

# MONTANA ADMINISTRATIVE REGISTER

2022 ISSUE NO. 17  
SEPTEMBER 9, 2022  
PAGES 1742-1785



# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 17

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 438-6122.

Page Number

### TABLE OF CONTENTS

#### PROPOSAL NOTICE SECTION

#### RULE ADOPTION SECTION

##### LABOR AND INDUSTRY, Department of, Title 24

24-225-42 (Board of Veterinary Medicine) Notice of Amendment and Adoption - Licensure of Veterinary Technicians. 1742-1746

##### NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36-22-215 (Board of Oil and Gas Conservation and the Department) Notice of Amendment - Adoption of Forms - Reports From Transporters, Refiners, Purchasers, and Gasoline or Extraction Plants. 1747

##### PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-975 Notice of Adoption and Repeal - Campgrounds, Trailer Courts, Work Camps, and Youth Camps. 1748-1749

37-981 Notice of Adoption and Amendment - Public Sleeping Accommodations. 1750

PUBLIC HEALTH AND HUMAN SERVICES, Continued

37-1001 Notice of Repeal of a Temporary Emergency Rule - Changing the Identification of Sex on Birth Certificates.	1751
37-1002 Notice of Amendment - Changing the Identification of Sex on Birth Certificates.	1752-1762

REVENUE, Department of, Title 42

42-1056 Notice of Amendment – Adopting the Multistate Tax Commission's Model Statute for Reporting Adjustments to Federal Taxable Income and Federal Partnership Audit Adjustments.	1763
42-1057 Notice of Amendment – Extension of Deadlines for a Taxpayer to Appeal an Audit Determination or a Final Determination.	1764-1765
42-1058 Notice of Decision on Proposed Adoption and Amendment – Creation of Additional Canopy License Tiers for Marijuana Cultivators.	1766
42-1059 Notice of Decision on Proposed Adoption – Authorization of Marijuana Dispensary Customer Loyalty Programs.	1767

SECRETARY OF STATE, Office of, Title 44

44-2-259 Notice of Amendment – Clarification of Timing of Certain Activities of Election Administrators.	1768-1769
44-2-260 Notice of Amendment – Update of Provisions Related to Business Services Filings – Administrative Updates.	1770-1771
44-2-261 Notice of Repeal and Amendment – Records and Information Management Fees – Delegation Authority for Records Disposal of Public Records and Records Storage Systems and Requirements.	1772-1773

SPECIAL NOTICE AND TABLE SECTION

Function of Administrative Rule Review Committee.	1774-1775
How to Use ARM and MAR.	1776
Recent Rulemaking by Agency.	1777-1785

BEFORE THE BOARD OF VETERINARY MEDICINE  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT AND  
ARM 24.101.413, 24.225.301, ) ADOPTION  
24.225.401, 24.225.511, and )  
24.225.550 and the adoption of NEW )  
RULES I and II regarding licensure of )  
veterinary technicians )

TO: All Concerned Persons

1. On May 27, 2022, the Board of Veterinary Medicine (board) published MAR Notice No. 24-225-42 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 738 of the 2022 Montana Administrative Register, Issue No. 10.

2. On June 21, 2022, a public hearing was held on the proposed amendment and adoption of the above-stated rules via the videoconference and telephonic platform. Comments were received by the June 24, 2022, deadline.

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

COMMENT 1: Several commenters requested the board support legislation clarifying that animal shelters qualify for a licensure exemption under 37-18-104(4), MCA.

RESPONSE 1: While this comment exceeds the scope of this rulemaking, the board may consider the suggestion in the future.

COMMENT 2: Several commenters supported the rule changes and the board's work in implementing Senate Bill 106.

RESPONSE 2: The board appreciates all comments received during the rulemaking process.

COMMENT 3: Many commenters requested the board clarify the definition of "support personnel" in ARM 24.225.301 and asked how the rule changes impact animal shelter employees and volunteers.

RESPONSE 3: This comment exceeds the scope of the proposed rule changes. The definition refers to the employees of a veterinarian or a veterinary clinic. Animal shelters are not regulated by the board.

COMMENT 4: One commenter recommended using the defined abbreviation for licensed veterinary technician (LVT) in ARM 24.225.550(2)(d) rather than spelling out the term.

RESPONSE 4: The board agrees and is amending the rule accordingly.

COMMENT 5: One commenter suggested the board clarify ARM 24.225.550(1)(e), stating that a veterinarian client patient relationship (VCPR) may not always be established. The commenter stated that no licensee should abandon, neglect, or otherwise physically abuse any animal, regardless of whether a VCPR exists.

RESPONSE 5: The board agrees and is amending the rule accordingly.

COMMENT 6: A commenter suggested adding "specialty" to ARM 24.225.550(1)(g) for clarity.

RESPONSE 6: The board agrees and is amending the rule accordingly.

COMMENT 7: Multiple commenters opposed adding the failure to follow the National Association of State Public Health Veterinarians Compendium of Animal Rabies Prevention and Control (NASPHV) as unprofessional conduct in ARM 24.225.550(1)(k). The commenters stated that this compendium is composed of guidelines that conflict with best practices, are outside the veterinary medicine scope of practice, and would conflict with local ordinances in some Montana counties.

RESPONSE 7: The board agrees and is amending the rule accordingly.

COMMENT 8: One commenter suggested inserting "licensed" before "supervising" in ARM 24.225.550(3)(a)(i) and (ii) for consistency.

RESPONSE 8: The board agrees and is amending the rule accordingly.

COMMENT 9: One commenter suggested that (3)(a)(v) is redundant, as the specified procedures mentioned are either a failure of the licensed DVM to supervise the LVT, or the LVT practicing beyond the scope of practice and are covered elsewhere in rule.

RESPONSE 9: The board considered the comment, but opted to proceed with the proposed language to ensure both veterinarians and LVTs understand the importance of obtaining client consent prior to beginning treatment, except in cases of emergency.

COMMENT 10: One commenter suggested clearer language regarding the number of times an LVT may attempt the jurisprudence exam.

RESPONSE 10: The board agrees and is amending NEW RULE I(3)(b) accordingly. This amendment leaves the rule substantively as proposed, but is simpler to understand for licensees and the public.

COMMENT 11: One commenter requested clarification of why formal education, as opposed to on-the-job training, is not required of all LVT applicants.

RESPONSE 11: Senate Bill 106 requires that the board provide for licensure of applicants who have gained practical experience. Further, an experience pathway to licensure was important to stakeholders to allow individuals currently working as support personnel to become licensed.

COMMENT 12: One commenter stated that the tasks in NEW RULE II(1)(a) are outside the scope of LVT practice.

RESPONSE 12: The board carefully considered the LVT scope of practice before proposing the rule and is adopting NEW RULE II(1)(a) exactly as proposed.

COMMENT 13: A commenter suggested NEW RULE II(2)(j) should be included as a part of (2)(d), which specifies dental procedures which may be performed, because suturing a gingival incision is a dental procedure.

RESPONSE 13: The board agrees and is amending the rule accordingly.

COMMENT 14: One commenter suggested correcting a typographical error in NEW RULE II(2)(e) by replacing the word "for" with "or" before "blood banking purposes."

RESPONSE 14: The board agrees and is amending the rule accordingly.

COMMENT 15: One commenter supported LVTs being able to administer rabies vaccines, as the training LVTs receive in administering vaccines is no different from a veterinarian.

RESPONSE 15: The board appreciates all comments received during the rulemaking process, and notes the supervising veterinarian remains responsible for determining an LVT's competency to perform allowable procedures.

4. The department has amended ARM 24.101.413 exactly as proposed.

5. The board has amended ARM 24.225.301, 24.225.401, and 24.225.511 exactly as proposed.

6. The board has amended ARM 24.225.550 with the following changes, stricken matter interlined, new matter underlined:

24.225.550 UNPROFESSIONAL CONDUCT (1) through (1)(d) remain as proposed.

(e) abandoning, neglecting, or otherwise physically abusing a patient once the licensed veterinarian has ~~established a valid VCPR and~~ undertaken treatment of the patient;

(f) remains as proposed.

(g) identifying oneself as a member of an American Veterinary Medical Association (AVMA)-recognized specialty organization or any other specialty veterinary association if such certification has not been awarded and maintained, or using terms implying a specialty in a false and misleading manner;

(h) and (i) remain as proposed.

(j) failure to refer if a client requests a referral; .

~~(k) failure to follow the National Association of State Public Health Veterinarians Compendium of Animal Rabies Prevention and Control (NASPHV). The board adopts and incorporates by reference, Vol 248, No. 5, effective March 1, 2016. A copy may be obtained through the publisher online- <http://www.nasphv.org/documents/Compendia/Rabies.html>; 2016 Compendium.~~

(2) through (2)(c) remain as proposed.

(d) fail to adequately supervise licensed veterinary technicians LVTs and support personnel.

(3) and (3)(a) remain as proposed.

(i) failing to adequately follow direction of a licensed supervising veterinarian;

(ii) undertaking procedures or performing treatment that has not been authorized by the licensed supervising veterinarian;

(iii) through (c) remain as proposed.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-18-202, MCA

IMP: 37-1-131, 37-1-136, 37-1-316, 37-1-319, 37-18-309, MCA

7. The board has adopted NEW RULE I (24.225.601) and NEW RULE II (24.225.602) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (24.225.601) VETERINARY TECHNICIAN LICENSE REQUIREMENTS—ORIGINAL APPLICANTS (1) through (3)(a) remain as proposed.

~~(b) applicants may not take the exam more than three times unless approved by the board to retake the examination. Applicants wishing to retake the exam for a fourth time must submit a written request to the board.~~ applicants that fail the exam three times may submit a written request to the board to retake the exam for a fourth time.

AUTH: 37-18-701, MCA

IMP: 37-18-701, MCA

NEW RULE II (24.225.602) LVT SCOPE OF PRACTICE—SUPERVISION

(1) through (2)(d)(ii) remain as proposed.

(iii) suturing a gingival incision;

(e) blood or blood component collection, preparation, and administration for transfusion ~~for~~ or blood banking purposes;

- (f) through (h) remain as proposed.
- (i) suturing of an existing surgical skin incision;
- ~~(j) suturing a gingival incision.~~
- (3) remains as proposed.

AUTH: 37-18-102, 37-18-104, 37-18-702, MCA  
IMP: 37-18-102, 37-18-104, 37-18-702, MCA

BOARD OF VETERINARY MEDICINE  
BARBARA CALM, D.V.M.,  
PRESIDENT

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

/s/ LAURIE ESAU  
Laurie Esau, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State August 30, 2022.



BEFORE THE BOARD OF OIL AND GAS CONSERVATION AND THE  
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM ) NOTICE OF AMENDMENT  
36.22.307 and 36.22.1243 pertaining to )  
adoption of forms and reports from )  
transporters, refiners, purchasers, and )  
gasoline or extraction plants )

To: All Concerned Persons

1. On June 24, 2022, the Department of Natural Resources and Conservation (department) published MAR Notice No. 36-22-215 pertaining to the proposed amendment of the above-stated rules at page 970 of the 2022 Montana Administrative Register, Issue Number 12.

2. The department has amended ARM 36.22.307 and 36.22.1243 as proposed.

3. The department received no comments or request for hearing on the proposed amendment.

/s/ Roy Brown  
Roy Brown, Chair  
Board of Oil and Gas  
Conservation

/s/ Amanda Kaster  
Amanda Kaster  
Director  
Department of Natural Resources and  
Conservation

/s/ Caitlin Buzzas  
Caitlin Buzzas  
Rule Reviewer

Certified to the Secretary of State August 30, 2022.

BEFORE THE DEPARTMENT OF PUBLIC HEALTH  
AND HUMAN SERVICES  
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF ADOPTION AND
Rules I through XXV and the repeal	)	REPEAL
of ARM 37.111.201, 37.111.202,	)	
37.111.205, 37.111.206, 37.111.207,	)	
37.111.211, 37.111.212, 37.111.215,	)	
37.111.216, 37.111.217, 37.111.218,	)	
37.111.220, 37.111.225, 37.111.226,	)	
37.111.230, 37.111.235, 37.111.501,	)	
37.111.504, 37.111.505, 37.111.506,	)	
37.111.515, 37.111.516, 37.111.517,	)	
37.111.518, 37.111.521, 37.111.522,	)	
37.111.523, 37.111.530, 37.111.531,	)	
37.111.532, 37.111.533, 37.111.534,	)	
37.111.535, 37.111.601, 37.111.604,	)	
37.111.605, 37.111.615, 37.111.616,	)	
37.111.617, 37.111.618, 37.111.621,	)	
37.111.622, 37.111.623, 37.111.624,	)	
pertaining to campgrounds, trailer	)	
courts, work camps, and youth camps	)	

TO: All Concerned Persons

1. On June 24, 2022, the Department of Public Health and Human Services published MAR Notice No. 37-975 pertaining to the public hearing on the proposed adoption and repeal of the above-stated rules at page 973 of the 2022 Montana Administrative Register, Issue Number 12.

2. The department has adopted the following rules as proposed: New Rule I (37.111.1201), II (37.111.1202), III (37.111.1203), IV (37.111.1204), V (37.111.1207), VI (37.111.1208), VII (37.111.1209), VIII (37.111.1210), IX (37.111.1211), X (37.111.1212), XI (37.111.1213), XII (37.111.1216), XIII (37.111.1217), XIV (37.111.1218), XV (37.111.1219), XVI (37.111.1220), XVII (37.111.1223), XVIII (37.111.1224), XIX (37.111.1225), XX (37.111.1226), XXI (37.111.1227), XXII (37.111.1228), XXIII (37.111.1231), XXIV (37.111.1232), and XXV (37.111.1233).

3. The department has repealed the above-stated rules as proposed.

4. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: A commenter was concerned that she would need to build a service building at her campground that offers spaces to independent units.

RESPONSE #1: Service buildings are not required for establishments that only offer spaces to independent units.

/s/ ROBERT LISHMAN  
Robert Lishman  
Rule Reviewer

/s/ CHARLES T. BRERETON  
Charles T. Brereton, Director  
Department of Public Health and Human  
Services

Certified to the Secretary of State August 30, 2022.

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES  
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I and the amendment of ARM 37.111.101, 37.111.102, 37.111.106, 37.111.107, 37.111.110, 37.111.111, 37.111.112, 37.111.113, 37.111.114, 37.111.116, 37.111.117, 37.111.121, 37.111.122, and 37.111.124 pertaining to Public Sleeping Accommodations ) NOTICE OF ADOPTION AND AMENDMENT ) ) ) ) ) ) ) ) ) )

TO: All Concerned Persons

1. On June 24, 2022, the Department of Public Health and Human Services published MAR Notice No. 37-981 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 998 of the 2022 Montana Administrative Register, Issue Number 12.

2. The department has adopted New Rule I (37.111.103) as proposed.

3. The department has amended the above-stated rules as proposed.

4. No comments or testimony were received.

/s/ ROBERT LISHMAN  
Robert Lishman  
Rule Reviewer

/s/ CHARLES T. BRERETON  
Charles T. Brereton, Director  
Department of Public Health and Human  
Services

Certified to the Secretary of State August 30, 2022.

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES  
OF THE STATE OF MONTANA

In the matter of the repeal of a ) NOTICE OF REPEAL OF  
Temporary Emergency Rule ) TEMPORARY EMERGENCY RULE  
pertaining to changing the )  
identification of sex on birth )  
certificates )

TO: All Concerned Persons

1. On May 23, 2022, the department adopted, and on June 10, 2022, the department published, MAR Notice No. 37-1001, notice of the temporary emergency adoption of the above-stated rule at page 915 of the 2022 Montana Administrative Register, Issue Number 11, pertaining to changing the identification of sex on birth certificates.

2. Following adoption of the above-stated temporary emergency rule, the department initiated ordinary rulemaking pertaining to changing the identification of sex on birth certificates. See MAR Notice No. 37-1002. Following a public hearing and receipt of written public comment, the department has adopted a permanent rule governing the process for changing identification of sex on birth certificates. *Notice of Amendment*, MAR Notice No. 37-1002 (published September 9, 2022). The permanent rule supplants the need for the above-stated temporary emergency rule.

3. The repeal of Temporary Emergency Rule I is effective September 10, 2022.

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

/s/ ROBERT LISHMAN  
Robert Lishman  
Rule Reviewer

/s/ CHARLES T. BRERETON  
Charles T. Brereton, Director  
Department of Public Health and Human  
Services

Certified to the Secretary of State August 30, 2022.

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 37.8.311 pertaining to changing )  
the identification of sex on birth )  
certificates )

TO: All Concerned Persons

1. On June 10, 2022, the Department of Public Health and Human Services published MAR Notice No. 37-1002 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 895 of the 2022 Montana Administrative Register, Issue Number 11.

2. The department has amended the above-stated rule as proposed.

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: Several commenters did not address the proposed rule and instead provided comment in opposition to the emergency rule adopted by the department under MAR Notice No. 37-1001.

RESPONSE #1: Comments on the emergency rule adopted by the department under MAR Notice No. 37-1001 are outside the scope of this rulemaking under MAR Notice No. 37-1002.

COMMENT #2: Several commenters did not address the proposed rule and instead provided comment in support of the emergency rule adopted by the department under MAR Notice No. 37-1001.

RESPONSE #2: The department appreciates the commenters' support of the Emergency Rule, but notes that such comments are outside the scope of this rulemaking under MAR Notice No. 37-1002.

COMMENT #3: Several commenters provided comment in opposition to Senate Bill 280 passed during the 2021 Legislative Session and did not address the proposed rule.

RESPONSE #3: Comments opposing Senate Bill 280 are outside the scope of this rulemaking under MAR Notice No. 37-1002. Indeed, as the department explained in the proposal notice, the department proposed, and now adopts, this rule as a result of the fact that it is preliminarily enjoined from enforcing Senate Bill 280, codified at

50-15-224, MCA. See the 2022 Montana Administrative Register pages 895 and 898 through 899 (June 10, 2022).

COMMENT #4: Several commenters expressed opposition to the proposed rule and suggested the department should return to a 2017 version of the rule, which permitted the department to "correct" the "gender" data element upon receipt of a correction affidavit accompanied by a "gender designation form" attesting that the individual had undergone gender transition, a copy of a government-issued identification with the correct gender identification, or a copy of a court order that the individual's gender had been changed. The commenters indicated the proposed rule conflicts with medical knowledge and science, unfairly targets transgender individuals, and will lead to increased rates of suicide. The commenters also indicated the proposed rule is unconstitutional and runs afoul of a preliminary injunction issued by the Montana Thirteenth Judicial District Court, Yellowstone County, in Cause No. DV 21-873.

RESPONSE #4: The department disagrees with these comments.

The department believes that all individuals should be treated with dignity and respect.

Under Montana law, the department is charged with establishing a statewide system of vital statistics; with adopting rules for vital statistics and vital records; and with ensuring the accuracy of such vital records. As explained in further detail in the proposal notice, those laws contemplate that birth certificates and other records of birth include the "sex" of the child, not the child's "gender" or "gender identity." See 2022 Montana Administrative Register at pages 896 through 897 and 901 through 902. And science and medical knowledge recognize the difference between "sex," which is a biological concept (and a biological fact), and "gender," which is a psychological, cultural, and/or social construct. See, e.g., *Id.* at pages 899 through 901. The rule, which implements the statutory directives to record the sex of a child on birth certificates and other birth records, thus, is consistent with the scientific and medical recognition of "sex" as a biological concept. This rule reflects the proper interpretation of the statutory provisions governing birth certificates/vital records and the vital records system that a person's sex, not his or her gender or gender identity, is required to be recorded on the birth certificate and other birth records. Accordingly, the department declines to return to the 2017 rule, which purported to redesignate, substitute, or conflate the "sex" data element on birth certificates as a "gender" data element.<sup>1</sup> But if the Montana legislature were to enact legislation requiring it, the department would add an optional gender marker data element to the birth certificate and other birth records (as one commenter suggested).

---

<sup>1</sup> The department notes that, although the 2017 rule provided that the "gender of a registrant, as cited on a certificate, may be corrected" and a "gender designation form" was created, the Montana birth certificate form was never changed and, throughout the time the 2017 rule was in effect, still used the word "sex."

These comments allege that the rule will lead to increased rates of suicide within the transgender community. The department does not believe that there is scientific evidence – and commenters presented no such evidence<sup>2</sup> – that the failure of birth certificates to reflect transgender individuals' gender identity leads to an increase in suicide in the transgender community. The department acknowledges that there is some evidence that, for example, transgender youth are at higher risk of suicidal ideation and suicidal attempts. However, as one analysis noted, "caution is needed when interpreting these data because they do not show causality or directionality." L.J.J.J. Vrouenraets et al., *Early Medical Treatment of Children and Adolescents With Gender Dysphoria: An Empirical Study*, *Journal of Adolescent Health* 57 (2015) 367, 372, <https://doi.org/10.1016/j.jadohealth.2015.04.004>. Research and reports indicate that many people who identify as transgender and have gender dysphoria have co-existing mental or psychological problems or disorders, which make it difficult to establish causation or to attribute adverse mental health outcomes to their gender dysphoria or to the fact that their birth certificates do not reflect their gender identity.<sup>3</sup>

The department is committed to improving the behavioral health care system in Montana, so that all Montanans can access high quality behavioral health services.

The department further disagrees that the rule is unconstitutional and runs afoul of the preliminary injunction issued by the Montana Thirteenth Judicial District Court, Yellowstone County, in Cause No. DV 21-873. The rule is consistent with the preliminary injunction for the reasons set forth in the proposal notice, 2022 Montana Administrative Register at pages 898 and 899 and 903 and 904, and in the

---

<sup>2</sup> One commenter cited a study examining legal gender marker and name changes on passports and state driver's license/ID. While the study found that such changes are associated with lower negative emotional response to gender-based mistreatment and improved mental health outcomes among transgender populations, it did not examine gender marker changes on birth certificates and acknowledged certain limitations, including that it "does not purport to evaluate the psychological effects of policy change" and that "causation between policy changes and our outcomes cannot be claimed." See A. Restar et al., *Legal gender marker and name change is associated with lower negative emotional response to gender-based mistreatment and improve [sic] mental health outcomes among trans populations*, *SSM – Population Health* 11 (2020) 100595, <https://doi.org/10.1016/j.ssmph.2020.100595>. It should be noted that the department's Office of Vital Records continues to process name changes on birth certificates and other birth records for transgender persons in the same manner in which it processes name changes for other persons.

<sup>3</sup> *Cf., e.g., Id.* at 370; Gender Identity Development Service (GIDS), Evidence Base, <https://gids.nhs.uk/professionals/evidence-base/> ("Most empirical studies around mental health of gender variant young people show that adolescents are at higher risk of other co-existing difficulties than the general population."; adolescents with post-puberty onset gender dysphoria "are more likely to also have significant psychopathology and broader identity issues than gender identity issues alone.") (citations omitted); Hillary Cass, MD, OBE, et al, *Independent review of gender identity services for children and young people: Interim report* (February 2022) ("Interim Report"), <https://cass.independent-review.uk>, ¶ 1.16 ("Another significant issue raised with us is one of diagnostic overshadowing – many of the children and young people presenting have complex needs, but once they are identified as having gender-related distress, other important healthcare issues . . . can sometimes be overlooked.")



department's response to plaintiffs' motion to clarify the preliminary injunction, State's Response to Plaintiffs' Motion to Clarify, filed on June 21, 2022.

COMMENT #5: Several commenters expressed privacy concerns with the proposed rule. These commenters indicated that the proposed rule violates Montana's constitutional right to privacy because it effectively requires nonbinary and transgender individuals to reveal their private information whenever their birth certificate is required to be made public to other individuals, organizations, companies, or governmental entities. The commenters also indicated that gender designation is a private matter that should be left to individual choice.

RESPONSE #5: The department disagrees. Under Montana law, a transgender person's privacy interests are only protected under Article II, § 10 if (1) the person has a subjective or actual expectation of privacy, and (2) society is willing to recognize that expectation as reasonable. The concern is usually about the circulation of private information.

The department notes that, to the extent a transgender individual ever has the need to disclose their birth certificate, it is the department's impression that such disclosure would generally occur to government personnel (federal, state, or local), or others, who would have a legal obligation to maintain the confidentiality of the information.

COMMENT #6: Several commenters stated the proposed rule conflicts with science and best medical practices. These commenters indicated the proposed rule misrepresents the complex science of gender and sex. A commenter stated that every medical society recognizes transgender individuals exist and that their choice of gender should be affirmed. Several commenters indicated that the best available medical evidence shows that the lives of transgender individuals are improved when gender identity is affirmed. The commenters also indicated gender identity cannot be predicted based on chromosomes.

RESPONSE #6: The department denies that the rule conflicts with science and best medical practices and that it misrepresents the science of sex and gender. Science is clear that "sex" is a biological variable defined by characteristics encoded in DNA – and that it is distinct from "gender." The rule is based on this longstanding scientific understanding of "sex" because the statutes that it implements contemplate that the data elements to be collected and included in a Montana birth certificate include the sex of the person. Because "sex" and "gender" are different concepts, the department would not read those statutory provisions concerning birth certificates or records of birth as including "gender" in the requirement to record the sex of the person. (The proposal notice, 2022 Montana Administrative Register page 895 (June 10, 2022) contains a more complete explanation of these points.) As a consequence, it is irrelevant that gender identity cannot be predicted based on chromosomes.

The department does not deny that medical societies recognize that transgender individuals exist – or that most medical societies recommend gender affirmation and gender affirming care.<sup>4</sup> However, the commenters do not explain the relationship between the rule, these observations, and the department's interpretation of the statute.

COMMENT #7: Several commenters indicated the proposed rule fails to account for persons who are intersex or have Differences of Sexual Development (DSDs).

RESPONSE #7: In response to this comment, the department notes that literature cited in the proposal notice establishes that DSDs, including the intersex condition, are "very rare" and do not result in any additional sexes. The rule would permit a change to the sex identified on a person's birth certificate based on an affidavit and supporting documents, including the results from chromosomal, molecular, karyotypic, DNA or genetic testing, that establishes that the person's sex was misidentified on the original birth certificate.

---

<sup>4</sup>While several commenters contended that the "best available medical evidence" shows that the lives of transgender individuals are improved when gender identity is affirmed or gender affirming care is provided, several medical associations or public health authorities in other countries recognize that the scientific evidence on which such treatment recommendations are based are inconclusive or of low quality. See, e.g., The Royal Australian & New Zealand College of Psychiatrists, *Recognizing and addressing the mental health needs of people experiencing Gender Dysphoria/Gender Incongruence*, Position Statement 103 (August 2021), <https://www.ranzcp.org/news-policy/policy-and-advocacy/position-statements/gender-dysphoria> ("There are polarised views and mixed evidence regarding treatment options for people presenting with gender identity concerns, especially children and young people."; "Research on Gender Dysphoria is still emerging. At present, there is a paucity of evidence on the outcomes of these presenting with Gender Dysphoria."); PALKO/COHERE Finland, *Recommendation of the Council for Choices In Health Care in Finland: Medical Treatment Methods for Dysphoria Related to Gender Variance In Minors, STM038:00/2020* (June 2020), [https://segm.org/sites/default/files/Finnish\\_Guidelines\\_2020\\_Minors\\_Unofficial%20Translation.pdf](https://segm.org/sites/default/files/Finnish_Guidelines_2020_Minors_Unofficial%20Translation.pdf) (unofficial translation) ("As far as minors are concerned, there are no medical treatments that can be considered evidence-based."); Hillary Cass, MD, OBE, et al., Interim Report ¶ 1.23 ("Evidence on the appropriate management of children and young people with gender incongruence and dysphoria is inconclusive both nationally [in the U.K.] and internationally."); GIDS, Evidence Base ("Although hormone blockers and cross-sex hormones are recommended in young people with GD and widely used across the board, it should be noted that the research evidence for the effectiveness of any particular treatment offered is still low."); National Institute for Health and Care Excellence (2021b) *Evidence Review: Gender-affirming hormones for children and adolescents with gender dysphoria*, [https://segm.org/sites/default/files/20210323\\_Evidence%2Breview\\_Gender-affirming%2Bhormones\\_For%2Bupload\\_Final\\_download.pdf](https://segm.org/sites/default/files/20210323_Evidence%2Breview_Gender-affirming%2Bhormones_For%2Bupload_Final_download.pdf), at 50-51 ("This evidence review found limited evidence for the effectiveness and safety of gender-affirming hormones in children and adolescents with gender dysphoria, with all studies being uncontrolled, observational studies, and all outcomes of very low certainty."); Swedish National Board of Health and Welfare, *Care of children with gender dysphoria: Summary*, <https://www.socialstyrelsen.se/globalassets/sharepoint-dokument/artikelkatalog/kunskapsstod/2022-3-7799.pdf> (February 2022 Update) 3 (noting "the continued lack of reliable scientific evidence concerning the efficacy and the safety of" puberty suppression and gender-affirming hormonal treatment and that "[h]igh quality trials such as RCTs are still lacking and the evidence on treatment efficacy and safety is still insufficient and inconclusive for all reported outcomes").

COMMENT #8: Several commenters stated the proposed rule is unconstitutional. These commenters indicated the proposed rule violates the constitutional right to privacy and other basic civil rights including the First and Fourteenth Amendments of the United States Constitution and rights under the Montana Constitution. The commenters also indicated the proposed rule discriminates against and marginalizes transgender and non-binary individuals and is motivated by animus towards this community.

RESPONSE #8: The department seeks to further the health and well-being of all Montanans, but at the same time, must implement the laws as adopted by the Montana Legislature. In this rule, the department is implementing the laws governing the creation of a statewide system of vital statistics and adoption of rules for vital statistics and vital records in a constitutional manner.

The rule does not violate the Equal Protection Clauses of either the U.S. Constitution or the Montana Constitution. Such a violation occurs only when there is actual discrimination with respect to a protected class (or, in the case of the Montana Constitution, a listed class). Here, the rule applies equally to all individuals. Moreover, transgender individuals are not a protected or suspect class under Montana or federal law. Because transgender status is not a protected class, the highly deferential rational basis review applies. And there are important departmental and public health interests in the collection and maintenance of accurate vital statistics and records such as these and the prevention of fraud.

With respect to the right to privacy under the Montana Constitution, please see the response to Comment #5.

COMMENT #9: Several commenters stated the proposed rule runs counter to legislative recommendations made to the department and a foul of a preliminary injunction issued by the Montana Thirteenth Judicial District Court, Yellowstone County, in Cause No. DV 21-873. According to these commenters, the proposed rule enacts a process more restrictive than what is currently enjoined by the district court and violates the status quo.

RESPONSE #9: The commenters do not identify the legislative recommendations to which they contend the rule runs counter. However, the department believes that the rule is consistent with the legislative requirements and recommendations contained in the statutes under which the department is charged with establishing a statewide system of vital statistics; with adopting rules for vital statistics and vital records; and with ensuring the accuracy of such vital records. Please also see 2022 Montana Administrative Register at pages 903 through 904.

With respect to the commenters' assertions concerning the preliminary injunction and this rule, please see the response to Comment #4.

COMMENT #10: A commenter indicated the proposed rule is arbitrary because it conflicts with the stance taken by the department in 2017 when it enacted a rule that

formerly allowed for amendment of the "gender" data element upon receipt of a correction affidavit accompanied by a "gender designation form" attesting that the individual had undergone gender transition, a copy of a government-issued identification with the correct gender identification, or a copy of a court order that the individual's gender had been changed.

RESPONSE #10: The department denies that the rule is arbitrary because it conflicts with the policies adopted in the 2017 rule. There is no legal impediment to adopting a regulatory policy that conflicts with a prior regulatory policy. In an analysis that would seem equally applicable to the Montana Administrative Procedure Act (MAPA), the U.S. Supreme Court said, with respect to an agency's regulatory change of course,

It need not demonstrate to a court's satisfaction that the reasons for the policy are *better* than the reasons for the old one; it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency *believes* it to be better, which the conscious change of course adequately indicates.

*FCC v. Fox Television Stations, Inc.* 556 U.S. 502, 128 S. Ct. 1800, 1811 (2009) (citations omitted; emphasis in original). Here (as set forth in the proposal notice), the rule is permissible under the statutes, the department has provided good reasons for the change in approach from the 2017 rule, and the department believes this approach to be better than the 2017 rule.

Under MAPA, a rule may be invalidated if it "was adopted with an arbitrary or capricious disregard for the purpose of the authorizing statute as evidenced by documented legislative intent." 2-4-506(2), MCA. The rule is fully consistent with the purpose of the implementing statutes as evidenced by the language of the statute itself, which is the best evidence of legislative intent: Recognizing that SB 280 is the clearest indicator of legislative intent with respect to changing the sex identified on a birth certificate, the rule provides that the new language is only effective when and to the extent that the department is subject to an injunction against enforcement of SB 280 or SB 280 has otherwise been invalidated. And the new language is consistent with the statutes under which the department is charged with establishing a statewide system of vital statistics; with adopting rules for vital statistics and vital records; and with ensuring the accuracy of such vital records.

COMMENT #11: Several commenters stated the proposed rule makes it more difficult for transgender, non-binary, and two spirit individuals to change their gender marker, which will result in increased mental health problems, rates of suicide, and harm the well-being of these individuals. Several of these commenters emphasized that Montana is currently experiencing high rates of suicide and expressed the belief that the proposed rule will only worsen these rates, particularly for transgender youth.

RESPONSE #11: The department acknowledges that Montana is currently experiencing high rates of suicide – but notes that the department is committed to improving the behavioral health care system in Montana, so that all Montanans can access high quality behavioral health care. It is concerned about the mental health of all Montanans, especially that of transgender youth with gender dysphoria, who also tend to have co-occurring mental health/psychiatric issues. At the same time, the commenters present no evidence that the inability of transgender, non-binary, and two spirit individuals to change the sex identified on their birth certificate – to align with their gender identity – would have an adverse effect on their mental health, rates of suicide, or well-being.

COMMENT #12: Several commenters expressed concerns that the proposed rule will result in inconsistent forms of Montana identification documents for transgender, non-binary, and two spirit individuals as well as identity documents that do not reflect the true gender identity of individuals. The commenters indicated this will result in the "outing" and stigmatization of individuals who are forced to present identification with a gender marker that does not match their true identity. The commenters also indicated this will adversely affect the ability of transgender, non-binary, and two spirit individuals to utilize public services, maintain housing, maintain employment, enroll in school, and utilize other basic civil processes. Several commenters stated that accurate and consistent gender markers on identification documents reduce the risk of violence, discrimination, and harassment for transgender, non-binary, and two-spirit individuals.

RESPONSE #12: The department does not find the comments persuasive. The department is interpreting the statutes for which it has responsibility – and has no authority over how other departments and agencies implement and interpret their statutes. Commenters present no argument as to why having inconsistent Montana-issued "identification documents" would present a problem for transgender persons. Similarly, no details or facts are provided in the comments as to why and how (1) such persons would have to present their birth certificates and (2) such presentation would adversely affect their ability to access services, maintain housing, maintain employment, etc.

COMMENT #13: Several commenters expressed concern that the proposed rule will lead to inconsistencies in identity documents issued by Montana and the federal government. The commenters indicated the proposed rule is inconsistent with the approach of the federal government, which allows amendment of gender marker identification without requiring proof of surgery. As a result, the commenters believe the rule will lead to individuals not being able to hold a birth certificate that reflects their true gender identity or that matches forms of other identification such as a U.S. Passport, Veteran ID Card, and other federal identification documents.

RESPONSE #13: As with Comment #12, commenters present no argument as to why having inconsistent Montana-issued and federal issued "identification documents" would present a problem for transgender persons. The department is responsible for interpreting (and implementing) its statutes.

COMMENT #14: A commenter indicated the proposed rule will prevent people born in Montana who currently reside in another state from updating documentation, such as a driver's license issued by the state in which they reside, to accurately reflect their gender identity.

RESPONSE #14: This comment presupposes that persons must have birth certificates that reflects their gender identity in order to obtain driver's licenses or other documentation from another state that reflects their gender identity. This is not the case in many states. See, e.g., Movement Advancement Program, *Identity Document Laws and Policies: Driver's License*, citations-id-drivers-license.pdf (lgbtmap.org) (current as of May 27, 2022).

COMMENT #15: Several commenters stated the proposed rule constitutes an inefficient use of department resources and taxpayer money. These commenters indicated the proposed rule is unnecessary and will not actually further the goal of maintaining accurate vital records and statistics. Several commenters also indicated the rule conflicts with other department goals such as preventing and reducing rates of suicide and promoting the public health of all Montanans.

RESPONSE #15: The department respectfully disagrees. It is never unnecessary or an inefficient use of department resources and taxpayer money to ensure that the department's rules conform to the proper interpretation of the statutes which the department is charged with implementing. This rule does just that, as set forth in greater detail in the proposal notice. See 2022 Montana Administrative Register at pages 896 and 897 and 901 and 902. The department further believes that the rule will advance the goal of maintaining accurate vital records and statistics. Finally, because the department is preliminarily enjoined from enforcing SB 280, there would be no process for changing the sex identified on Montana birth certificates without this rule (or the emergency rule that preceded it). The department has an obligation to provide clear rules on the subject.

The department does seek to achieve a number of health and public health goals to benefit all Montanans, including expanding access to quality behavioral health services; addressing the mental health and other causes of suicide, to prevent and reduce the rate of suicide; and to promote the health and well-being of all Montanans. But it recognizes that it must pursue these goals and objectives within the confines of the authority provided to it by the Montana Legislature. Unlike the 2017 rule, this rule is carefully structured to stay within the department's regulatory authority.

COMMENT #16: A commenter expressed opposition to the proposed rule and suggests it is inconsistent with state efforts to prevent sex trafficking, reduce substance use disorders, and rates of suicide. The commenter seeks an explanation from the department of why it believes the proposed rule is not inconsistent with these goals. The commenter also contends the rule is inconsistent with the Fourteenth Amendment of the United States Constitution and the Montana

constitutional provision concerning the inalienable right to seek their safety, health and happiness in lawful ways, and seeks an explanation of how the rule is related to a legitimate government interest. Additionally, the commenter indicates the department has failed to establish necessity for the proposed rule because there are other options.

RESPONSE #16: The department respectfully disagrees. The commenter provides no evidence or reasoning as to why this rule would have an impact on homeless LGBTQ youth and be inconsistent with the department's and the State's efforts to prevent sex trafficking, reduce substance use disorders, and impact suicide rates. In any event, as noted above, in response to Comment #15, the department must pursue its goals and objectives within the confines of its authority, which is what it is doing in this rule.

With respect to the Equal Protection Clause of the Fourteenth Amendment, please see the response to Comment #8.

Under 2-4-410(2)(a), MCA, an intended action has to be reasonably necessary to effectuate the purpose of the code section(s) being implemented. That standard is easily met by the rule, as set forth here and in the proposal notice. The rule is reasonably necessary to implement the statutory provisions relating to a statewide system of vital statistics and vital records, in particular, those code provisions that contemplate that birth certificates and other records of birth include the "sex" of the child. The commenter contends that the rule is not reasonably necessary because there are other options which have not been given due consideration – but fails to identify what such options are, so that the department could assess those options and respond.

Finally, nothing in the rule precludes Montanans from seeking their safety, health, and happiness in lawful ways. Some legal commenters have suggested that the Constitutional provision is primarily a hortatory statement or a statement of political philosophy. Even if it is more – and the rule is implicated by the provision – the provision textually empowers the State and its entities to "lawfully" limit individuals' pursuit of those rights. Thus, if the rule is implicated by this provision of the Montana Constitution, the rule is consistent with it.

COMMENT #17: Several commenters expressed support for the proposed rule. These commenters indicated the rule is supported by science because sex is determined at birth, does not evolve over time, and cannot be changed. The commenters also indicated accurate collection of demographics is critical to a properly functioning government and society.

RESPONSE #17: The department agrees and thanks the commenters for their support of the rule, as well as their recognition of the importance of interpreting the statutes governing the creation of a statewide system of vital statistics and the adoption of rules for vital statistics and vital records according to their plain language.

COMMENT #18: Several commenters expressed partial support for the proposed rule. Those commenters state that sex is determined at birth and it is a scientific fact that cannot be changed. However, the commenters believe a time limitation should be established for the data entry error exception set forth under ARM 37.8.311(5)(b)(i) and suggest a range of 30 to 90 days after the date of birth from which to correct a data entry or scrivener's error.

RESPONSE #18: The department thanks the commenters for their support for the rule. With respect to their suggestion of a time limit in which data entry or scrivener's errors could be corrected, the department appreciates the suggestion, but declines to so modify the final rule. It is concerned that such a time period may not be sufficient to correct the birth records, or that such errors may not be discovered within such time – and believes that the associated documentation requirements will ensure that the provision is only used to correct data entry or scrivener's errors.

4. These rule amendments are effective September 10, 2022.

/s/ ROBERT LISHMAN  
Robert Lishman  
Rule Reviewer

/s/ CHARLES T. BRERETON  
Charles T. Brereton, Director  
Department of Public Health and Human  
Services

Certified to the Secretary of State August 30, 2022.



BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT
ARM 42.15.314 and 42.23.303	)	
pertaining to adopting the Multistate	)	
Tax Commission's Model Statute for	)	
Reporting Adjustments to Federal	)	
Taxable Income and Federal	)	
Partnership Audit Adjustments	)	

TO: All Concerned Persons

1. On July 22, 2022, the Department of Revenue published MAR Notice No. 42-1056 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1286 of the 2022 Montana Administrative Register, Issue Number 14.

2. On August 15, 2022, the department held a public hearing to consider the proposed amendment. There were no commenters present to provide testimony or commentary for the rulemaking. The department did not receive any written comments in support or opposition to the proposed amendment.

3. The department has amended ARM 42.15.314 and 42.23.303 as proposed.

/s/ Todd Olson  
 Todd Olson  
 Rule Reviewer

/s/ Brendan Beatty  
 Brendan Beatty  
 Director of Revenue

Certified to the Secretary of State August 30, 2022.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 42.2.510 pertaining to the )  
extension of deadlines for a taxpayer )  
to appeal an audit determination or a )  
final determination )

TO: All Concerned Persons

1. On July 22, 2022, the Department of Revenue published MAR Notice No. 42-1057 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1289 of the 2022 Montana Administrative Register, Issue Number 14.

2. On August 15, 2022, the department held a public hearing to consider the proposed adoption. The only attendee at the hearing was Robert Story, Executive Director of the Montana Taxpayers Association. The department also received written comments from James C. Wangerin, CPA.

3. The department has amended ARM 42.2.510 as proposed.

4. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT 1: Mr. Story provided commentary in support of the rulemaking because it improves procedural deadlines for taxpayer appeals with the department and increases the equity of outcomes especially if the department fails to adhere to procedural deadlines.

RESPONSE 1: The department thanks Mr. Story for his valuable input to this rulemaking.

COMMENT 2: Mr. Wangerin contends that the department has not been complying with the intent of the legislature that after informal review, the department must send a notice of determination within the statute's three-year deadline. Mr. Wangerin requests the department amend ARM 42.2.510 to provide " . . . if the Department fails to issue a Notice of Determination within the original statute of limitations, and an extension has not been previously agreed to between the parties, the tax return shall be accepted as originally filed."

Mr. Wangerin also provided additional commentary from his litigation with the department, which is currently pending before the Montana Supreme Court.

RESPONSE 2: Mr. Wangerin asks the department to adopt arguments he makes in an unrelated, and pending, Montana Supreme Court appeal that he

initiated and cites his briefing when making this request. The Montana Supreme Court is the appropriate forum to resolve Mr. Wangerin's concerns, and the department declines to adopt his request. Moreover, Mr. Wangerin's request is beyond the scope of the rulemaking.

The amendments are designed to bring equity to the appeal process by requiring the department timely respond to a taxpayer's request for informal review. If the department fails to timely respond, there are stronger consequences for that failure. This rule change is intended to encompass only those issues that the taxpayer specifically raises with the department and where the department fails to issue a timely response because the taxpayer may agree with the department's audit findings in some cases but not on others.

/s/ Todd Olson  
Todd Olson  
Rule Reviewer

/s/ David R. Stewart for  
Brendan Beatty  
Director of Revenue

Certified to the Secretary of State August 30, 2022.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I and the amendment of ARM 42.39.104 pertaining to the creation of additional canopy license tiers for marijuana cultivators ) NOTICE OF DECISION ON PROPOSED ADOPTION AND AMENDMENT ) ) )

TO: All Concerned Persons

1. On July 22, 2022, the Department of Revenue published MAR Notice No. 42-1058 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1293 of the 2022 Montana Administrative Register, Issue Number 14.

2. A public hearing on the notice of proposed adoption and amendment of the above-stated rules was held on August 16, 2022, and the deadline for public comment was August 23, 2022.

3. After receiving public comment on the rulemaking proposal notice, the department is withdrawing MAR Notice No. 42-1058 from consideration.

/s/ Todd Olson  
Todd Olson  
Rule Reviewer

/s/ Brendan Beatty  
Brendan Beatty  
Director of Revenue

Certified to the Secretary of State August 30, 2022.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the adoption of New ) NOTICE OF DECISION ON  
Rule I pertaining to the authorization ) PROPOSED ADOPTION  
of marijuana dispensary customer )  
loyalty programs )

TO: All Concerned Persons

1. On July 22, 2022, the Department of Revenue published MAR Notice No. 42-1059 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 1296 of the 2022 Montana Administrative Register, Issue Number 14.
2. A public hearing on the notice of proposed adoption of the above-stated rule was held on August 16, 2022, and the deadline for public comment was August 23, 2022.
3. After receiving comment from the public and the Economic Affairs Interim Committee on the rulemaking proposal notice, the department is withdrawing MAR Notice No. 42-1059 from consideration.

/s/ Todd Olson  
Todd Olson  
Rule Reviewer

/s/ Brendan Beatty  
Brendan Beatty  
Director of Revenue

Certified to the Secretary of State August 30, 2022.

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 44.3.116, 44.3.2204, and )  
44.3.2511 pertaining to clarification of )  
timing of certain activities of Election )  
Administrators )

TO: All Concerned Persons

1. On July 22, 2022, the Secretary of State published MAR Notice No. 44-2-259 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1299 of the 2022 Montana Administrative Register, Issue Number 14.

2. On August 12, 2022, a public hearing was held on the proposed amendment of the above-stated rules.

3. The Secretary of State has amended the following rules as proposed, with the following changes from the original proposal, deleted matter interlined:

44.3.116 ELECTRONIC TRANSMISSION OF VOTING MATERIALS

(1) through (1)(d) remain as proposed.

(e) No sooner than the time permitted for preparation of ballots pursuant to 13-13-241(7), MCA, the election administrator shall have the returned ballots transcribed using the procedure prescribed below. If the received ballot is acceptable pursuant to the requirements of 13-13-246, MCA, the election administrator shall:

(e)(i) through (k) remain as proposed.

AUTH: 13-13-246, MCA

IMP: 13-13-246, MCA

44.3.2204 PROCESSES AND PROCEDURES FOR EARLY PREPARATION OF ABSENTEE BALLOTS (1) remains as proposed.

(2) The following processes and procedures, when implemented by the election administrator, are intended to ensure the security of ballots and secrecy of votes during the early preparation of ballots not sooner than the earliest time permitted by 13-13-241(7), MCA. The election administrator shall ensure that the early absentee ballot preparation area:

(a) through (8) remain as proposed.

AUTH: 13-13-241, MCA

IMP: 13-13-241, MCA

44.3.2511 ELECTRONIC TRANSMISSION OF VOTING MATERIALS

(1) through (1)(e) remain as proposed.

(f) No sooner than the time permitted for preparation of ballots pursuant to 13-13-241(7), MCA, the election administrator shall have the returned ballots transcribed, as applicable, using the procedure prescribed below.

(g) through (2) remain as proposed.

AUTH: 13-21-104, MCA

IMP: 13-13-241, 13-21-104, MCA

4. The Secretary of State has thoroughly considered the comments received. A summary of the comments and SOS's responses are as follows:

COMMENT #1: A commenter said that it was not clear if the proposed amendments to the rules intend for the exception in 13-13-241(8), MCA, to apply or not to apply. The commenter noted that 13-13-241(7), MCA contains an exception clause for (8); as proposed, however, the reference is ambiguous.

RESPONSE #1: The Secretary of State appreciates the commenter's concern and has adjusted the references to avoid ambiguity.

/s/ AUSTIN JAMES  
Austin James  
Rule Reviewer

/s/ CHRISTI JACOBSEN  
Christi Jacobsen  
Secretary of State

Dated this 30th day of August, 2022.

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 44.2.204, 44.2.302, 44.5.114, )  
44.5.115, 44.5.119, 44.5.120, and )  
44.5.121 pertaining to the update of )  
provisions related to Business )  
Services filings and other )  
administrative updates )

TO: All Concerned Persons

1. On July 22, 2022, the Secretary of State published MAR Notice No. 44-2-260 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1302 of the 2022 Montana Administrative Register, Issue Number 14.

2. On August 12, 2022, a public hearing was held on the proposed amendment of the above-stated rules. There were no attendees at the public hearing. Written comments were received during the public comment period.

3. The Secretary of State has amended ARM 44.2.204, 44.2.302, 44.5.114, 44.5.115, 44.5.119, and 44.5.120 as proposed.

4. The Secretary of State has amended the following rule as proposed, with the following changes from the original proposal, deleted matter interlined, new matter underlined:

44.5.121 MISCELLANEOUS FEES (1) through (17) remain as proposed.

AUTH: 2-15-403, 2-15-405, 20-7-604, 30-9A-526, ~~35-1-1307~~, 35-2-1107, 35-7-103, 35-14-122, 35-14-130, 82-1-104, MCA

IMP: 2-15-403, 2-15-405, 20-7-604, 30-9A-525, 30-13-320, ~~35-1-1206~~, 35-2-119, 35-2-1003, 35-2-1107, 35-7-103, 35-14-122, 35-14-130, 80-8-210, 82-1-104, MCA

5. The Secretary of State has thoroughly considered the comments received. A summary of the comments and SOS's responses are as follows:

COMMENT #1: A commenter noted there are repealed statutes listed as implementing or authorizing statutes. Ch. 271 (L. 2019) revised the act related to corporations by repealing a number of sections and enacting a number of new sections.

RESPONSE #1: The Secretary of State agrees with this comment and has adjusted the references accordingly.



/s/ AUSTIN JAMES  
Austin James  
Rule Reviewer

/s/ CHRISTI JACOBSEN  
Christi Jacobsen  
Secretary of State

Dated this 30th day of August, 2022.

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the repeal of ARM	)	NOTICE OF REPEAL AND
44.14.101 and 44.14.308 through	)	AMENDMENT
44.14.312 pertaining to records and	)	
information management fees and	)	
the amendment of ARM 44.14.106,	)	
44.14.201, 44.14.202, and 44.14.203	)	
pertaining to delegation authority for	)	
records disposal of public records	)	
and records storage systems and	)	
requirements	)	

TO: All Concerned Persons

1. On July 22, 2022, the Secretary of State published MAR Notice No. 44-2-261 pertaining to the public hearing on the proposed repeal and amendment of the above-stated rules at page 1308 of the 2022 Montana Administrative Register, Issue Number 14.

2. On August 12, 2022, a public hearing was held on the proposed repeal and amendment of the above-stated rules. There were no attendees at the public hearing. Written comments were received during the public comment period.

3. The Secretary of State has repealed ARM 44.14.101, 44.14.308, 44.14.309, 44.14.310, 44.14.311, and 44.14.312 as proposed.

4. The Secretary of State has amended the following rules as proposed, with the following changes from the original proposal, deleted matter interlined, new matter underlined:

44.14.106 DELEGATION AUTHORITY FOR DISPOSAL OF PUBLIC RECORDS (1) through (6) remain as proposed.

AUTH: ~~2-6-203~~ 2-6-1101, MCA  
IMP: 2-6-1101, 2-6-1103, MCA

44.14.201 USE OF ELECTRONIC RECORDS STORAGE SYSTEMS FOR LOCAL GOVERNMENT DOCUMENTS (1) remains as proposed.

AUTH: ~~2-6-404~~ 2-6-1101, MCA  
IMP: 2-6-1205, MCA

44.14.202 STORAGE REQUIREMENT FOR ELECTRONICALLY STORED DOCUMENTS WITH GREATER THAN TEN YEAR RECORD RETENTION (LONG-TERM RECORDS) (1) and (2) remain as proposed.

AUTH: ~~2-6-404~~ 2-6-1101, MCA  
IMP: 2-6-1205, MCA

44.14.203 STORAGE REQUIREMENT FOR ELECTRONICALLY STORED DOCUMENTS WITH LESS THAN TEN YEAR RECORD RETENTION SCHEDULE

(1) remains as proposed.

AUTH: ~~2-6-404~~ 2-6-1101, MCA  
IMP: 2-6-1205, MCA

5. The Secretary of State has thoroughly considered the comments received. A summary of the comments and SOS's responses are as follows:

COMMENT #1: A commenter noted that the authority statutes for ARM 44.14.106 and 44.14.201 through 44.14.203 reference a repealed statute.

RESPONSE #1: The Secretary of State agrees with this comment and has adjusted the references accordingly.

/s/ AUSTIN JAMES  
Austin James  
Rule Reviewer

/s/ CHRISTI JACOBSEN  
Christi Jacobsen  
Secretary of State

Dated this 30th day of August, 2022.

## **NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE**

### **Interim Committees and the Environmental Quality Council**

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

#### **Economic Affairs Interim Committee:**

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

#### **Education and Local Government Interim Committee:**

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

#### **Children, Families, Health, and Human Services Interim Committee:**

- Department of Public Health and Human Services.

#### **Law and Justice Interim Committee:**

- Department of Corrections; and
- Department of Justice.

#### **Energy and Telecommunications Interim Committee:**

- Department of Public Service Regulation.

**Revenue and Transportation Interim Committee:**

- Department of Revenue; and
- Department of Transportation.

**State Administration and Veterans' Affairs Interim Committee:**

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

**Environmental Quality Council:**

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

**Water Policy Interim Committee (where the primary concern is the quality or quantity of water):**

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

## HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: **Administrative Rules of Montana (ARM)** is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

**Montana Administrative Register (MAR or Register)** is an online publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding Register.

### **Use of the Administrative Rules of Montana (ARM):**

- |               |  |
|---------------|--|
| Known Subject | 1. Consult ARM Topical Index.<br>Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued. |
| Statute       | 2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.                |

## RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2022. This table includes notices in which those rules adopted during the period March 11, 2022, through August 26, 2022, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2022, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2022 Montana Administrative Register.

To aid the user, this table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

### ADMINISTRATION, Department of, Title 2

2-2-624	Public Meetings, p. 640, 1312
2-5-628	Department Responsibilities – Delegation of Purchasing Authority – Small Purchases or Limited Solicitations of Supplies and Services – Sole Source Procurement – Exigency Procurements – Minimum Refund – Exceptions to Minimum Refund Rule, p. 1344
2-12-623	Review and Approval Process for Procurement, Development, and Oversight of Information Technology Resources and Software and Management Systems - Granting Exceptions - Utilization of Centralized State Facilities - Introduction - Definitions - Agency Information Technology Plans - Establishing Policies, Standards, Procedures, and Guidelines - Appeal Process as It Applies to Information Technology Plans, Procurements, and Granting Exceptions, p. 430, 796
2-59-626	Renewal Fees of Mortgage Brokers, Lenders, Servicers, and Mortgage Loan Originators, p. 944, 1690
2-59-627	Semiannual Assessments - Supervisory Fess for Banks and Credit Unions, p. 856, 1656
2-59-630	Activities Requiring a License, p. 1352
2-59-632	Banking Definitions, p. 1355

(Public Employees' Retirement Board)

- 2-43-622 Investment Policy Statements for the Defined Contribution Retirement Plan, the Montana Fixed Fund, and the 457(b) Deferred Compensation Plan, p. 267, 609
- 2-43-631 Actuarial Rates and Assumptions, p. 1349, 1689

AGRICULTURE, Department of, Title 4

- 4-22-274 State Grain Lab Fee Schedule, p. 435, 797
- 4-22-275 Hemp, p. 947, 1657

STATE AUDITOR, Office of, Title 6

- 6-267 Credit for Reinsurance—Reciprocal Jurisdictions - Forms, p. 444, 798
- 6-268 Group Capital Calculation, p. 708, 1189
- 6-269 Term and Universal Life Insurance Reserve Financing, p. 1120, 1691
- 6-270 Credit for Reinsurance - Certified Assuming Insurers, p. 643, 1190
- 6-271 Annuities - Periodic Payment of Premium Taxes – Surplus Lines Insurance Transactions - Supervision, Rehabilitation, and Liquidation of Self-Funded Multiple Employer Welfare Arrangements, p. 1359
- 6-272 Life Insurance – Illustrations, p. 1363
- 6-273 Exemptions, p. 1366
- 6-274 Collection of Stamping Fee, p. 1369

COMMERCE, Department of, Title 8

- 8-2-197 Actions That Qualify as Categorical Exclusions Under the Montana Environmental Policy Act, p. 311, 610
- 8-94-194 Deadline for the Second Cycle for the Community Development Block Grant (CDBG)—Community and Public Facilities Projects Application and Guidelines, p. 98, 398
- 8-94-196 Submission and Review of Applications for Funding Under the Montana Coal Endowment Program (MCEP), p. 314, 611
- 8-94-198 Administration of the Federal Community Development Block Grant (CDBG) Program – Planning Grants, p. 550, 906
- 8-94-199 Administration of the CDBG Program, p. 1372
- 8-119-193 Tourism Advisory Council, p. 100, 399

(Board of Investments)

- 8-97-101 Board of Investments Rules, p. 1212

EDUCATION, Title 10

(Board of Public Education)

- 10-57-288 Teacher Licensing, p. 103, 799
- 10-58-272 Professional Educator Preparation Program Standards, p. 1376



- 10-64-283 School Bus Requirements, p. 140, 1313
- 10-66-101 Adult Secondary Education Credits, p. 142, 400

(Office of Public Instruction)

- 10-66-102 State Diplomas, p. 451, 829

FISH, WILDLIFE AND PARKS, Department of, Title 12

- 12-557 Removal of Tiber Reservoir From the List of Identified Bodies of Water Confirmed or Suspected for Aquatic Invasive Mussels, p. 271, 831
- 12-559 Licensing, p. 325
- 12-561 Angling Restriction and Fishing Closure Criteria, p. 1131
- 12-562 Closing the Yellowstone River From the Yellowstone National Park Boundary to the Springdale Bridge Fishing Access Site, p. 1025, 1191
- 12-563 Closing Fishing Access Sites From the Axtell Bridge Fishing Access Site to the Bud Lilly Fishing Access Site on the Gallatin River, p. 1028
- 12-564 Closing Fishing Access Sites From the Sappington Bridge Fishing Access Site to the Drouillard Fishing Access Site on the Jefferson River, p. 1030
- 12-565 Closing the Ruby Island Fishing Access Site in Madison County, p. 1032
- 12-566 Closing the Ennis Fishing Access Site in Madison County, p. 1034
- 12-567 Closing the Valley Garden Fishing Access Site in Madison County, p. 1036
- 12-568 Closing the Alder Bridge Fishing Access Site in Madison County, p. 1038
- 12-569 Closing the Old Steel Bridge Fishing Access Site in Flathead County, p. 1040
- 12-570 Closing the Yellowstone River in Stillwater County, p. 1042
- 12-571 Closing the Stillwater River in Stillwater County, p. 1044, 1692
- 12-572 Closing West Rosebud Creek and Rosebud Creek in Stillwater County, p. 1046
- 12-573 Closing the Absaroka Fishing Access Site in Stillwater County, p. 1048
- 12-574 Closing the Buffalo Jump Fishing Access Site in Stillwater County, p. 1050
- 12-575 Closing the Castle Rock Fishing Access Site in Stillwater County, p. 1052
- 12-576 Closing the Cliff Swallow Fishing Access Site in Stillwater County, p. 1054
- 12-577 Closing the Fireman's Point Fishing Access Site in Stillwater County, p. 1056
- 12-578 Closing the Jeffrey's Landing Fishing Access Site in Stillwater County, p. 1058
- 12-579 Closing the Moraine Fishing Access Site in Stillwater County, p. 1060
- 12-580 Closing the Swinging Bridge Fishing Access Site in Stillwater County, p. 1062

- 12-581 Closing the White Bird Fishing Access Site in Stillwater County, p. 1064
- 12-582 Closing the Rosebud Isle Fishing Access Site in Stillwater County, p. 1066
- 12-583 Closing the Holmgren Ranch Fishing Access Site in Stillwater County, p. 1068
- 12-584 Closing the Indian Fort Fishing Access Site in Stillwater County, p. 1070
- 12-585 Closing the Yellowstone River in Park County, p. 1192
- 12-586 Grizzly Bear Demographic Objective for the Northern Continental Divide Ecosystem, p. 1135
- 12-587 Recreational Use on the Boulder River, p. 1139
- 12-588 Extending the Implementation Date of the Madison River Commercial Use Cap, p. 1141
- 12-589 Closing the Yellowstone River in Park County, p. 1658
- 12-590 Closing the Stillwater River in Stillwater County, p. 1693

(Fish and Wildlife Commission)

- 12-553 Rest/Rotation and Walk/Wade Rules on the Madison River, p. 1609, 687
- 12-560 Classification of Caracal Cat as a Prohibited Species, p. 950

ENVIRONMENTAL QUALITY, Department of, Title 17

- 17-417 Methamphetamine Cleanup - Definitions - Decontamination Standards - Performance, Assessment, and Inspection - Performance Standards - Contractor Certification and Training Course Requirements - Reciprocity - Training Provider Certification - Certified Training Provider Responsibilities - Denial, Suspension, and Revocation of Certification - Fees - Sampling - Recordkeeping - Reports - Incorporation by Reference, p. 367, 952
- 17-418 Incorporation by Reference - Hazardous Waste Fees, p. 14, 693
- 17-419 Incorporation by Reference of 40 CFR Part 51, Appendix W, p. 392, 694
- 17-420 Definitions - Development Process for the Adaptive Management Program to Implement Narrative Nutrient Standards, p. 1876, 327
- 17-422 Ground Water Under the Direct Influence of Surface Water Determinations - Standards for Public Water Supply Systems, p. 713, 1695
- 17-423 Application and Administration of Hard Rock Small Mining Exclusion Statements, Exploration Licenses, and Operating Permits, p. 1143
- 17-425 Opencut Mining Program, p. 1152
- 17-427 Temporary Water Quality Standards Variances, p. 1171

TRANSPORTATION, Department of, Title 18

- 18-187 Utility Right-of-Way Occupancy, p. 722, 1176, 1314

- 18-188 Motor Carrier Services Maximum Allowable Weight and Safety Requirements, p. 553, 1072
- 18-189 Motor Carrier Services - Vehicles Authorized to Bypass Weigh Stations - Definitions - Compliance With Weigh Station Bypass, p. 859, 1423

CORRECTIONS, Department of, Title 20

(Board of Pardons and Parole)

- 20-25-71 Paroling Decision - Early Parole Consideration - Administrative Reviews and Reappearances - Board Operating Processes - Executive Clemency Functions, p. 193, 1194

JUSTICE, Department of, Title 23

- 23-8-263 9-1-1 Telecommunication System, p. 833
- 23-16-265 Gambling Control Division Headquarters Address Change, p. 1427

(Public Safety Officers Standards and Training Council)

- 23-13-264 Certification of Public Safety Officers, p. 732

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order by chapter following the department notices.

- 24-2-390 Public Participation and Model Rules, p. 557, 907
- 24-11-383 Response Times in Unemployment Insurance, p. 145, 352
- 24-15-201 Employment Relations Division, p. 317, 612
- 24-17-389 Prevailing Wages, p. 149, 353
- 24-22-369 Workforce Innovation and Opportunity Act Montana State Plan Modifications, p. 319
- 24-22-393 Incumbent Worker Training (IWT) Program, p. 646, 1074
- 24-22-394 Montana Employment Advancement Right Now (EARN) Program Act, p. 863, 1315
- 24-28-396 Workers' Compensation Mediation, p. 957, 1660
- 24-29-392 Medical Fee Schedules and Drug Formulary for Workers' Compensation Purposes, p. 650, 1075
- 24-38-391 Professional Employer Organizations, p. 561, 909
- 24-101-313 Multidisciplinary Health Care Provider Task Force Review of Statutes and Recommendations Involving Physicians, Physician Assistants, and Advanced Practice Registered Nurses, p. 320
- 24-101-395 Organizational, Procedural, and Public Participation Rules, p. 866
- 24-301-351 Building Codes Incorporation by Reference - Local Government Enforcement - Plumbing Requirements - Electrical Requirements - Elevator Code - Special Reports, p. 460, 911

(Board of Clinical Laboratory Science Practitioners)  
24-129-19 Minimum Licensure Standards, p. 322, 835

(Board of Dentistry)  
24-138-82 Fee Schedules - Clinical Exam Criteria, p. 565, 1662

(Board of Medical Examiners)  
24-156-92 Definitions - ECP Licensure Qualifications - ECP License Application - Continued Competency Requirements - Fee Schedule - Fees - Final Pre-Licensing Examinations, p. 1482, 520  
24-156-93 Board of Medical Examiners, p. 880, 1664

(Board of Nursing)  
24-159-92 Board of Nursing, p. 658, 1666

(Board of Pharmacy)  
24-174-78 Pharmacy Technician Registration Requirements - Ratio of Pharmacy Technicians and Interns to Supervising Pharmacists - Application for Approval of Utilization Plan, p. 32, 401  
24-174-79 Board of Pharmacy, p. 1216

(Board of Professional Engineers and Professional Land Surveyors)  
24-183-45 Fee Schedule, p. 569, 1668

(Board of Psychologists)  
24-189-43 Fee Schedule - Behavior Analyst Experience and Supervision, p. 454, 1076

(Board of Real Estate Appraisers)  
24-207-46 Real Property Appraiser Qualification and Continuing Education, p. 457, 910

(Board of Veterinary Medicine)  
24-225-42 Licensure of Veterinary Technicians, p. 738

LIVESTOCK, Department of, Title 32

32-22-328 Importation of Camelids, p. 667, 1669  
32-22-329 Diagnostic Laboratory Fees, p. 961, 1670  
32-22-332 Testing Within the DSA, p. 1441

(Board of Milk Control)  
32-22-330 Transfer of Quota – Reassignment of Quota From the Unassigned Quota Pool – Readjustment of Quota Into the Statewide Quota System, p. 1434  
32-22-331 Producer Pricing, p. 1438

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

- 36-22-214 Horse Creek Controlled Groundwater Area, p. 670, 1705
- 36-22-216 Dam Safety, p. 1177

(Board of Oil and Gas Conservation)

- 36-22-215 Adoption of Forms - Reports From Transporters, Refiners, Purchasers, and Gasoline or Extraction Plants, p. 970

(Board of Water Well Contractors)

- 36-22-213 Water Well Licensing - Construction Standards, p. 490, 1671

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

- 37-909 Assisted Living Rules Related to Background Checks and Category D Endorsement, p. 1736, 354
- 37-947 Applied Behavior Analysis Services, p. 1444
- 37-971 Communicable Disease Control, p. 1460
- 37-973 Child-Facing Employee Certification and Supervisory Training, p. 209, 613
- 37-974 Child-Placing Agency Definitions, p. 214, 537
- 37-975 Campgrounds, Trailer Courts, Work Camps, and Youth Camps, p. 973
- 37-976 HMK Dental Procedure Codes, p. 573, 1077
- 37-977 County and Tribal Matching Grant, p. 1471
- 37-978 Medicaid Fee Schedules and Effective Dates, p. 395, 695
- 37-979 Assisted Living Rules Related to Background Checks and Category D Endorsement, p. 746
- 37-981 Public Sleeping Accommodations, p. 998
- 37-983 Updating Medicaid and Non-Medicaid Provider Rates, Fee Schedules, and Effective Dates, p. 576, 1078
- 37-984 Low Income Weatherization Assistance Program, p. 1477
- 37-985 Financial Eligibility Criteria, p. 782
- 37-988 Medicaid Hospice Fee Reimbursement and Care Program, p. 1007, 1672
- 37-989 Nursing Facility Reimbursement, p. 590, 1081
- 37-990 Health Care Facility Revisions, p. 1485
- 37-991 Families Achieving Independence in Montana (FAIM), p. 785, 1673
- 37-993 Developmental Disabilities Waiver Program Reimbursement, p. 672, 1316
- 37-994 Immunization Requirements and Exemptions for Children and Staff at Child Care Facilities, p. 1495
- 37-995 Child Support Services Division Guidelines and Distribution, p. 1508
- 37-996 Low Income Home Energy Assistance Program, p. 1511
- 37-997 Vending of Food and Beverages, p. 1518
- 37-999 Living Wills, p. 1522
- 37-1001 Changing the Identification of Sex on Birth Certificates, p. 915
- 37-1002 Changing the Identification of Sex on Birth Certificates, p. 895

- 37-1003 Crisis System Restructuring, p. 1526
- 37-1005 Foster Care Immunization Requirements, p. 1531
- 37-1008 Medically Needy Living Allowance Deduction, p. 1536
- 37-1010 State Approval of Substance Use Disorder Programs – Licensure of Substance Use Disorder Facilities – Behavioral Health and Development Disability Medicaid & Non-Medicaid Manuals, p. 1539
- 37-1012 Updating Medicaid and Non-Medicaid Provider Rates, Fee Schedules, and Effective Dates, p. 1615

PUBLIC SERVICE REGULATION, Department of, Title 38

- 38-2-255 Interventions, p. 1185
- 38-5-250 Montana Energy Impact Assistance Financing, p. 217, 494, 1087
- 38-5-253 Montana's Renewable Energy Resource Standard, p. 221, 538
- 38-5-254 Public Utility Regulatory Policies Act (PURPA), p. 1621
- 38-5-256 Resource Planning, p. 1229
- 38-5-257 Pipeline Safety, p. 1640

REVENUE, Department of, Title 42

- 42-1046 Department Procedures Involving Penalties Against Alcoholic Beverages Licenses, p. 788, 1707
- 42-1047 Former DPHHS Regulations for Failed Laboratory Test Samples, p. 223, 403
- 42-1048 Marijuana and Marijuana Products Packaging and Labeling Application and Approval Process, p. 274, 594, 924
- 42-1049 Department Processing and Remittance of Local-Option Marijuana Excise Tax Collections to Localities, p. 497, 836
- 42-1050 Eliminated Tax Credits, p. 500, 837
- 42-1051 Licensed Premises Proximity Requirements to Places of Worship or Schools, p. 504, 838
- 42-1052 Department Implementation of Legislation for House Bills 157, 226, 525, 705 and Senate Bill 320 Enacted by the 2021 Montana Legislature, p. 1246, 1686
- 42-1053 Montana Marijuana Regulation and Taxation Act Post-Legislative Rules Revisions and Contested Case Rules Updates, p. 1016, 1712
- 42-1054 Property Tax Exemption Process Revisions, p. 1274
- 42-1055 Tribal Government Applications for Temporary Property Tax Exemptions, p. 1643
- 42-1056 Adopting the Multistate Tax Commission's Model Statute for Reporting Adjustments to Federal Taxable Income and Federal Partnership Audit Adjustments, p. 1286
- 42-1057 Extension of Deadlines for a Taxpayer to Appeal an Audit Determination or a Final Determination, p. 1289
- 42-1058 Creation of Additional Canopy License Tiers for Marijuana Cultivators, p. 1293

- 42-1059 Authorization of Marijuana Dispensary Customer Loyalty Programs, p. 1296
- 42-1060 Waste Management Process Revision, p. 1648
- 42-1061 Montana Education Savings Plans (529 Plans), p. 1650

SECRETARY OF STATE, Office of, Title 44

- 44-2-255 Election Security Definitions - Security Assessment Requirements - Security Awareness Training Requirements - Physical Security Requirements - Additional Election Security Requirements - Definitions Related to the Examination of Voting Machines and Devices, p. 507, 676, 1089
  - 44-2-256 Procedures Facilitating Disabled Voter Access, p. 514, 839
  - 44-2-257 Reduction of Business Services Filing Fees, p. 603, 931
  - 44-2-258 Minor Parties, p. 683, 1092
  - 44-2-259 Clarification of Timing of Certain Activities of Election Administrators, p. 1299
  - 44-2-260 Update of Provisions Related to Business Services Filings – Administrative Updates, p. 1302
  - 44-2-261 Records and Information Management Fees – Delegation Authority for Records Disposal of Public Records and Records Storage Systems and Requirements, p. 1308
  - 44-2-262 Scheduled Dates for the 2023 Montana Administrative Register, p. 1653
- (Office of the Commissioner of Political Practices)
- 44-2-254 Child-Care Expenses - Campaigns, p. 225, 404

MONTANA ADMINISTRATIVE  
REGISTER

2022 ISSUE NO. 17  
SEPTEMBER 9, 2022  
PAGES 1742-1785

**CHRISTI JACOBSEN**  
SECRETARY OF STATE

P.O. BOX 202801  
HELENA, MONTANA 59620