date set by ARM 24.101.413. The provisions of ARM 24.101.408 and 24.101.414 apply.

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

AUTH: 37-1-141, ~~37-72-201~~, 37-72-202, MCA

IMP: ~~37-1-131~~, 37-1-141, 37-72-301, 37-72-302, 37-72-304, 37-72-305, MCA

REASON: See REASONS for ARM 24.131.402 and 24.131.405. The department is amending (3) to delete a reference to a repealed rule.

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 Construction Blaster License Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to cbaker@mt.gov, and must be received no later than 5:00 p.m., February 12, 2021.

6. An electronic copy of this notice of public hearing is available at <http://boards.bsd.dli.mt.gov/bla> (department and program'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 department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this program. 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 program 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 Construction Blaster License Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-

2305; e-mailed to cbaker@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 department has determined that the amendment of ARM 24.131.402, 24.131.405, 24.131.410, and 24.131.501 will not significantly and directly impact small businesses.

Documentation of the department's above-stated determination is available upon request to the Construction Blaster License Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2004; facsimile (406) 841-2305; or to cbaker@mt.gov.

10. Carrie Baker, Program Manager, has been designated to preside over and conduct this hearing.

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

/s/ BRENDA NORDLUND
Brenda Nordlund, Acting Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State December 30, 2020.