

# MONTANA ADMINISTRATIVE REGISTER

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# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 19

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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) 444-9000.

### Page Number

## TABLE OF CONTENTS

### PROPOSAL NOTICE SECTION

#### ADMINISTRATION, Department of, Title 2

2-59-587 Notice of Proposed Amendment - Semiannual Assessment for Banks. No Public Hearing Contemplated. 1682-1684

2-63-580 (State Lottery and Sports Wagering Commission) Notice of Public Hearing on Proposed Adoption, Amendment, and Repeal - Sports Wagering Accounts - Self-Exclusion - Responsible Gaming - Age Verification - General Provisions - Place of Sale - Licensing - Fees - Electronic Fund Transfers - Accounting - Retailer Commission - Notices - Investigative Cooperation - Prizes - Redemptions to Implement Sports Wagering - Forms of Payment. 1685-1704

#### COMMERCE, Department of, Title 8

8-94-172 Notice of Public Hearing on Proposed Adoption - Deadline for the Second Cycle for the Community Development Block Grant (CDBG)–Planning Grants. 1705-1706

EDUCATION, Title 10

10-1-133 (Office of Public Instruction) Notice of Negotiated Rulemaking - Soliciting Applications for Membership on a Negotiated Rulemaking Committee to Develop and Amend Rules Related to K-12 Content Standards for Computer Science, Library Media, and Technology.	1707-1709
10-1-134 (Office of Public Instruction) Notice of Negotiated Rulemaking - Soliciting Applications for Membership on a Negotiated Rulemaking Committee to Develop and Amend Rules Related to K-12 Content Standards for Career and Vocational/Technical Education.	1710-1712
10-1-135 (Office of Public Instruction) Notice of Negotiated Rulemaking - Soliciting Applications for Membership on a Negotiated Rulemaking Committee to Develop and Amend Rules Related to K-12 Content Standards for Social Studies.	1713-1715
10-54-289 (Board of Public Education) Notice of Proposed Amendment - Deadlines for Applications and Annual Reports. No Public Hearing Contemplated.	1716-1718

LABOR AND INDUSTRY, Department of, Title 24

24-29-348 Notice of Public Hearing on Proposed Amendment - Drug Formulary in the Utilization and Treatment Guidelines for Workers' Compensation and Occupational Disease.	1719-1720
24-35-349 Notice of Public Hearing on Proposed Adoption - Registration of Home Inspectors.	1721-1730
24-174-72 (Board of Pharmacy) Notice of Public Hearing on Proposed Amendment - Administration of Vaccines by Pharmacists - Prescription Drug Registry Fee.	1731-1734

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-898 Notice of Public Hearing on Proposed Amendment - Assisted Living and Nursing Facility Reimbursement.	1735-1739
---	-----------

RULE ADOPTION SECTION

STATE AUDITOR, Office of, Title 6

6-256 (Commissioner of Securities and Insurance) Notice of Adoption and Amendment - Annual Audited Reports - Establishing Accounting Practices and Procedures to Be Used in Annual Statements - Internal Audit Function Requirements. 1740

6-258 (Commissioner of Securities and Insurance) Notice of Amendment - Notice of Protection Provided by the Montana Life and Health Insurance Guaranty Association. 1741

EDUCATION, Title 10

10-55-289 (Board of Public Education) Notice of Amendment - Accreditation Process. 1742

LABOR AND INDUSTRY, Department of, Title 24

24-165-24 (Board of Occupational Therapy Practice) Notice of Amendment, Adoption, and Repeal - Definitions - Fees - Military Training or Experience - Examinations - Supervision - Deep Modality Endorsement - Recognized Education Programs - Standards of Practice - Approved Modality Instruction - Approved Training - Endorsement to Apply Topical Medications - Use of Topical Medications - Protocols for Use of Topical Medications - Debriding Agents Protocols - Anesthetic Agents Protocols - Nonsteroidal Anti-Inflammatory Agents Protocols - Antispasmodic Agents Protocols - Adrenocortico-Steroid Agent Protocols - Protocol for Use of an Approved Medication as a Neuropathic Pain Agent - Temporary Practice Permit - Inactive Status - Continuing Education - Continuing Education–Exemption - Unprofessional Conduct - Bactericidal Agents Protocols - Applications for Licensure - Pass-Fail Criteria - Supervision–Methods - Documentation of Instruction and Training - Approval to Use Sound and Electrical Physical Agent Modalities Endorsement - Documenting Education and Competence to Perform Sound and Electrical Physical Agent Modalities–Out-of-State Practitioners. 1743-1744

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-887 Notice of Adoption and Amendment - Communicable Disease Control. 1745

SPECIAL NOTICE AND TABLE SECTION

Function of Administrative Rule Review Committee.	1746-1747
How to Use ARM and MAR.	1748
Recent Rulemaking by Agency.	1749-1758

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 2.59.104 pertaining to the	)	AMENDMENT
semiannual assessment for banks	)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On December 7, 2019, the Department of Administration proposes to amend the above-stated rule.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on October 18, 2019, to advise us of the nature of the accommodation that you need. Please contact Heather Hardman, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2922; TDD (406) 841-2974; facsimile (406) 841-2930; or e-mail to [banking@mt.gov](mailto:banking@mt.gov).

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

2.59.104 SEMIANNUAL ASSESSMENT (1) through (3) remain the same.

(4) The fee shall not exceed \$600,000 for the assessment period. For example, if Bank A paid \$375,000 for the first assessment in June, the maximum amount due for the second assessment in December would be \$225,000.

(5) In the event of a bank merger between Montana state-chartered banks during the second or fourth quarter of the year, the assessment fee for the acquired bank must be paid by the surviving bank.

AUTH: 32-1-213, 32-1-218, MCA

IMP: 32-1-213, 32-1-218, MCA

STATEMENT OF REASONABLE NECESSITY: The Division of Banking and Financial Institutions (division) strives to keep assessment fees commensurate with the cost of supervising Montana state-chartered banks. In 2016, the division implemented a new fee schedule reducing the annual bank assessment revenue by approximately \$595,000. After further analysis, the division found that the assessment fee for banks with total assets \$8 billion and higher remained disproportionate to the cost of supervision, necessitating a further reduction in fees.

The division determined that the assessment fee should be capped at \$600,000 annually to better align with the cost associated with supervising a large bank.

Currently, there are two banks that would be affected by the proposed amendment because their assets exceed \$8 billion. If we use the March 31, 2019, total assets from these two banks, the proposed rule amendment will result in a reduction in revenue to the division of approximately \$772,489 annually.

Historically, the division has inadvertently waived the assessment fee for banks acquired by another Montana state-chartered bank during the second and fourth quarters of the year. During a review of our bank assessment rules, we decided to formally address this through the proposed rule amendment.

Banks that are acquired during the second or fourth quarter, are not in existence to pay the assessment fee by the subsequent assessment due date. For example, Bank A filed their first quarter call report and subsequently merged into Bank B effective April 25, 2019. The division sent out the bank assessment billing on July 1, 2019, which is based on the total assets from the first quarter call report. Bank A shows up in the list, but it no longer exists and therefore cannot remit the assessment. Bank B had also filed their first quarter call report but had not acquired Bank A yet. Therefore, the division performed services for Bank A for the assessment period, October 1, 2018 through March 31, 2019, without receiving reimbursement.

In an effort to project revenue accurately and receive reimbursement for services performed, the division requests the surviving entity pay the assessment fees of the acquired bank.

4. Concerned persons may present their data, views, or arguments concerning the proposed action to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to [banking@mt.gov](mailto:banking@mt.gov); and must be received no later than 5:00 p.m., November 4, 2019.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in 4 above no later than 5:00 p.m., November 1, 2019.

6. If the Division of Banking and Financial Institutions receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be four state-chartered banks based on the 42 existing Montana state-chartered banks.

7. An electronic copy of this proposal notice is available through the department's website at <http://doa.mt.gov/administrativerules>. The department strives to make its online version of the notice conform to the official published version, but advises all concerned persons that if a discrepancy exists between the official version and the department's online version, only the official text will be considered. In addition, although the department works to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

8. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name, mailing address, and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to Heather Hardman, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to [banking@mt.gov](mailto:banking@mt.gov); or may be made by completing a request form at any rules hearing held by the department.

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

10. The department has determined that under 2-4-111, MCA, the proposed amendment of the above-stated rule will not significantly and directly impact small businesses.

By: /s/ John Lewis  
John Lewis, Director  
Department of Administration

By: /s/ Don Harris  
Don Harris, Rule Reviewer  
Department of Administration

Certified to the Secretary of State September 24, 2019.



BEFORE THE STATE LOTTERY AND SPORTS WAGERING COMMISSION  
DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the adoption of NEW	)	NOTICE OF PUBLIC HEARING ON
RULES I through IV pertaining to sports	)	PROPOSED ADOPTION,
wagering accounts, self-exclusion,	)	AMENDMENT, AND REPEAL
responsible gaming and age verification,	)	
the amendment of ARM 2.63.203,	)	
2.63.204, 2.63.401, 2.63.402, 2.63.403,	)	
2.63.404, 2.63.405, 2.63.406, 2.63.407,	)	
2.63.603, 2.63.604, 2.63.606, 2.63.609,	)	
2.63.611, 2.63.612, 2.63.801, 2.63.1002,	)	
2.63.1004, 2.63.1005, 2.63.1201, and	)	
2.63.1202 pertaining to general	)	
provisions, place of sale, licensing, fees,	)	
electronic fund transfers, accounting,	)	
retailer commission, notices,	)	
investigative cooperation, prizes and	)	
redemptions to implement sports	)	
wagering, and the repeal of ARM	)	
2.63.409 pertaining to forms of payment	)	

TO: All Concerned Persons

1. On October 28, 2019, at 10:00 a.m., the Montana Lottery will hold a public hearing at the State Lottery Headquarters, 2525 N. Montana Ave., Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The Montana Lottery will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the State Lottery Commission no later than 5:00 p.m. on October 21, 2019, to advise us of the nature of the accommodation that you need. Please contact Denise Blankenship, State Lottery, 2525 North Montana Avenue, P.O. Box 6073, Helena, Montana 59604-6073; telephone (406) 444-5801; fax (406) 444-5830; TDD/Montana Relay Service (406) 444-9642; or by e-mail at [dblankenship@mt.gov](mailto:dblankenship@mt.gov).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2019 Legislature enacted Chapter 284, Laws of 2019 (House Bill 725), to allow sports gambling through the state lottery. With the enactment of HB 725, it is necessary for the commission to adopt new rules and amend existing rules to address the addition of sports wagering as an allowable activity.

The commission is amending ARM 2.63.203, 2.63.401, 2.63.402, 2.63.403, 2.63.404, 2.63.405, 2.63.406, 2.63.407, 2.63.603, 2.63.606, 2.63.612, 2.63.801,

2.63.1002, 2.63.1004, 2.63.1005, and 2.63.1202 to replace references to the term "retailer" with the term "sales agent" to conform with the terminology used in HB 725. Reasons for other proposed changes are addressed specifically for those rules.

4. The rules proposed to be adopted provide as follows:

NEW RULE I SPORTS WAGERING ACCOUNTS (1) Only players who have established a sports wagering account as defined in 23-7-103, MCA, may engage in mobile sports wagering.

(2) The lottery may accept anonymous wagers at a sports wagering facility.

(3) The lottery shall record and maintain the information submitted to initially create a sports wagering account.

(4) Before establishing a sports wagering account, the lottery shall:

(a) verify the player's identity by physical or electronic means;

(b) verify the player is 18 years of age or older by physical or electronic means as provided in [NEW RULE IV];

(c) verify the player is not self-excluded from participating in sports wagering by participation in the self-exclusion program as provided in [NEW RULE II];

(d) verify the player is not prohibited from sports wagering by 23-7-302(4), MCA, or otherwise prohibited from participating in sports wagering;

(e) record the document number of the government-issued identification credentials examined, or other methodology for remote, multi-sourced authentication, which may include third-party and governmental databases, as approved by the director; and

(f) record the player's:

(i) acceptance of the terms and conditions and privacy policy; and

(ii) acknowledgment that the information provided is accurate and that the player is prohibited from allowing any other person to access or use their sports wagering account.

(5) Unauthorized access to, or use of, a player's sports wagering account by a person other than the player for whom the sports wagering account was established is prohibited.

(6) A player is allowed only one sports wagering account.

(7) A sports wagering account may be funded using methods described in ARM 2.63.409.

(8) The lottery shall suspend a sports wagering account if a preponderance of evidence indicates:

(a) the account has not been used to make any wagers for a consecutive 18-month period;

(b) illegal activity;

(c) a negative account balance;

(d) fraudulent or multiple failed automated clearing house (ACH) deposit attempts; however, a failed ACH deposit attempt may not be considered fraudulent if the player has successfully deposited funds via an ACH transfer on a previous occasion with no outstanding chargebacks;

(e) the account was issued in error or in violation of statute or rule; or

(f) a violation of the terms and conditions of the sports wagering account that are posted on montanalottery.com and the mobile application.

(9) When a sports wagering account is suspended, the player may not:

(a) wager;

(b) deposit funds;

(c) withdraw funds, unless the reason for the suspension would not prohibit a withdrawal;

(d) change their sports wagering account; or

(e) remove the sports wagering account from the system.

(10) A suspended sports wagering account may be restored:

(a) upon expiration of the time period established by the player as indicated in the self-exclusion program provided for in [NEW RULE II];

(b) upon the lottery's permission; or

(c) when the player is no longer a prohibited sports wagering participant.

(11) Funds may be withdrawn from a sports wagering account for:

(a) wagers;

(b) check or wire transfer by the lottery made payable to the player and issued directly or delivered to the player's address on file;

(c) credits to the player's debit card;

(d) a transaction using sports wagering equipment; or

(e) any other means approved by the lottery.

(12) Sports wagering account funds may not be withdrawn unless all conditions are met, including:

(a) successful resolution of player dispute or investigation;

(b) the ACH funding transaction clears or the chargeback period ends; and

(c) the funding of lottery-provided promotional rewards clears.

(13) A player may not transfer funds or rewards between or among sports wagering accounts.

(14) The lottery shall suspend and close a sports wagering account if the account has not been used to make any wagers for a consecutive 18-month period. In such circumstances:

(a) funds within the suspended sports wagering account to be closed are no longer accessible by the player;

(b) funds in the account must be returned to the player; and

(c) the player may only create a new sports wagering account after the suspended account is closed by the lottery.

AUTH: 23-7-202, MCA

IMP: 23-7-102, 23-7-103, 23-7-110, 23-7-202, MCA; Chapter 284, section 1, L. 2019

**STATEMENT OF REASONABLE NECESSITY:** The lottery proposes to adopt this rule to implement, manage, and terminate sports wagering accounts through the use of electronic devices. The use of a sports wagering account will enable a player to electronically participate in sports wagering at a licensed sports wagering facility. The lottery is charged with maximizing revenue and having the

ability to allow for electronic wagers which are used throughout the industry to increase efficiency and ease of play.

The player is limited to one account to discourage potential fraudulent use of an account by another player who may not be eligible to wager. For example, a player with more than one account could create another account under their identity and turn control of the account over to an ineligible player.

It is necessary to verify the identity of the player to ensure compliance with law and assist in responsible gaming efforts. Physical and electronic verification of the player are tools to ensure compliance.

The proposed rule lists grounds for suspending sports wagering accounts to give players notice of events that may lead to account suspension. The identified reasons for suspending an account were selected because they describe circumstances when illegal or fraudulent activity may have occurred, conditions that place the player's account at risk of being compromised, and circumstances that create risk for the lottery.

If an account is suspended, it is necessary to restrict access to all activities associated with that account until the issue triggering the suspension is resolved. This limits potential financial impact to both the player and the lottery and prevents possible criminal activity.

Withdrawals and transfers from established accounts are limited to the methods described in (12) and (13) to ensure that the funds being withdrawn are going to the account holder. These limited methods discourage use by someone other than the verified player and prevents criminal activity, such as money laundering.

Dormant accounts indicate they are abandoned and could be subject to abuse by persons who gain access to the account. The 18-month period was chosen to allow a player the opportunity to only wager on an annual event such as the World Series and events that occur annually but not always at the same time.

Anonymous wagers will be accepted only at a sports wagering facility, thus enabling a player to wager without establishing an account. This will allow persons who are new to sports wagering the ability to experience sports betting without providing personal information. The operator of the sports wagering facility must still verify the player's eligibility.

Through the controls outlined in the proposed rule, the lottery will help ensure the person holding the account is of legal age to place a wager and that the account cannot be used for illegal purposes.

**NEW RULE II SELF-EXCLUSION PROGRAM** (1) The voluntary self-exclusion program allows persons who wish to refrain from sports wagering to notify the lottery that they accept responsibility for refraining from sports wagering offered by the lottery. Each person seeking placement in the voluntary self-exclusion program acknowledges the responsibility to refrain from engaging in sports wagering.

(2) A person may request placement in the voluntary self-exclusion program by completing the application and following the procedure outlined at [montanalottery.com](http://montanalottery.com).

(3) A program participant may not create a sports wagering account and may not collect any winnings or recover any losses resulting from any sports wagers under the lottery's control.

(4) The program participant must forfeit all rewards or points earned through any player reward or other promotional programs offered by the lottery.

(5) A person who has self-excluded may request removal from the self-exclusion program by following the procedure outlined at [montanalottery.com](http://montanalottery.com).

AUTH: 23-7-202, MCA

IMP: 23-7-202, MCA; Chapter 284, section 1, L. 2019

STATEMENT OF REASONABLE NECESSITY: The proposed rule for a self-exclusion program for sports wagering helps ensure the lottery is contributing to responsible gaming as directed in 23-7-202(10)(i), MCA. The lottery proposes this approach because self-exclusion programs are a commonly employed strategy for responsible gaming. Research gathered by the National Center for Responsible Gaming and in the Journal of Gambling Studies indicates persons who self-exclude experience benefits, including decreased gambling and increased psychological wellbeing and overall functioning. Ohio, Missouri, Maryland, Pennsylvania, California, and other locations have made self-exclusion programs part of their efforts to combat problem gambling. By implementing a program, the lottery provides persons a recognized tool to help manage their gambling disorder.

NEW RULE III RESPONSIBLE GAMING (1) The lottery shall provide players choices in their sports wagering account to select responsible gaming options, including self-limiting options such as:

(a) a deposit limit offered on a daily, weekly, and monthly basis that specifies the maximum amount of money a player may deposit into their sports wagering account during a particular period of time;

(b) a spending limit offered on a daily, weekly, and monthly basis that specifies the maximum amount of player funds that may be put at risk during a particular period of time; and

(c) a time-based limit, offered daily that specifies the maximum amount of time, measured hourly from the player's log-in to log-off, a player may spend playing on a sports wagering system.

(2) Information about player protection and responsible gaming is available at [montanalottery.com](http://montanalottery.com).

(3) Players' personally identifiable information is protected in accordance with the privacy policy located at [montanalottery.com](http://montanalottery.com).

(4) Self-exclusion is allowed as described in [NEW RULE II].

(5) As described in [NEW RULE IV], the lottery shall reasonably ensure a player under the age of 18 is prohibited from participating in sports wagering by verifying the age of each person who obtains a sports wagering account and by informing licensees of their responsibility to verify the legal age of persons placing a sports wager.

AUTH: 23-7-202, MCA

IMP: 23-7-202, MCA; Chapter 284, section 1, L. 2019

STATEMENT OF REASONABLE NECESSITY: The lottery is proposing this rule to allow players to set self-imposed limits on placing sports wagers and to protect the player's identity. Player-set limits are utilized nationally to encourage responsible gambling. Research published in the Responsible Gambling Review indicates that self-imposed limits contribute to responsible gaming. A self-limiting program for sports wagering allows the lottery to contribute to responsible gaming as directed in 23-7-202(10)(i), MCA, by ensuring a fair and safe gaming experience that protects the players from the adverse consequences of sports wagering. The responsible gaming limits included in the proposed rule reflect responsible gaming principles accepted within the industry and the lottery believes following these principles rather than creating its own makes sense.

NEW RULE IV AGE VERIFICATION (1) Each sales agent shall ensure all persons purchasing or cashing lottery products are 18 years of age or older.  
(2) All persons selling lottery products must be 18 years of age or older.  
(3) The lottery shall verify the age of all persons establishing a sports wagering account to ensure they are 18 years of age or older by:  
(a) physical verification of a government-issued identification as described in ARM 2.63.1201(1); or  
(b) electronic verification of information provided by the player.

AUTH: 23-7-202, MCA

IMP: 23-7-202, 23-7-302, MCA; Chapter 284, section 1, L. 2019

STATEMENT OF REASONABLE NECESSITY: NEW RULE IV imposes age verification requirements on sales agents to ensure the purchase of lottery tickets and sports wagers is restricted to persons 18 years of age and older as provided in 23-7-302(2), MCA. Sale of lottery tickets and sports wagers is restricted to persons who are 18 years of age or older by 23-7-301(3)(b), MCA. The responsibility to verify the age of the player falls to both the retailer and the lottery. Section (3) clarifies it is the lottery's duty to verify the age of persons establishing sports wagering accounts. Government-issued identification review allows the lottery to verify the identity and age of the player to assess the player's suitability and ensure compliance with existing law. All references to age restrictions were placed into this rule in one location to help avoid confusion.

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

2.63.203 DEFINITIONS In addition to the definitions found in 23-7-103, MCA, the following definitions apply to this chapter:

(1) through (4) remain the same.

(5) "Player" means a person who:

(a) has purchased a lottery game ticket, chance, wager, or bet; and

(b) is not restricted from purchase under 23-7-302, MCA.

(5) remains the same but is renumbered (6).

~~(6) "Retailer" means a licensed ticket or chance sales agent provided for in 23-7-301, MCA.~~

(7) and (8) remain the same.

AUTH: 23-7-202, MCA

IMP: 23-7-301, MCA; Chapter 284, section 1, L. 2019

STATEMENT OF REASONABLE NECESSITY: The commission proposes to delete the term "retailer" because it was replaced by the term "sales agent" in 23-7-103(6), MCA, as amended by HB 725. With the inclusion of "sales agent" in statute, a separate definition in rule is not necessary. The term "player" is added to distinguish a person who is legally playing a lottery game from those who are not eligible to play a lottery game.

2.63.204 GENERAL PROVISIONS (1) The lottery shall provide lottery tickets ~~and, promotional coupons, and sports wagering~~ to the public whenever the director, with the commission's concurrence, finds it feasible and in the state's best interest.

(2) through (5) remain the same.

(6) The director shall adopt parameters for sports wagering games, including but not limited to:

(a) holding fixed odds wagering;

(b) bettor participation in wagering games;

(c) minimum and maximum wager limits;

(d) bet acceptance;

(e) bet cancellation;

(f) event results;

(g) winning bets;

(h) winnings payouts;

(i) maximum winnings;

(j) disputes and complaints; and

(k) sports and bet types.

~~(6) (7)~~ The director may conduct a grand prize event ~~in conjunction with the games~~. The procedures for conducting preliminary drawings and for the grand prize event shall be determined by the director, subject to 23-7-102, MCA.

AUTH: 23-7-202, MCA

IMP: 23-7-110, 23-7-202, 23-7-211, 23-7-212, 23-7-301, MCA; Chapter 284, section 1, L. 2019

STATEMENT OF REASONABLE NECESSITY: The proposed amendments are necessary to implement sports wagering. The director will provide parameters or game specifications describing how specific sports wagering games will operate. Parameters are unique and change in every new game. All new games and game parameter changes are presented to the commission quarterly for approval.

Parameters are necessary to ensure the fairness and integrity of the sports wagering product. By having a fair product, the lottery will encourage players to purchase wagers and maximize the revenue generated. Sports wagering is another product of the lottery and will be subject to similar provisions as other lottery products. The parameters required by this proposed amendment will address all aspects of sports wagering.

Other jurisdictions, including Delaware, the District of Columbia, British Columbia, and the Western Canada Lottery Commission have required parameters to address the issues and considerations identified in (6). As in these jurisdictions, the lottery anticipates establishing parameters regarding the listed issues will ensure the lottery's sports wagering products are fair. Furthermore, under 23-7-305, MCA, the lottery is required to make adequate disclosure of the odds or payoffs of all lottery products, and therefore it is necessary to have parameters for fixed odds wagering.

Information regarding sports wagering parameters will be available at [montanalottery.com](http://montanalottery.com) and the sports wagering account mobile application.

2.63.401 RETAILER SALES AGENT PLACES OF SALE (1) remains the same.

(2) Sports wagering may be offered at any place of business in Montana:

(a) that is licensed by the lottery;

(b) that is under the control of a person in possession of a gambling operator license as defined in 23-5-177, MCA;

(c) whose owner has the appropriate alcoholic beverage license as defined in 23-5-119, MCA;

(d) that has a unique address assigned by the local government in which the premises is located;

(e) that is not engaged in a business exclusively as a sports wagering sales agent;

(f) that is financially responsible;

(g) that is accessible to the public and meets ADA standards;

(h) whose owner has not been convicted of a felony or gambling-related offense;

(i) whose owner does not have a financial interest in any gaming supplier; and

(j) whose owner is not a person prohibited from receiving a license pursuant to 23-7-301, MCA.

AUTH: 23-7-202, 23-7-301, MCA

IMP: 23-7-301, 23-7-306, 23-7-307, MCA; Chapter 284, section 1, L. 2019

STATEMENT OF REASONABLE NECESSITY: The catchphrase is being amended to conform with the terminology used in HB 725. Rule text is being amended to include sports wagering. The rule will subject sports wagering locations to the same restrictions placed on other lottery sales agents with several additional requirements to ensure the integrity of the product. HB 725 describes a sports



wagering facility as a location licensed as a gambling operator as described in 23-5-177, MCA.

During legislative hearings on HB 725, there was testimony requesting that sports wagering be limited to taverns. As a result, an amendment to the legislation was offered and accepted to require a gambling operator license to limit sports wagering to locations with gambling. The lottery intends to clarify this further by specifying that, in addition to the gambling operator license, an appropriate alcoholic beverage license as defined in 23-5-119, MCA, is also required. The lottery has taken this approach because by limiting eligibility to locations that possess the appropriate alcoholic beverage license for certain gambling activities, the lottery will ensure a sufficient number of locations to offer sports wagering and help limit any adverse impacts of an overabundance of locations. Since the distribution of alcoholic beverage licenses is based upon population, linking sports wagering to both license requirements ensures a similar balanced distribution of the sports wagering licenses.

A unique business address for a location allows the lottery to identify where the sales agent will operate from. The record will allow the lottery to locate the sales agent to deliver and maintain equipment and supplies. A location that plans to operate a business exclusively offering sports wagers would not be eligible with the addition made to 23-7-301, MCA in HB 725.

The fiscal responsibility of the sales agent will be determined through investigation by lottery staff utilizing, in part, information supplied by the applicant. Sales agents are entrusted with funds from the sale of lottery products from the time of sale until the funds are transferred to the lottery. Therefore, the lottery is required to determine the financial responsibility of the applicant to minimize potential financial risk to the state. If the applicant is determined to be a risk, the director may choose to require a bond as provided for in 23-7-301, MCA.

The lottery is proposing other criteria in (2) to ensure sports wagering licensees meet the financial responsibility, security, accessibility, and public convenience requirements in 23-7-301, MCA. Restrictions regarding persons who are involved in professional and collegiate sports are included and are required by 23-7-301(3)(d), MCA.

2.63.402 RETAILER SALES AGENT RESIDENCY (1) remains the same.

AUTH: 23-7-301, MCA

IMP: 23-7-301, MCA; Chapter 284, section 1, L. 2019.

2.63.403 RETAILER SALES AGENT APPLICATIONS AND FEES (1) A person interested in obtaining a license as a retailer sales agent shall:

(a) complete an eStop application and pay the required licensing fee on the state licensing system portal at [www.eStop.mt.gov](http://www.eStop.mt.gov); and

(b) ~~file a traditional or Montana sports action (MSA) lottery retailer an~~ application for a license using the application forms on ~~the Montana Lottery website at [www.montanalottery.com/en/view/retailers](http://www.montanalottery.com/en/view/retailers)~~ [montanalottery.com](http://montanalottery.com); and

(c) indicate license type:

(i) lottery only; or

(ii) sports wagering only.

(2) There is a one-time non-refundable \$50 application fee for a ~~traditional~~ license.

(3) ~~There is an additional annual fee for an MSA license as provided in ARM 8.22.3902(2)(c), which is collected for and transferred to the Board of Horse Racing. To apply for an MSA license, a retailer must first have a current gaming license.~~

(4) remains the same but is renumbered (3).

AUTH: 23-7-202, MCA

IMP: 23-7-202, 23-7-301, MCA; Chapter 284, section 1, L. 2019

STATEMENT OF REASONABLE NECESSITY: In general, the proposed amendments are needed to restructure licenses with the addition of sports wagering. With the enactment of HB 725, use of the term "traditional license" is no longer appropriate as there are now two types of licenses available. The lottery proposes to adopt (1)(c) to require applicants to identify which of the two available license types the applicant is seeking.

With the addition of sports wagering, the lottery is proposing to delete (3) to avoid potential confusion between parimutuel betting licenses, also known as sports action licenses, and the sports wagering licenses authorized by HB 725. ARM 8.22.3902 governs licensure for parimutuel betting. The lottery will continue to collect and remit the pari-mutuel license fee for the Board of Horse Racing; however, it is unnecessary to address pari-mutuel licensing in both ARM 8.22.3902 and in this rule regarding lottery sales agent licensing.

The lottery is not changing the application fee collected to defray the expense of processing and administering licenses. No sports wagering licenses have been issued to date; however, the Department of Justice reports there are 1,400 licensed gambling operators who would be eligible to apply for a sports wagering license. If the gambling operators licensed currently apply for sports wagering licenses, the cumulative revenue increase for the lottery will be \$70,000.

#### 2.63.404 RETAILER SALES AGENT REQUIRED RULE READING

(1) Each licensed ~~retailer~~ sales agent and any employee of the ~~retailer~~ sales agent ~~who will be~~ involved in the sale, bookkeeping, or any other aspect of the lottery ~~and sports wagering~~ shall:

(a) ~~read and understand the lottery laws and commission rules concerning retail lottery and sports wager licenses and be familiar with these laws and rules;~~  
and

(b) sign all official application forms indicating that the ~~retailer~~ sales agent is familiar with the laws and commission rules and agrees not to violate these laws or rules.

AUTH: 23-7-202, MCA

IMP: 23-7-202, 23-7-301, MCA; Chapter 284, section 1, L. 2019

STATEMENT OF REASONABLE NECESSITY: The lottery proposes to amend this rule to provide style corrections and improve clarity. It is important for

the sales agent to understand and follow the statutory obligations and restrictions, because a violation could result in a criminal conviction and loss of license. The lottery believes that emphasis on these obligations is important.

2.63.405 RETAILER SALES AGENT ELECTRONIC FUNDS TRANSFER AND ACCOUNTING (1) ~~A retailer~~ An applicant shall, before being licensed, authorize the debiting and crediting of an account in the ~~retailer's~~ applicant's name for the purpose of electronic funds transfer to or from the state's collection account, as provided in ARM 2.63.801.

(2) The ~~retailer~~ sales agent shall execute all forms required by the lottery director, the ~~retailer's~~ sales agent's bank, or the initiating bank.

(3) The lottery shall provide to the sales agent the means to track sales, cashing, adjustment, and invoicing activity for bookkeeping purposes.

AUTH: 23-7-202, MCA

IMP: 23-7-301, MCA; Chapter 284, section 1, L. 2019

STATEMENT OF REASONABLE NECESSITY: The lottery currently provides sales agents the ability to track all aspects of business conducted with the lottery. The additional proposed language describes the financial tracking tools the lottery provides to sales agents. These tools will allow both parties to have a common point of reference while working to resolve issues. Identifying issues early on gives the lottery the best opportunity to limit any potential loss.

2.63.406 RETAILER SALES AGENT BONDING (1) The director may require a surety bond from the owner or corporation making the application to the lottery to become a lottery retailer sales agent. ~~A determination for this bonding requirement is made based on the applicant's credit risk score exceeding a maximum allowable score of 30. The bond amount is determined by:~~

(a) if the location was previously licensed, the sales total for the six months prior to closing;

(b) for a new location, the sales of a similarly sized sales agent in a community of approximately the same population for the six months before the application date.

(2) The sales agent shall maintain the bond for two years.

AUTH: 23-7-202, 23-7-301, MCA

IMP: 23-7-301, MCA; Chapter 284, section 1, L. 2019

STATEMENT OF REASONABLE NECESSITY: This rule, which applies to all lottery games offered by sales agents, is being amended to implement 23-7-301 MCA, which states the amount of bond will be provided for in rule. The former rule utilized a scoring system that is no longer in use in the industry. The proposed methodology will protect the lottery from potential risk by providing a bond against potential loss. Research by JP Morgan indicates approximately 1/3 of small businesses stop operating within two years. Based on this research, the commission believes two years is a reasonable time.

2.63.407 RETAILER SALES AGENT COMMISSION (1) Retailers Sales agents who sell lottery scratch or terminal-issued tickets are entitled to a 5 percent base commission of the face value of tickets sold.

(2) Retailers Sales agents who sell scratch tickets may increase the scratch ticket commission up to an additional 5 percent.

(a) Each retailer sales agent is assigned a scratch ticket sales base. The scratch ticket sales base is determined using the prior fiscal year's average scratch ticket pack activations minus pack returns.

(b) For each sales quarter, the retailer's sales agent's scratch tickets are measured against the assigned base by scratch tickets activated and not returned to the lottery.

(c) For each 2 percent increase in retailer's sales agent's sales over the established base sales during the sales quarter, the retailer's sales agent's commission must be increased by an additional 0.5 percent, not to exceed a 10 percent total commission for any quarter.

(3) Retailers Sales agents who sell terminal-issued tickets designated in lottery policy may increase the terminal-issued commission for participating games up to an additional 5 percent.

(a) Each retailer sales agent is assigned a terminal-issued ticket sales base for participating games. The terminal-issued ticket quarterly sales base is determined by a retailer's sales agent's previous year's sales performance. Retailers Sales agents with quarterly revenue greater than \$1,000 are eligible for this bonus program.

(b) For each sales quarter, the retailer's sales agent's terminal-issued tickets are measured against the assigned base by gross sales for participating games.

(c) Retailers Sales agents who achieve the minimum sales quarter growth requirement must receive an additional bonus rate commission for participating terminal-issued games, not to exceed a 10 percent total commission for any quarter.

(4) Retailer Sales agent ticket sales bases, minimum requirements, and bonus rates may be adjusted annually at the discretion of the commission.

(5) remains the same.

(6) Sales agents who offer sports wagers are entitled to a 6 percent base commission of the value of sports wagers made.

AUTH: 23-7-202, 23-7-301, MCA

IMP: 23-7-202, 23-7-301, MCA; Chapter 284, section 1, L. 2019

STATEMENT OF REASONABLE NECESSITY: The lottery proposes to amend this rule to reflect the requirement for the lottery commission to address sales agents' commissions, as reflected in 23-7-202 and 23-7-301, MCA. The rule currently addresses commissions for other lottery products. With the addition of sports wagering, the sales agent's commission for this product is required to be added. The lottery is proposing a 6 percent commission for sports wagering, because a sales incentive program for sports wagering is not offered.

## 2.63.603 DISPLAY OF LICENSE, NOTICES, AND RESTRICTIONS

(1) Each ~~retailer~~ sales agent shall prominently display the license in each licensed place of business in an area visible to the general public and in a manner that prevents theft or defacement of the license.

(2) Each sales agent shall post a notice that persons must be 18 years of age to play.

(3) A sales agent operating a sports wagering facility shall also post information from the lottery including:

(a) sports wagering game conditions that are available through the official website;

(b) responsible gambling resources approved by the director that are dedicated to helping persons with potential gambling problems; and

(c) information governing self-imposed responsible gaming limits and the ability for the player to establish those limits.

AUTH: 23-7-301, MCA

IMP: 23-7-301, 23-7-302, MCA; Chapter 284, section 1, L. 2019

STATEMENT OF REASONABLE NECESSITY: The lottery is amending this rule to ensure persons under the age of 18 are aware that they cannot place a wager as stated in 23-7-302, MCA. The commission believes this emphasis is important given the Legislature's mandate. The listing of the game conditions, information regarding potential gambling problems, and self-imposed limits will increase awareness of responsible gaming and help protect the consumer. The information will also promote public confidence in the integrity of lottery products. If the public has confidence in the product, they will continue to play, allowing the lottery to maximize revenue.

2.63.604 LICENSE LOCATIONS (1) remains the same.

(2) Each person shall submit a separate application for each location at which the person intends to sell lottery tickets or offer sports wagering.

(3) and (4) remain the same.

AUTH: 23-7-202, 23-7-301, MCA

IMP: 23-7-301, MCA; Chapter 284, section 1, L. 2019

STATEMENT OF REASONABLE NECESSITY: The lottery is amending this rule to include sports wagering locations consistent with 23-7-301, MCA. By adding sports wagering locations to the rule, the lottery is dealing with these locations in a similar fashion as other locations selling lottery products.

2.63.606 DUPLICATE LICENSES (1) Upon the loss, mutilation, or destruction of any license issued by the director, the ~~retailer~~ sales agent shall submit a written request to replace the license to the director.

(2) remains the same.

(3) The request for a duplicate license must be accompanied by a nonrefundable fee of \$40 25.

(4) and (5) remain the same.

AUTH: 23-7-202, MCA

IMP: 23-7-211, 23-7-301, MCA; Chapter 284, section 1, L. 2019

STATEMENT OF REASONABLE NECESSITY: The lottery is proposing to amend this rule to increase the allowable fee to provide a duplicate license. The increase will help cover the additional costs of verifying the license owner information, status of the license, production, and the mailing. The increase will only affect a person who has lost a license. The amount of a duplicate license has remained the same since the inception of the lottery in 1986, and the commission believes this amount is reasonable and will cover the administrative cost of providing a duplicate license. On average, the lottery replaces approximately 20 licenses per year. This change would result in an additional \$300 annually.

2.63.609 CHANGE OF LOCATION (1) The change of a business address for any ~~retail~~ licensee is not considered to be the assignment or transfer of the license if all of the following criteria are met:

- (a) remains the same;
- (b) the old location ceases all business activity by the licensee and not merely the sale of ~~lottery~~ tickets, chances, wagers, or bets;
- (c) through (2) remain the same.

AUTH: 23-7-202, MCA

IMP: 23-7-301, MCA; Chapter 284, section 1, L. 2019

STATEMENT OF REASONABLE NECESSITY: With the addition of sports wagering as a lottery product, the lottery has the obligation to ensure that each location is properly licensed. The lottery proposes to amend the current rule to include sports wagering language into the existing rule and use consistent terminology throughout the rule. By adding sports wagering locations to the rule, the lottery is dealing with these locations in a similar fashion as other locations selling lottery-only products.

2.63.611 REVOCATION OR SUSPENSION OF LICENSE (1) through (1)(c) remain the same.

(d) sold any ticket, chance, wager, or bet at a higher price than that set by commission rule;

(e) intentionally or knowingly initiated or accepted an offer of compensation from another person, or agreed to aid another person or persons, to claim all or a share of a lottery prize or a share of a lottery prize sports wager winnings by means of fraud, deceit, or misrepresentation, ~~or agrees to aid another person or persons to claim a lottery prize or a share of a lottery prize with the intent to defraud a creditor by means of fraud, deceit, or misrepresentation;~~

(f) intentionally preprinted multiple terminal-issued draw game or raffle tickets with the objective of gaining an advantage over other lottery sales locations while benefiting financially, either directly or indirectly, from sale of those tickets; ~~or~~

(g) intentionally amassed packs of scratch tickets or taken other intentional actions to gain an advantage over other lottery sales locations while benefiting financially, either directly or indirectly, from sale of those tickets; or

(h) tampered with any equipment used for lottery or sports wagering.

(2) through (2)(d) remain the same.

(e) knowingly selling to or cashing a lottery or sports wager ticket ~~to~~ for a person under the age of 18 years;

(f) allowing an employee under the age of 18 to sell or cash lottery or sports wager tickets;

(g) ~~failure~~ failing to redeem prizes lottery prize or sports wager winnings as directed by the lottery;

(h) ~~the refusal~~ refusing to acquire or display any materials required by the director; or

(i) the ~~licensee~~ sales agent is ineligible for a license ~~under the Montana Lottery Act~~ and the facts giving rise to such ineligibility occurred or were discovered subsequent to the issuance of a license.

(3) Upon notice of revocation or suspension, the ~~retailer~~ suspended sales agent shall give a final accounting to the lottery and surrender the license, ~~lottery material, equipment, paper,~~ and tickets to the lottery. The ~~retailer~~ sales agent is liable for all money still owed the lottery.

(4) remains the same.

(5) In circumstances where the ~~licensee~~ suspended sales agent owns or is a partner in multiple locations, the restriction, suspension, or termination of one location associated with the ~~licensee~~ suspended sales agent is grounds for restriction, suspension, or termination of all locations.

AUTH: 23-7-202, MCA

IMP: 23-7-301, MCA; Chapter 284, section 1, L. 2019

STATEMENT OF REASONABLE NECESSITY: The lottery proposes to amend this rule to provide style corrections and improve clarity. The addition of sports wagering to the rule will allow the lottery to treat sports wagering licenses in a manner consistent with existing lottery licenses.

Equipment and paper were added to the items to be returned as they both are controlled items and can impact the integrity of the lottery if utilized for criminal activity. Unauthorized access to these items could result in attempts to create fraudulent tickets or access to the lottery system.

By limiting the circumstances when a prize can be claimed, the lottery is limiting potential illegal activity. By limiting illegal activity, the lottery is enhancing the integrity of lottery products and promoting public confidence in the products offered.

By not allowing a sales agent to claim a prize for another person, the lottery can fulfill its responsibility to prevent fraud and assist in collecting certain debts.

2.63.612 TEMPORARY LICENSES (1) The director may issue a special temporary license to a licensed ~~retailer~~ lottery-only sales agent upon conditions considered necessary including, but not limited to:

(a) through (e) remain the same.

(2) No temporary licenses will be issued for sports wagering.

AUTH: 23-7-202, MCA

IMP: 23-7-301, MCA; Chapter 284, section 1, L. 2019

STATEMENT OF REASONABLE NECESSITY: Given the nature and complexity of sports wagering, the lottery proposes that no temporary sports wagering licenses be granted to help ensure the integrity of product. The sports wagering product includes the use of an electronic sports wagering account that allows for the player to place a wager from within a licensed location. It would be technically difficult and cost prohibitive to enable a temporary location. Given the transient nature of the locations and time period they would be open, the expenditure of resources for temporary locations is not justified.

2.63.801 ELECTRONIC FUNDS TRANSFER (1) As a condition of licensing, a ~~retailer~~ sales agent shall agree to participate in the lottery's electronic funds transfer system.

(2) The director may determine the schedule for debiting (sweeping) the ~~retailer's sales agent's~~ account, subject to concurrence of the commission. The director may allow deviation from the schedule for the first game and in other special circumstances.

(3) The ~~retailer~~ sales agent shall bring any accounting error, bank account change, or dispute to the attention of the lottery before the next scheduled sweep.

(4) A ~~retailer~~ sales agent must pay the amount of any nonsufficient fund sweep immediately by certified check, cashier's check, or money order. If a ~~NSF is not covered~~ the debt is not paid, the ~~retailer~~ sales agent shall immediately surrender all tickets, equipment, paper, and other lottery material and is subject to license revocation proceedings.

(5) remains the same.

AUTH: 23-7-202, 23-7-301, MCA

IMP: 23-7-301, MCA; Chapter 284, section 1, L. 2019

STATEMENT OF REASONABLE NECESSITY: The lottery proposes to include the addition of equipment and paper to the items to be surrendered. Both items are the lottery's property. Each of the items plays a part in the security and integrity of the lottery and needs to be controlled by the lottery if they are no longer in use by the sales agent.

2.63.1002 LOTTERY TICKET PRICE (1) The price of a lottery ticket is determined by the lottery commission. A ~~retailer~~ sales agent may not sell a lottery ticket for more than the price printed on the ticket. A ~~retailer~~ sales agent may give away tickets.

AUTH: 23-7-202, MCA

IMP: 23-7-202, 23-7-301, MCA



2.63.1004 LOTTERY TICKETS - RETAILER SALES AGENT (1) The ~~retailer sales agent~~ is responsible for all lottery tickets after acceptance and bears the burden of any loss, including theft or damage.

AUTH: 23-7-202, MCA

IMP: 23-7-202, 23-7-301, MCA; Chapter 284, section 1, L. 2019

2.63.1005 NOTIFICATION OF LOST, DAMAGED, OR STOLEN TICKETS OR EQUIPMENT AND INVESTIGATIVE COOPERATION (1) ~~Retailers Sales agents~~ shall immediately report the theft, loss, or damage of any ~~lottery tickets, paper,~~ or equipment to the director and local law enforcement authorities. ~~The retailer shall cooperate in any investigation conducted by the lottery, its employees, the attorney general, legislative auditor or local law enforcement authorities.~~

(2) Sales agents shall contact the lottery to report any suspicious activity that could affect the integrity of the lottery, including but not limited to:

(a) an offer of compensation from another person to claim a lottery prize or wager winnings;

(b) any attempt to influence winning a prize through the use of coercion, fraud, deception, or tampering with equipment and materials; or

(c) persons seeking technical information regarding the operation of lottery equipment.

(3) The sales agent and any employee shall cooperate in any investigation conducted by the lottery, the attorney general, legislative auditor, or local law enforcement authorities.

(4) The lottery shall monitor and review transaction activity to ensure system integrity and for potential criminal violations.

AUTH: 23-7-202, MCA

IMP: 23-7-212, 23-7-411, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed changes reflect the efforts of the lottery to help ensure the integrity of all lottery games and prevent possible illegal activity. It is essential for information regarding any attempt to influence the outcome of any lottery product be reported so that the lottery can work with law enforcement to prevent this from happening. By being aware of attempts to influence the outcome of a lottery product, the lottery can work with sales agents to resolve issues and prevent them from happening in the future and at other locations.

2.63.1201 PRIZES (1) Winning lottery and sports wager tickets will be redeemed:

(a) by any ~~retailer~~ sales agent for lottery and sports wager tickets less than \$600; or

(b) if the lottery ticket or sports wager ticket value is \$600 or more, by presenting the ticket, a claim form, and valid, unexpired photo identification to the lottery, either by mail or in person. ~~Playslip~~ Play slip and or sales receipt may not be

used to claim a prize. Acceptable types of identification include an original or copy of:

- (i) driver license;
- (ii) government-issued identification card;
- (iii) military identification card;
- (iv) passport;
- (v) permanent resident card;
- (vi) Department of Veterans Affairs medical benefits card; and
- (vii) tribal government-issued identification card.

(2) In lieu of the methods described in (1), a winning sports wager ticket may be redeemed to the player's account when the sports wager is managed through the player's account.

~~(2)~~ (3) A winning lottery or sports wager ticket may be redeemed only by an organization with a federal employer's identification number or by ~~an individual~~ a person.

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

~~(4)~~ (5) Unless otherwise provided in the parameters for a specific game, a claimant shall sign the back of a winning lottery or sports wager ticket.

~~(5)~~ (6) The lottery may deny a claim for a winning lottery or sports wager ticket if the ticket:

(a) through (c) remain the same.

(6) remains the same but is renumbered (7).

~~(7)~~ (8) A lottery or sports wager ticket is a bearer instrument until signed. The person who signs the lottery or sports wager ticket is the bearer of the ~~lottery~~ ticket. Payment of any prize may be made to the bearer, and all liability of the lottery terminates upon such payment.

(8) remains the same but is renumbered (9).

~~(9)~~ (10) A lottery or sports wager ticket not passing all validation checks is invalid and no prize may be paid on such ticket.

(10) through (13) remain the same but are renumbered (11) through (14).

~~(14)~~ (15) An owner or employee of a licensed lottery ~~retailer~~ sales agent shall identify themselves as such to lottery officials when claiming a prize at the lottery office or through the claim mail process. This information must be recorded on the claim form maintained by the lottery as part of the prize file.

AUTH: 23-7-202, MCA

IMP: 23-7-202, 23-7-211, MCA; Chapter 284, section 1, L. 2019

STATEMENT OF REASONABLE NECESSITY: The current rule outlines how lottery prizes are claimed by the public. The proposed amendments allow for sports wagers to be claimed the same way. In addition, winning sports wagers can be credited to the sports wagering account as defined in 23-7-103(8), MCA. The lottery is subjecting sports wagering winnings to the same rule as other lottery products. The current rule allows the lottery to ensure the identity of the person collecting the prize. With the information collected, the lottery can comply with Internal Revenue Service rules on reporting income and assist in the collection of child support for the

Department of Public Health and Human Services and any debt owed to the Department of Labor and Industry for overpayment of unemployment insurance.

2.63.1202 LOTTERY TICKET WINNER REDEMPTIONS (1) ~~Retailers~~ Sales agents are responsible for the security of all winning lottery tickets and sports wagers they redeem. ~~Retailers~~ Sales agents will bear the burden of any loss incurred as a result of:

- (a) multiple redemptions of winning lottery and sports wager tickets;
- (b) nonwinning lottery and sports wager tickets redeemed in error as winning lottery and sports wager tickets; or
- (c) failure to redeem winning lottery and sports wager tickets in the manner determined by the director.

AUTH: 23-7-202, MCA

IMP: 23-7-202, MCA; Chapter 284, section 1, L. 2019

STATEMENT OF REASONABLE NECESSITY: The proposed addition of sports wagers to the rule will allow the lottery to treat sports wagering in a manner consistent with existing lottery practices. The lottery took this approach to protect the interests of the state and to hold sales agents accountable for the products they are selling. Like other products offered by retailers the producer of that product is not responsible for the theft of the product once it arrives at the retailer. By holding the sales agent responsible for the agent's own errors, the lottery is protecting the revenue that has been generated and maximizing the benefit to the state. In addition, the rule gives sales agents a strong financial incentive to use caution and follow lottery requirements in redeeming winning tickets.

6. The commission proposes to repeal the following rule:

2.63.409 ACCEPTABLE FORMS OF PAYMENT, found on ARM page 2-6519.

AUTH: 23-7-202, MCA

IMP: 23-7-202, MCA

STATEMENT OF REASONABLE NECESSITY: The lottery is proposing to repeal this rule because all forms of payment identified in the rule are already listed in 23-7-302, MCA, and administrative rule may not unnecessarily duplicate statute.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Bryan Costigan, Montana Lottery, 2525 N. Montana Ave., Helena, Montana 59601; telephone (406) 444-5804; fax (406) 444-5830; or e-mail [bcostigan@mt.gov](mailto:bcostigan@mt.gov), and must be received no later than 5:00 p.m., November 4, 2019.

8. Bryan Costigan, Montana Lottery, has been designated to preside over

and conduct this hearing.

9. The commission maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address or e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding Montana Lottery rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 7 above or may be made by completing a request form at any rules hearing held by the department.

10. An electronic copy of this proposal notice is available through the department's website at [doa.mt.gov/administrativerules](http://doa.mt.gov/administrativerules). The department strives to make its online version of the notice conform to the official published version, but advises all concerned persons that if a discrepancy exists between the official version and the department's online version, only the official text will be considered. In addition, although the department works to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

11. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Representative Ryan Lynch, was contacted on July 1, 2019 by mail.

12. The commission has determined that under 2-4-111, MCA, the proposed adoptions, amendments, and repeal will not significantly and directly affect small businesses.

By: /s/ Wilbur Rehmann  
Wilbur Rehmann, Chair  
Montana Lottery Commission

By: /s/ Don Harris  
Don Harris, Rule Reviewer  
Department of Administration

Certified to the Secretary of State September 24, 2019.

BEFORE THE DEPARTMENT OF COMMERCE  
OF THE STATE OF MONTANA

In the matter of the adoption of New     )  
Rule I pertaining to the deadline for     )  
the second cycle for the Community     )  
Development Block Grant (CDBG) –     )  
Planning Grants     )

NOTICE OF PUBLIC HEARING ON  
PROPOSED ADOPTION

TO: All Concerned Persons

1. On October 24, 2019, at 10:00 a.m., the Department of Commerce will hold a public hearing in Room 268 of the Park Avenue Building at 301 South Park Avenue, in Helena, Montana, or by conference call 1-877-273-4202, conference room 7865396, to consider the proposed adoption of the above-stated rule.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m., October 22, 2019, to advise us of the nature of the accommodation that you need. Please contact Bonnie Martello, Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0523; telephone (406) 841-2770; TDD 841-2702; fax (406) 841-2771; or e-mail docadministrativerules@mt.gov.

3. The rule as proposed to be adopted provides as follows:

NEW RULE I SECOND CYCLE FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) – PLANNING GRANTS (1) The Department of Commerce approves a second application cycle for fall 2019. The Department of Commerce will receive CDBG planning grant applications for the second cycle of fall 2019 until the deadline. The deadline to apply for the second cycle is November 5, 2019.

(2) All CDBG planning grant applications must comply with the 2019-2020 Application and Administrative Guidelines for Housing, Public Facilities and Economic Development Planning Grants as adopted in ARM 8.94.3728. Copies of the 2019-2020 Application and Administrative Guidelines for Housing, Public Facilities and Economic Development Planning Grants may be obtained as provided in ARM 8.94.3728.

AUTH: 90-1-103, MCA  
IMP: 90-1-103, MCA

REASON: The Department of Commerce (department) is proposing to adopt NEW RULE I. This rule notifies the public that the department is opening a second cycle to receive CDBG planning grant applications. The rule sets the deadline for applicants to submit a CDBG planning grant application for the second cycle on or

before November 5, 2019. The department is opening a second cycle based on public comments received requesting additional time to submit a CDBG planning grant application this fall. The first cycle ends September 27, 2019. This rule is necessary to make the public aware of the second cycle offered the fall of 2019. The 2019-2020 Application and Administrative Guidelines for Housing, Public Facilities and Economic Development Planning Grants, which is the governing administrative document, is not being amended.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Department of Commerce, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2770; TDD 841-2702; fax (406) 841-2771; or e-mail [docadministrativerules@mt.gov](mailto:docadministrativerules@mt.gov), and must be received no later than 5:00 p.m., November 1, 2019.

5. Bonnie Martello, Paralegal, Department of Commerce, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. 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 for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact listed in 4 above or may be made by completing a request form at any rules hearing held by the department.

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

8. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rule will not significantly and directly impact small businesses.

9. The department intends to apply this rule retroactively to November 5, 2019. A retroactive application of the proposed rule adoption does not result in a negative impact to any affected party.

/s/ Garrett Norcott

Garrett Norcott  
Rule Reviewer

/s/ Tara Rice

Tara Rice  
Director  
Department of Commerce

Certified to the Secretary of State September 24, 2019.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION  
OF THE STATE OF MONTANA

In the matter of soliciting applications	)	NOTICE OF NEGOTIATED
for membership on a negotiated	)	RULEMAKING
rulemaking committee to develop and	)	
amend rules related to K-12 content	)	
standards for computer science,	)	
library media, and technology	)	

TO: All Concerned Persons

1. The Office of Public Instruction intends to establish an independent negotiated rulemaking committee to develop and amend Board of Public Education rules related to K-12 computer science, library media, and technology content standards and to consult on the preparation of an economic impact statement. This negotiated rulemaking process is required by 20-7-101, MCA (2017).

2. The proposed rules will amend K-12 content standards and program delivery standards for library media, and technology and propose new computer science standards.

3. Interests that are likely to be significantly affected by the proposed rulemaking are those related to accredited Montana K-12 schools of all sizes.

4. The individuals proposed to represent state agencies on the negotiated rulemaking committee are: Colet Bartow, Content Standards and Instruction Division Administrator, Office of Public Instruction; Jule Walker, Deputy Superintendent for Operations, Office of Public Instruction; and Peter Donovan, Executive Director, Board of Public Education.

5. The agency is seeking applications from interested parties to serve on the committee. The agency will seek individuals likely to be significantly affected by the proposed rule amendment, including individuals from the following groups: school district trustees, K-12 school administrators, K-12 teachers, higher education faculty, school business officials, parents, and taxpayers. Members of the committee will be selected based on the following criteria:

cultural diversity  
geography  
computer science experience  
library media experience  
technology integration experience  
district and school size  
grade levels served

6. The proposed working schedule for the negotiated rulemaking committee is as follows:

(a) On October 4, 2019, this notice will be published in the Montana Administrative Register (MAR). The notice will also be mailed to persons known to the agency to have an interest in this matter.

(b) Applications for membership on the negotiated rulemaking committee must be received no later than October 31, 2019. After receipt and consideration of the comments and applications, the agency will establish a negotiated rulemaking committee no later than November 22, 2019. The members selected to serve on the committee must be able to adequately represent the interests of the persons that will be significantly affected by the proposed rule amendment. The committee members will be notified in writing of their selection and receive an information packet.

(c) The negotiated rulemaking committee will convene its first meeting on December 5, 2019. Teleconferencing and e-mail correspondence will be utilized as much as possible. The committee will begin with initial drafts of amendments to current Board of Public Education content standards for library media and technology integration, and an initial draft of new standards for computer science at this meeting.

(d) The committee will transmit a report to the agency specifying the areas in which the committee has reached consensus and the issues that remain unresolved.

(e) Thereafter, the Superintendent of Public Instruction will develop recommendations and present them to the Board of Public Education for formal rulemaking.

7. Any individual or entity interested in applying for or nominating another person for membership on the committee must submit the following information in writing to Colet Bartow, Director of Content Standards and Instruction, [cbartow@mt.gov](mailto:cbartow@mt.gov), Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620, no later than October 31, 2019:

(a) the person's name or the nominee's name, address, and contact information including work and personal telephone, and work or personal email address where they can be contacted;

(b) evidence that the person or nominee represents any of the specific criteria of interest groups listed above;

(c) the name of the school district in which the nominee lives or works, and the relationship of the person or nominee to it;

(d) a commitment that the person or nominee will be able to participate in the negotiated rulemaking process and will actively participate in good faith in the development of the proposed rule amendment under consideration; and

(e) the ability of the person or nominee to cover committee participation costs (such as telephone calls, travel, and per diem expenses).

8. Interested parties may submit their views and comments concerning the proposed negotiated rulemaking process to Colet Bartow, Director of Content Standards and Instruction, [cbartow@mt.gov](mailto:cbartow@mt.gov), Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620, faxed to (406) 444-3924, or electronic mail to [cbartow@mt.gov](mailto:cbartow@mt.gov) no later than January 31, 2020.



9. The agency proposes to limit the size of the negotiated rulemaking committee to no more than fifteen persons and two "alternate" members selected in the event a member is unable to participate. However, after receipt of comments and applications, the agency may determine that a smaller or larger number is necessary to adequately represent the interests of the persons significantly affected by the proposed rule amendments. The selected committee members may represent other parties or agencies that have a significant relationship with Montana schools.

10. The agency will make reasonable accommodations for persons with disabilities who wish to participate on the committee. If you require an accommodation, please advise the agency of the nature of the accommodation you need when applying for membership on the committee.

11. Please note the following concerning the process of negotiated rulemaking:

(a) "Interest" for the purpose of this process means multiple parties that have similar points of view or that are likely to be affected in a similar manner in relationship to matters affected by the rule(s) (2-5-103(5), MCA).

(b) Negotiated rulemaking is not a substitute for the public notification and participation requirements of the Montana Administrative Procedure Act, and a consensus agreement by a negotiated rulemaking committee may be modified by an agency as a result of the subsequent rulemaking process (2-5-102, MCA).

12. The specific grant of rulemaking authority authorizing the Board of Public Education to adopt the proposed rules is found in 20-2-121, MCA. The proposed rule amendment will implement 20-2-121, and Title 20, chapter 7, part 1, MCA.

/s/ Julia W. Swingley  
Julia W. Swingley  
Rule Reviewer

/s/ Elsie Arntzen  
Elsie Arntzen, Superintendent  
Office of Public Instruction

Certified to the Secretary of State September 24, 2019.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION  
OF THE STATE OF MONTANA

In the matter of soliciting applications ) NOTICE OF NEGOTIATED  
for membership on a negotiated ) RULEMAKING  
rulemaking committee to develop and )  
amend rules related to K-12 content )  
standards for career and )  
vocational/technical education )

TO: All Concerned Persons

1. The Office of Public Instruction intends to establish an independent negotiated rulemaking committee to develop and amend Board of Public Education rules related to K-12 career and vocational/technical education content standards and to consult on the preparation of an economic impact statement. This negotiated rulemaking process is required by 20-7-101, MCA (2017).

2. The proposed rules will amend K-12 content standards and program delivery standards for career and vocational/technical education.

3. Interests that are likely to be significantly affected by the proposed rulemaking are those related to accredited Montana K-12 schools of all sizes.

4. The individuals proposed to represent state agencies on the negotiated rulemaking committee are: Colet Bartow, Content Standards and Instruction Division Administrator, Office of Public Instruction; Jule Walker, Deputy Superintendent for Operations, Office of Public Instruction; and Peter Donovan, Executive Director, Board of Public Education.

5. The agency is seeking applications from interested parties to serve on the committee. The agency will seek individuals likely to be significantly affected by the proposed rule amendment, including individuals from the following groups: school district trustees, K-12 school administrators, K-12 teachers, higher education faculty, school business officials, parents, and taxpayers. Members of the committee will be selected based on the following criteria:

cultural diversity  
geography  
career and vocational/technical education content experience  
district and school size  
grade levels served

6. The proposed working schedule for the negotiated rulemaking committee is as follows:

(a) On October 4, 2019, this notice will be published in the Montana Administrative Register (MAR). The notice will also be mailed to persons known to the agency to have an interest in this matter.

(b) Applications for membership on the negotiated rulemaking committee must be received no later than October 31, 2019. After receipt and consideration of the comments and applications, the agency will establish a negotiated rulemaking committee no later than November 22, 2019. The members selected to serve on the committee must be able to adequately represent the interests of the persons that will be significantly affected by the proposed rule amendment. The committee members will be notified in writing of their selection and receive an information packet.

(c) The negotiated rulemaking committee will convene its first meeting on December 3, 2019. Teleconferencing and e-mail correspondence will be utilized as much as possible. The committee will begin with an initial draft of amendments to current Board of Public Education content standards for career and vocational/technical education at this meeting.

(d) The committee will transmit a report to the agency specifying the areas in which the committee has reached consensus and the issues that remain unresolved.

(e) Thereafter, the Superintendent of Public Instruction will develop recommendations and present them to the Board of Public Education for formal rulemaking.

7. Any individual or entity interested in applying for or nominating another person for membership on the committee must submit the following information in writing to Colet Bartow, Director of Content Standards and Instruction, [cbartow@mt.gov](mailto:cbartow@mt.gov), Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620, no later than October 31, 2019:

(a) the person's name or the nominee's name, address, and contact information including work and personal telephone, and work or personal email address where they can be contacted;

(b) evidence that the person or nominee represents any of the specific criteria of interest groups listed above;

(c) the name of the school district in which the nominee lives or works, and the relationship of the person or nominee to it;

(d) a commitment that the person or nominee will be able to participate in the negotiated rulemaking process and will actively participate in good faith in the development of the proposed rule amendment under consideration; and

(e) the ability of the person or nominee to cover committee participation costs (such as telephone calls, travel, and per diem expenses).

8. Interested parties may submit their views and comments concerning the proposed negotiated rulemaking process to Colet Bartow, Director of Content Standards and Instruction, [cbartow@mt.gov](mailto:cbartow@mt.gov), Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620, faxed to (406) 444-3924, or electronic mail to [cbartow@mt.gov](mailto:cbartow@mt.gov) no later than January 31, 2020.

9. The agency proposes to limit the size of the negotiated rulemaking committee to no more than fifteen persons and two "alternate" members selected in

the event a member is unable to participate. However, after receipt of comments and applications, the agency may determine that a smaller or larger number is necessary to adequately represent the interests of the persons significantly affected by the proposed rule amendments. The selected committee members may represent other parties or agencies that have a significant relationship with Montana schools.

10. The agency will make reasonable accommodations for persons with disabilities who wish to participate on the committee. If you require an accommodation, please advise the agency of the nature of the accommodation you need when applying for membership on the committee.

11. Please note the following concerning the process of negotiated rulemaking:

(a) "Interest" for the purpose of this process means multiple parties that have similar points of view or that are likely to be affected in a similar manner in relationship to matters affected by the rule(s) (2-5-103(5), MCA).

(b) Negotiated rulemaking is not a substitute for the public notification and participation requirements of the Montana Administrative Procedure Act, and a consensus agreement by a negotiated rulemaking committee may be modified by an agency as a result of the subsequent rulemaking process (2-5-102, MCA).

12. The specific grant of rulemaking authority authorizing the Board of Public Education to adopt the proposed rules is found in 20-2-121, MCA. The proposed rule amendment will implement 20-2-121, and Title 20, chapter 7, part 1, MCA.

/s/ Julia W. Swingley

Julia W. Swingley

Rule Reviewer

/s/ Elsie Arntzen

Elsie Arntzen, Superintendent

Office of Public Instruction

Certified to the Secretary of State September 24, 2019.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION  
OF THE STATE OF MONTANA

In the matter of soliciting applications ) NOTICE OF NEGOTIATED  
for membership on a negotiated ) RULEMAKING  
rulemaking committee to develop and )  
amend rules related to K-12 content )  
standards for social studies )

TO: All Concerned Persons

1. The Office of Public Instruction intends to establish an independent negotiated rulemaking committee to develop and amend Board of Public Education rules related to K-12 social studies content standards and to consult on the preparation of an economic impact statement. This negotiated rulemaking process is required by 20-7-101, MCA (2017).

2. The proposed rules will amend K-12 content standards and program delivery standards for social studies.

3. Interests that are likely to be significantly affected by the proposed rulemaking are those related to accredited Montana K-12 schools of all sizes.

4. The individuals proposed to represent state agencies on the negotiated rulemaking committee are: Colet Bartow, Content Standards and Instruction Division Administrator, Office of Public Instruction; Jule Walker, Deputy Superintendent for Operations, Office of Public Instruction; and Peter Donovan, Executive Director, Board of Public Education.

5. The agency is seeking applications from interested parties to serve on the committee. The agency will seek individuals likely to be significantly affected by the proposed rule amendment, including individuals from the following groups: school district trustees, K-12 school administrators, K-12 teachers, higher education faculty, school business officials, parents, and taxpayers. Members of the committee will be selected based on the following criteria:

cultural diversity  
geography  
social studies content experience  
district and school size  
grade levels served

6. The proposed working schedule for the negotiated rulemaking committee is as follows:

(a) On October 4, 2019, this notice will be published in the Montana Administrative Register (MAR). The notice will also be mailed to persons known to the agency to have an interest in this matter.

(b) Applications for membership on the negotiated rulemaking committee must be received no later than October 31, 2019. After receipt and consideration of the comments and applications, the agency will establish a negotiated rulemaking committee no later than November 22, 2019. The members selected to serve on the committee must be able to adequately represent the interests of the persons that will be significantly affected by the proposed rule amendment. The committee members will be notified in writing of their selection and receive an information packet.

(c) The negotiated rulemaking committee will convene its first meeting on December 2, 2019. Teleconferencing and e-mail correspondence will be utilized as much as possible. The committee will begin with an initial draft of amendments to current Board of Public Education content standards for social studies at this meeting.

(d) The committee will transmit a report to the agency specifying the areas in which the committee has reached consensus and the issues that remain unresolved.

(e) Thereafter the Superintendent of Public Instruction will develop recommendations and present them to the Board of Public Education for formal rulemaking.

7. Any individual or entity interested in applying for or nominating another person for membership on the committee must submit the following information in writing to Colet Bartow, Director of Content Standards and Instruction, [cbartow@mt.gov](mailto:cbartow@mt.gov), Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620, no later than October 31, 2019:

(a) the person's name or the nominee's name, address, and contact information including work and personal telephone, and work or personal email address where they can be contacted;

(b) evidence that the person or nominee represents any of the specific criteria of interest groups listed above;

(c) the name of the school district in which the nominee lives or works, and the relationship of the person or nominee to it;

(d) a commitment that the person or nominee will be able to participate in the negotiated rulemaking process and will actively participate in good faith in the development of the proposed rule amendment under consideration; and

(e) the ability of the person or nominee to cover committee participation costs (such as telephone calls, travel, and per diem expenses).

8. Interested parties may submit their views and comments concerning the proposed negotiated rulemaking process to Colet Bartow, Director of Content Standards and Instruction, [cbartow@mt.gov](mailto:cbartow@mt.gov), Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620, faxed to (406) 444-3924, or electronic mail to [cbartow@mt.gov](mailto:cbartow@mt.gov) no later than January 31, 2020.

9. The agency proposes to limit the size of the negotiated rulemaking committee to no more than fifteen persons and two "alternate" members selected in the event a member is unable to participate. However, after receipt of comments and applications, the agency may determine that a smaller or larger number is necessary to adequately represent the interests of the persons significantly affected

by the proposed rule amendments. The selected committee members may represent other parties or agencies that have a significant relationship with Montana schools.

10. The agency will make reasonable accommodations for persons with disabilities who wish to participate on the committee. If you require an accommodation, please advise the agency of the nature of the accommodation you need when applying for membership on the committee.

11. Please note the following concerning the process of negotiated rulemaking:

(a) "Interest" for the purpose of this process means multiple parties that have similar points of view or that are likely to be affected in a similar manner in relationship to matters affected by the rule(s) (2-5-103(5), MCA).

(b) Negotiated rulemaking is not a substitute for the public notification and participation requirements of the Montana Administrative Procedure Act, and a consensus agreement by a negotiated rulemaking committee may be modified by an agency as a result of the subsequent rulemaking process (2-5-102, MCA).

12. The specific grant of rulemaking authority authorizing the Board of Public Education to adopt the proposed rules is found in 20-2-121, MCA. The proposed rule amendment will implement 20-2-121, and Title 20, chapter 7, part 1, MCA.

/s/ Julia W. Swingley  
Julia W. Swingley  
Rule Reviewer

/s/ Elsie Arntzen  
Elsie Arntzen, Superintendent  
Office of Public Instruction

Certified to the Secretary of State September 24, 2019.

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PROPOSED  
ARM 10.54.1010 pertaining to ) AMENDMENT  
deadlines for applications and annual )  
reports ) NO PUBLIC HEARING  
 ) CONTEMPLATED

TO: All Concerned Persons

1. The Board of Public Education (board) proposes to amend the above-stated rule.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m. on October 18, 2019, to advise us of the nature of the accommodation that you need. Please contact Pete Donovan, Executive Director, 46 N. Last Chance Gulch, Suite 2B, P.O. Box 200601, Helena, Montana, 59620-0601; telephone (406) 444-0300; fax (406) 444-0847; or e-mail pdonovan@mt.gov.

3. The rule as proposed to be amended provides as follows:

10.54.1010 DEADLINES FOR APPLICATIONS AND ANNUAL REPORTS

(1) remains the same.

(2) For applications submitted for advanced opportunity aid, the following deadlines apply:

(a) The opening date for applications and for submission of annual reports is the first Monday of December each year; and

(b) The closing date for applications and for submission of annual reports is the second Monday of January each year following the opening date.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, MCA, Chapter 279, L. 2019, Chapter 402, L. 2019

IMP: Mont. Const. Art. X, sec. 9, Chapter 279, L. 2019, Chapter 402, L. 2019

REASON: The board proposes to amend the rule to meet the requirement in HB 387 (2019) (Chapter 279, Laws of 2019) that the board establish by rule the deadlines for applications. The Superintendent of Public Instruction recommended the proposed deadlines to the board, after consultation with statewide education organizations, because the deadlines provide a reasonable time for school districts to prepare and file applications and annual reports. The deadlines provide a reasonable time for review and qualification of the applications and annual reports prior to distribution of funds. The deadlines also account for local school districts to include in their budgets any permissive levy. The Superintendent of Public Instruction determined



that the proposed deadlines are administrative in nature and, thus, the negotiated rulemaking process was unnecessary.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Pete Donovan, Executive Director, Board of Public Education, 46 N. Last Chance Gulch, Suite 2b, P.O. Box 200601, Helena, Montana, 59635; telephone (406) 444-0300; fax (406) 444-0847; or e-mail pdonovan@mt.gov, and must be received no later than 5:00 p.m., November 1, 2019.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Pete Donovan at the above address no later than 5:00 p.m., November 1, 2019.

6. If the board receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 41 persons based on 409 public school districts in Montana.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. 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 for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be 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, apply and have been fulfilled. The primary bill sponsor was contacted by phone on September 24, 2019.

9. With regard to the requirements of 2-4-111, MCA, the board has determined that amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Pete Donovan  
Pete Donovan  
Executive Director  
Rule Reviewer

/s/ Dr. Darlene Schottle  
Dr. Darlene Schottle  
Chair  
Board of Public Education

Certified to the Secretary of State September 24, 2019.

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

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.29.1616 pertaining to the	)	PROPOSED AMENDMENT
drug formulary in the Utilization and	)	
Treatment Guidelines for Workers'	)	
Compensation and Occupational	)	
Disease	)	

TO: All Concerned Persons

1. On November 1, 2019, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing in conference rooms A and B of the Beck Building, 1805 Prospect Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 4:00 p.m., October 25, 2019, to advise us of the nature of the accommodation that you need. Please contact Jason Swant, Employment Relations Division, P.O. Box 8011, Helena, Montana 59604; telephone (406) 444-6451; facsimile (406) 444-4140; Montana TTD (406) 444-5549; or e-mail JSwant@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

24.29.1616 INCORPORATION BY REFERENCE AND UPDATES TO THE FORMULARY (1) remains the same.

(2) The department adopts and incorporates by reference ~~the October 2018 edition of the ODG Drug Formulary~~ as its formulary as follows:

(a) for prescriptions written between January 1, 2019 through December 31, 2019, the October 2018 edition of the ODG Drug Formulary; and

(b) for prescriptions written on or after January 1, 2020, the October 2019 edition of the ODG Drug Formulary.

(3) through (5) remain the same.

AUTH: 39-71-203, 39-71-704, MCA

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1616 because the department has adopted a commercial fee schedule. The fee schedule rule must be updated annually via the administrative rule amendment process in order to comply with the provisions of 39-71-704(3)(b)(i) and (ii), MCA (2017). The annual rule amendments serve to "catch up" the monthly updates to the formulary rule that are

made by the vendor of the formulary, the ODG. The automatic monthly update process is expressly provided for by 2-4-307(8), MCA.

4. Copies of the proposed 2019 ODG Drug Formulary are available and can be accessed online at: <http://erd.dli.mt.gov/work-comp-claims/medical-regulations/formulary>.

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 Jason Swant, Employment Relations Division, P.O. Box 8011, Helena, MT 59604; fax (406) 444-4140; or e-mail [JSwant@mt.gov](mailto:JSwant@mt.gov), and must be received no later than 5:00 p.m., November 8, 2019.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices, and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, or e-mailed to [mcadwallader@mt.gov](mailto:mcadwallader@mt.gov), or may be made by completing a request form at any rules hearing held by the agency.

7. An electronic copy of this notice of public hearing is available through the Secretary of State's web site at <https://sosmt.gov/arm/>. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

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

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

10. The Office of Administrative Hearings, Department of Labor and Industry, has been designated to preside over and conduct this hearing.

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

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

Certified to the Secretary of State September 24, 2019.

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

In the matter of the adoption of New     ) NOTICE OF PUBLIC HEARING ON  
Rules I through XII pertaining to     ) PROPOSED ADOPTION  
registration of home inspectors     )

TO: All Concerned Persons

1. On October 25, 2019, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing in conference rooms A and B of the Beck Building, 1805 Prospect Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The 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 October 18, 2019, to advise us of the nature of the accommodation that you need. Please contact Jenny Harris, Employment Relations Division, P.O. Box 8011, Helena, Montana 59604; telephone (406) 444-9012; facsimile (406) 444-4140; Montana TTD (406) 444-5549; or e-mail JHarris@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: There is reasonable necessity to adopt NEW RULES I through XII in order to implement Chapter 294, Laws of 2019 (Senate Bill 269) by its January 1, 2020, effective date.

The Department of Labor and Industry (department) has drafted NEW RULES I through XII with the assistance of a group of stakeholders from the home inspection industry and real estate sales. The department researched home inspector licensing and registration programs in other states. The department also researched home inspector continuing education programs and requirements in other states. The department conducted five stakeholder meetings in the drafting process over a five-month period. The department concludes that proposed rules are consistent with accepted industry practices, but do not impose a duty of "best practices" that go beyond the minimum requirements provided by SB 269. The department believes that the stakeholders are in general consensus that the proposed rules are appropriate and reasonable in light of the statutory requirements of SB 269.

This general statement of reasonable necessity applies to NEW RULES I through XII. Where appropriate, additional statements of reasonable necessity are provided for individual rules.

4. The proposed new rules are as follows:

NEW RULE I DEFINITIONS As used in this subchapter, the following definitions apply:

(1) "Day" means a calendar day.

- (2) "Department" means the Department of Labor and Industry.
- (3) "Expiration of registration" means the registration was not timely renewed and is no longer active due to the passage of time.
- (4) "Home inspection business" means a sole proprietorship, a partnership, a limited liability company, a corporation, or any other business entity, which is required by law to register with the department before being able to lawfully perform home inspection for others.
- (5) "Home inspection work" means the same as "home inspection" as provided by 39-9-102, MCA.
- (6) "Home inspection worker" means an individual who has demonstrated to the department that the individual is qualified to perform home inspection work.
- (7) "ICEC" means the independent contractor exemption certificate issued by the department pursuant to 39-71-417, MCA.
- (8) "Initial application" means the first time a home inspection business applies to the department for registration as a home inspector.
- (9) "Registration" means the status held by a home inspection business after the home inspection business has successfully registered with the department.
- (10) "Reinstatement of registration" means reactivation of a non-expired registration, following suspension of the registration by the department.
- (11) "Renewal application" means an application by a registered home inspector to be registered for an additional two-year period after the home inspector has been properly registered via an initial application.
- (12) "Roster" means the list of home inspection workers who have been identified by the home inspection business as employees. The roster may include an individual who is separately registered in their individual capacity as a home inspection business as provided by [NEW RULE V], but who is authorized to work under the registration name and number of the registrant.
- (13) "Suspension of registration" means the registration is no longer active as the result of an action taken by the department in response to conduct of the registrant.

AUTH: 39-9-102, 39-9-212, MCA  
IMP: 39-9-212, MCA

REASON: There is reasonable necessity to adopt NEW RULE I in order to provide clarity to the rules. SB 269 refers to "home inspectors" as meaning both the person performing the work and the business entity that provides individual workers to customers. NEW RULE I draws the distinction between a "home inspection worker" and a "home inspection business" so as to more clearly identify individual requirements versus the broader business requirements which individuals do not have to personally fulfill.

NEW RULE II FEE SCHEDULE (1) The following fees are charged by the department for home inspection businesses:

- |   |         |
|---|---------|
| (a) initial application                     | \$80.00 |
| (b) renewal application                     | 80.00   |
| (c) reinstatement of suspended registration | 40.00   |

- |   |           |
|---|-----------|
| (d) change of address                       | no charge |
| (e) change of home inspection worker roster | no charge |
| (f) photocopies, per page                   | 0.25      |
| (2) All fees are nonrefundable.             |           |

AUTH: 39-9-103, MCA

IMP: 39-9-206, MCA

REASON: There is reasonable necessity to adopt NEW RULE II in order to establish fees as required by SB 269. The department estimates there are approximately 400 home inspectors in Montana, and that in most instances, home inspection businesses do not hire their own employees to conduct inspections. The department estimates that during the first biennium of program operation, the program will generate approximately \$32,000 in registration fees. Based on its operation of the construction contractor registration program, the department believes that the registration and renewal fees are commensurate with the program's expected costs. As provided by 39-9-206, MCA, 15 percent of program fees must be used for consumer and industry outreach and education. No additional fee is being charged for a change of address or change of roster in order to encourage home inspectors to provide the department with current information.

#### NEW RULE III INITIAL APPLICATION FOR HOME INSPECTION

BUSINESS REGISTRATION (1) In order to be registered by the department, a home inspection business shall complete a registration application and pay the registration fee as provided in [NEW RULE II].

(2) The applicant shall provide the following information to the department:

- (a) legal name of the home inspection business;
- (b) type of business structure (sole proprietorship, partnership, LLC, etc.);
- (c) mailing address of the business;
- (d) physical address of the business, if different than the mailing address;

and

(e) telephone number.

(3) The applicant shall provide a roster identifying each person who will perform home inspection work on behalf of the applicant.

(4) The applicant shall provide proof of training or examination for all home inspection workers on the roster, demonstrating that each worker on the roster meets the minimum initial qualifications as provided by [NEW RULE VI].

(5) The applicant shall provide proof that the applicant is a member of a national association for home inspectors.

(6) The applicant shall provide proof of required insurance coverages. Proof of insurance is demonstrated by:

- (a) the policy declaration page;
- (b) a binder of coverage; or
- (c) a certificate of insurance issued by an authorized agent of the insurer.

(7) The following are the minimum per incident amounts of insurance coverage required for a home inspection business:

- (a) for commercial general liability insurance, \$100,000; and

- (b) for errors and omission insurance, \$100,000.
- (8) An applicant may demonstrate proof of compliance with the workers' compensation insurance requirements by submitting either:
  - (a) proof of Montana workers' compensation insurance coverage; or
  - (b) proof that each home inspection worker listed on the roster holds a valid independent contractor exemption certificate issued by the department, where home inspection is a listed occupation for that worker.
- (9) All insurance policies must be underwritten by an insurer authorized to provide that coverage under the laws of Montana.
- (10) Application contents are public record open to inspection, except for personally identifiable information protected from public disclosure.
- (11) An applicant may complete an incomplete application during the six months following submission of the application before a new application fee will be charged. The applicant is not allowed to operate a home inspection business until the application is completed and approved by the department.

AUTH: 39-9-103, 39-9-212, MCA  
IMP: 39-9-212, MCA

NEW RULE IV APPROVAL OF APPLICATIONS (1) In order to be registered, the applicant shall submit a fully completed application to the department and pay the required fees.

(2) An application may be made in person during regular business hours, at the department's offices at 1805 Prospect Avenue, Helena, Montana, or submitted via mail to: Registration Section, Employment Relations Division, Department of Labor and Industry, P.O. Box 8011, Helena, MT 59604-8011.

(3) The registration period is two years and expires on the two-year anniversary of the initial registration.

(4) An applicant is not allowed to operate a home inspection business until the application is approved by the department.

(5) An applicant who is aggrieved by the department's denial of an application may request a hearing as provided by [NEW RULE XI].

AUTH: 39-9-103, 39-9-212, MCA  
IMP: 39-9-212, MCA

NEW RULE V REGISTRATION REQUIRED FOR SUBCONTRACTORS AND INDEPENDENT CONTRACTORS (1) A home inspection worker who engages in subcontracting with a home inspection business of another shall individually register as a home inspection business, as required by [NEW RULE III].

(2) A home inspection worker who is engaged as an employee of a registered home inspection business does not need to separately register as a home inspection business, if the home inspection worker never:

- (a) subcontracts with a registered home inspection business owned by another; or
- (b) independently offers her or his services to members of the public.



AUTH: 39-9-103, 39-9-212, 39-71-203, MCA  
IMP: 39-9-212, 39-71-417, MCA

REASON: There is reasonable necessity to adopt NEW RULE V in order to ensure that the consumer protections provided by SB 269 for required insurance are not circumvented by subcontracting work to a person or entity which is not in compliance with the registration requirements. The rule allows a person to both work as a self-employed home inspection worker but also perform work on behalf of another registered home inspection business.

NEW RULE VI MINIMUM INITIAL QUALIFICATIONS FOR A HOME INSPECTION WORKER (1) An individual who intends to work as a home inspector shall document one of the following:

(a) the individual has passed the National Home Inspector Examination offered by the Examination Board of Professional Home Inspectors;

(b) the individual has passed the examination offered by an organization recognized by the department; or

(c) the individual has successfully completed a comprehensive educational program for home inspectors approved by the department.

(2) Any organization wishing to be approved by the department for the purposes of offering an examination under (1)(b) must apply to the department for approval of its examination. The organization must demonstrate that its examination is psychometrically valid, and covers at least the following topics:

(a) roofing;

(b) exterior;

(c) interior;

(d) structural;

(e) electrical;

(f) plumbing;

(g) heating and cooling (HVAC);

(h) insulation;

(i) fireplace and chimney; and

(j) ethical business practices, professional standards, and reports.

(3) Any organization wishing to be approved by the department for the purposes of offering a comprehensive educational program for home inspectors consisting of at least 40 hours of instruction under (1)(c) must apply to the department for recognition. The organization must demonstrate that its educational program is comprehensive and covers at least the following topics:

(a) roofing;

(b) exterior;

(c) interior;

(d) structural;

(e) electrical;

(f) plumbing;

(g) heating and cooling (HVAC);

(h) insulation;

(i) fireplace and chimney; and

(j) ethical business practices, professional standards, and reports.

(4) Any organization wishing to be approved by the department for the purposes of offering a comprehensive educational program for home inspectors under (1)(c) must also demonstrate that it conducts a valid assessment of students' knowledge and understanding of the subject matter being taught in order to demonstrate successful completion. The organization shall describe in detail how the assessment is made, and the criteria by which a student is deemed to have successfully completed the educational program.

(5) A list of organizations approved by the department to offer home inspector examinations is available by contacting the department's home inspection program, and can also be found at the department's web site: <http://www.mtcontractor.com>.

(6) A list of formal home inspection educational programs approved by the department is available by contacting the department's home inspection program, and can also be found at the department's web site: <http://www.mtcontractor.com>.

AUTH: 39-9-103, 39-9-212, MCA

IMP: 39-9-212, MCA

NEW RULE VII DUTY TO UPDATE ROSTER AND BUSINESS  
INFORMATION – SUSPENSION – REINSTATEMENT OF REGISTRATION

(1) A home inspection business shall provide to the department in writing, within ten days of the occurrence, changes to:

(a) the roster of home inspectors performing work for the home inspection business; and

(b) the business name, address, contact information, or type of business structure.

(2) A home inspection business shall demonstrate to the department that a home inspector added to the roster meets the minimum initial qualifications as provided by [NEW RULE VI].

(a) A person may not perform services as a home inspection worker until the home inspection business is notified by the department that the person has met the minimum initial qualifications as a home inspection worker.

(b) A home inspection worker registered pursuant to [NEW RULE V] meets the minimum initial qualifications and may begin work immediately.

(3) A home inspection business that does not timely provide information to the department as required by (1) is subject to having its registration suspended.

(4) A home inspection business may reinstate a suspended registration by providing the department with any updated information as required by (1) and paying the reinstatement fee provided in [NEW RULE II].

(5) As provided by 39-9-212, MCA, a home inspection business may not operate without being properly registered. Operating a home inspection business without proper registration may result in the imposition of a civil penalty as provided by [NEW RULE X].

(a) The imposition of a civil penalty does not preclude the department from seeking injunctive relief.

AUTH: 39-9-103, 39-9-212, MCA

IMP: 39-9-212, MCA

NEW RULE VIII RENEWAL OF BUSINESS REGISTRATION (1) Prior to the expiration of registration, a home inspection business may renew its registration by applying to the department and paying the fee provided by [NEW RULE II]. A home inspection business may not conduct operations unless it has a current registration. There is no "grace period" allowed for operating with an expired registration.

(2) A renewal applicant shall provide the department with the following information:

(a) an updated roster of all home inspection workers performing work on behalf of the renewal applicant;

(b) proof of the required 40 hours of continuing education credit for each home inspection worker listed on the roster;

(c) proof that the renewal applicant is a member of a national home inspector association;

(d) proof that the renewal applicant has insurance coverage as required by [NEW RULE III]; and

(e) proof that the renewal applicant is complying with the workers' compensation laws, as required by [NEW RULE III].

(3) Renewal application contents are public record, except for personally identifiable information protected from public disclosure.

AUTH: 39-9-103, 39-9-212, MCA

IMP: 39-9-212, MCA

NEW RULE IX RECOGNITION OF CONTINUING EDUCATION COURSES

(1) Any sponsoring organization that requests continuing education credits be approved by the department for training must complete and submit a request on a form provided by the department.

(2) The department shall review the course submission and determine the number of credit hours to be awarded for completion of the course. Course topics must be germane to the skills needed for competency as a home inspection worker.

(3) An hour of credit is available for each 50 minutes of continuing education instruction.

(4) Courses subject to an award of continuing education credits may include but are not limited to:

(a) classroom setting or seminars;

(b) self-study, electronic media;

(c) correspondence course;

(d) computer-based training; or

(e) remote training.

(5) Continuing education programs offered or recognized by the following associations are deemed to be accepted by the department:

(a) American Society of Home Inspectors (ASHI); and

(b) International Association of Certified Home Inspectors (InterNACHI).

(6) The department will accept continuing education courses offered by any other content provider, where the course has been recognized or accepted by two or more states that require continuing education for home inspectors as a condition of renewal of authority to engage in home inspection in that state.

(7) A list of recognized continuing education sponsors is available on the department's home inspector web page.

(8) A list of approved continuing education courses from other content providers is available on the department's home inspector web page.

AUTH: 39-9-103, 39-9-212, MCA

IMP: 39-9-212, MCA

NEW RULE X PENALTIES – CIVIL FINES – INJUNCTIVE RELIEF (1) The following schedule of penalties (civil fines) applies to the home inspector program:

(a) failure to register:

(i) first offense \$ 250

(ii) second offense 500

(iii) third offense and subsequent offenses 1,000

(b) use of a false name or a false identity:

(i) first offense 1,000

(ii) second offense 2,500

(iii) third offense and subsequent offenses 5,000

(2) In the event of an inadvertent failure to register, or a de minimus violation to timely update information, the department may, in its sole discretion, reduce or waive a penalty.

(3) The imposition of a civil fine does not preclude the department from taking any other enforcement action against the party. The department expressly reserves its right to seek injunctive relief for violations of Title 39, chapter 9, MCA.

AUTH: 39-9-103, 39-9-212, MCA

IMP: 39-9-206, 39-9-212, 39-9-301, 39-9-401, MCA

REASON: There is reasonable necessity to adopt NEW RULE X in order to provide a uniform and progressive schedule of civil penalties (fines) provided for by statute. The fine schedule establishes a clear basis for the amount of a penalty for a violation, starting at a low amount for the first violation, and increasing to the maximum allowed amount for a third or subsequent violation of the same provisions of law. There is reasonable necessity to establish a "look-back" period, which provides an incentive for home inspection businesses to continue to operate in compliance with the law, and not to engage in repeat violations.

NEW RULE XI DISPUTE RESOLUTION PROCESS (1) A person aggrieved by the department's decision pertaining to that person may request a hearing within 30 days of the date of the decision. All requests for hearing must be made in writing and sent to the department at any of the following addresses:

(a) Registration Section, Employment Relations Division, Department of Labor and Industry, P.O. Box 8011, Helena, MT 59604-8011;

(b) Registration Section, Employment Relations Division, Department of Labor and Industry, 1805 Prospect Avenue, Helena, MT 59601; or

(c) [appeals@mtcontractor.com](mailto:appeals@mtcontractor.com).

(2) The hearing will be conducted as a contested case pursuant to the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, and the department's rules.

(3) The hearing and related proceedings will be conducted by the department's Office of Administrative Hearings.

(4) Because home inspector registration is not a licensing matter, the hearing may be conducted either as a formal or informal proceeding, at the election of the person requesting the hearing.

AUTH: 39-9-103, 39-9-212, MCA

IMP: 2-4-603, 39-9-212, 39-9-401, MCA

NEW RULE XII EDUCATION AND OUTREACH PROGRAM (1) As required by 39-9-212, MCA, the department shall dedicate 15 percent of the fees received by the home inspection program for education and outreach for consumers and home inspectors.

(2) The department shall operate and separately account for the home inspector education and outreach separately from the construction contractor registration program.

(3) Where appropriate, the department may coordinate the education and outreach for consumers and home inspectors with similar efforts of the construction contractor registration program, provided that the costs are allocated on an equitable basis between the two programs.

AUTH: 39-9-103, 39-9-212, MCA

IMP: 39-9-206, MCA

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 Tracy Gonzalez, Employment Relations Division, P.O. Box 8011, Helena, MT 59604; fax (406) 444-4140; or e-mail to [TGonzalez2@mt.gov](mailto:TGonzalez2@mt.gov), and must be received no later than 5:00 p.m., on November 1, 2019.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices, and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, or e-mailed to [mcadwallader@mt.gov](mailto:mcadwallader@mt.gov), or may be made by completing a request form at any rules hearing held by the agency.

7. An electronic copy of this notice of public hearing is available through the Secretary of State's web site at <https://sosmt.gov/arm/>. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on April 24, 2019, by e-mail.

9. Pursuant to 2-4-111, MCA, the department has determined that the rules proposed in this notice will not have a significant and direct impact upon small businesses.

10. The department's Office of Administrative Hearings has been designated to preside over and conduct this hearing.

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

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

Certified to the Secretary of State September 24, 2019.

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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 24.174.503 administration of ) PROPOSED AMENDMENT  
vaccines by pharmacists and )  
24.174.1712 prescription drug registry )  
fee )

TO: All Concerned Persons

1. On November 1, 2019, at 10:00 a.m., a public hearing will be held in Basement Conference Room #B-07, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Pharmacy no later than 5:00 p.m., on October 25, 2019, to advise us of the nature of the accommodation that you need. Please contact Marcie Bough, Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2371; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdpdpha@mt.gov (board's e-mail).

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

24.174.503 ADMINISTRATION OF VACCINES BY PHARMACISTS

(1) remains the same.

(2) An immunization-certified pharmacist must have a collaborative practice agreement with a practitioner authorized to prescribe drugs to administer immunizations not listed in 37-7-105, MCA, to persons ~~48~~ seven years of age or older, as provided in the most recent guidelines by vaccine and age group published by the U.S. Centers for Disease Control and Prevention (CDC) and as determined within a collaborative practice agreement; or, in the case of a public health emergency, a directive from the State Medical Officer of the Montana Department of Public Health and Human Services.

(3) An immunization-certified pharmacist, as defined in ~~37-7-105(3)(a)~~ 37-7-101, MCA, shall:

(a) and (b) remain the same.

(4) In order to administer immunizations, with or without a collaborative practice agreement, an immunization-certified pharmacist must meet the requirements of 37-7-105, MCA, and:

(a) remains the same.

(b) have access to a current edition of the ~~United States Centers for Disease~~

Control and Prevention (CDC) CDC reference "Epidemiology and Prevention of Vaccine-Preventable Diseases";

~~(c) provide a copy of the most current vaccine information statement (VIS) to the patient or the patient's legal representative, as required by 37-7-105(2)(b), MCA;~~

(d) through (d)(iv) remain the same but are renumbered (c) through (c)(iv).

(v) disposal of used or contaminated supplies; and

~~(e) ensure that the individual immunized is assessed for contraindications to immunization, as required by 37-7-105(2)(a), MCA;~~

~~(f) report any significant adverse events to the primary care provider if one is identified by the patient, and to the Vaccine Adverse Events Reporting System (VAERS), if applicable, as required by 37-7-105(2)(c), MCA; and~~

~~(g) (d)~~ maintain the following information in the patient's medical records ~~for a period of at least seven years, as required by 37-7-105(2)(d) 37-7-105, MCA,~~ which shall be considered confidential information:

(i) the patient's name, address, allergies, and date of birth ~~of the patient;~~

~~(ii) the date of administration;~~

~~(iii) (ii)~~ the product's name, dose, manufacturer, ~~dose~~, lot number, and expiration date ~~of the vaccine;~~

~~(iv) the vaccine information statement provided;~~

~~(iii) the date of administration;~~

~~(v) (iv)~~ the site and route of administration; and

~~(vi) (v)~~ the administering pharmacist's name or identifiable initials ~~of the administering pharmacist; and the pharmacy's address.~~

~~(vii) any adverse events encountered.~~

(5) and (6) remain the same.

AUTH: 37-7-201, MCA

IMP: 37-7-101, 37-7-105, 37-7-201, MCA

REASON: The 2019 Montana Legislature enacted Chapter 463, Laws of 2019 (House Bill 231), an act revising the scope of practice for pharmacists allowed to administer vaccines pursuant to 37-7-105, MCA. The bill was signed by the Governor on May 10, 2019 and was effective July 1, 2019. The board determined it is reasonably necessary to amend this rule to implement the legislation and reflect statutory changes regarding age, collaborative practice requirements, definition of an immunizing-certified pharmacist, notification, and recordkeeping.

24.174.1712 PRESCRIPTION DRUG REGISTRY FEE (1) Every person licensed under Title 37, MCA, ~~who is authorized to prescribe or dispense controlled substances,~~ prescription drugs shall pay a fee to the board for the purpose of establishing and maintaining the prescription drug registry.

(2) remains the same.

~~(3) A licensee who is not authorized to prescribe or dispense controlled substances is not required to pay the fee.~~

(4) remains the same but is renumbered (3).

AUTH: 37-1-134, 37-7-1511, 37-7-1512, MCA



IMP: 37-1-134, 37-1-141, 37-7-1511, 37-7-1512, MCA

REASON: The 2019 Montana Legislature enacted Chapter 130, Laws of 2019 (Senate Bill 61), an act revising the Montana Prescription Drug Registry (MPDR). The bill was signed by the Governor on April 10, 2019 and will become effective October 1, 2019. The board determined it is reasonably necessary to amend this rule to reflect the bill's amendments to 37-7-1511, MCA, expanding the licensees required to pay the MPDR fee. The amendment reflects that all licensees authorized under Title 37, MCA, to prescribe or dispense prescription drugs are now required to pay the MPDR fee.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to [dlibsdpha@mt.gov](mailto:dlibsdpha@mt.gov), and must be received no later than 5:00 p.m., November 1, 2019.

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

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to [dlibsdpha@mt.gov](mailto:dlibsdpha@mt.gov); or made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. Regarding House Bill 231, the primary bill sponsor was contacted on July 18, 2019 by e-mail. Regarding Senate Bill 61, the primary bill sponsor was contacted on July 18, 2019 and September 19, 2019 by e-mail.

8. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.174.503 and 24.174.1712 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513,

Helena, Montana 59620-0513; telephone (406) 841-2371; facsimile (406) 841-2305; or to dlibsdp@mt.gov.

9. Marcie Bough, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF PHARMACY  
TONY KING, PharmD  
PRESIDENT

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

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

Certified to the Secretary of State September 24, 2019.

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

In the matter of the amendment of        ) NOTICE OF PUBLIC HEARING ON  
ARM 37.40.307 and 37.85.105            ) PROPOSED AMENDMENT  
pertaining to assisted living and        )  
nursing facility reimbursement        )

TO: All Concerned Persons

1. On October 24, 2019, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on October 17, 2019, to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.40.307 NURSING FACILITY REIMBURSEMENT (1) remains the same.

(2) Effective July 1, 2001, and in subsequent rate years, nursing facilities will be reimbursed using a price-based reimbursement methodology. The rate for each facility will be determined using the operating component defined in (2)(a) and the direct resident care component defined in (2)(b):

(a) and (b) remain the same.

(c) The statewide price for nursing facility services will be determined each year through a public process. Factors that could be considered in the establishment of this price include the cost of providing nursing facility services, Medicaid recipients access to nursing facility services, and the quality of nursing facility care. The statewide price (average daily rate) for State Fiscal Year (SFY) 2020 is ~~\$204.30~~ \$208.06 effective October 1, 2019.

(d) The total payment rate available for the period ~~July 1, 2019~~ October 1, 2019, through June 30, 2020, will be the rate as computed in (2), plus any additional amount computed in ARM 37.40.311 and 37.40.361. Copies of the department's current nursing facility Medicaid reimbursement rates per facility are posted at <https://dphhs.mt.gov/sltc/csb/provider#28702384-nursing-facilities-and-swing-bed-services> and may be obtained from the Department of Public Health and Human

Services, Senior & Long-Term Care Division, P.O. Box 4210, Helena, MT 59604-4210.

(3) Providers who, as of July 1 of the rate year, have not filed with the department a cost report covering a period of at least six months participation in the Medicaid program in a newly constructed facility will have a rate set at the statewide median price as computed on ~~July 1, 2019~~ October 1, 2019. Following a change in provider as defined in ARM 37.40.325, the per diem rate for the new provider will be set at the previous provider's rate, as if no change in provider had occurred.

(4) through (12) remain the same.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-6-101, 53-6-111, 53-6-113, MCA

37.85.105 EFFECTIVE DATES, CONVERSION FACTORS, POLICY ADJUSTERS, AND COST-TO-CHARGE RATIOS OF MONTANA MEDICAID PROVIDER FEE SCHEDULES (1) through (3) remain the same.

(4) The department adopts and incorporates by reference, the fee schedule for the following programs within the Senior and Long Term Care Division on the date stated:

(a) The home and community-based services for elderly and physically disabled persons fee schedule, as provided in ARM 37.40.1421, is effective ~~July 1, 2019~~ October 1, 2019.

(b) through (e) remain the same.

(5) The department adopts and incorporates by reference, the fee schedule for the following programs within the Addictive and Mental Disorders Division on the date stated:

(a) remains the same.

(b) The home and community-based services for adults with severe disabling mental illness fee schedule, as provided in ARM 37.90.408, is effective ~~July 1, 2019~~ October 1, 2019.

(c) and (6) remain the same.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-125, 53-6-402, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) administers the Montana Medicaid and non-Medicaid program to provide health care to Montana's qualified low income, elderly, and disabled residents. Medicaid is a public assistance program paid for with state and federal funds appropriated to pay health care providers for the covered medical services they deliver to Medicaid members.

The department is proposing amendments to ARM 37.40.307 and 37.85.105 to increase assisted living and nursing facility reimbursement rates for services provided on or after October 1, 2019.

The department proposes these amendments because there are funds in the nursing home bed fee tax account that are designated for the purpose of supplementing Medicaid rates to nursing homes. The department has determined there are adequate funds in the bed fee tax account to meet the obligations of the proposed rate increase. The department proposes to increase the assisted living reimbursement rates concurrently with the nursing home rate increase and has determined there are adequate funds to meet the obligations of the proposed rate increase.

#### ARM 37.40.307

The proposed amendments to ARM 37.40.307(2) increase the statewide price (average daily rate) from \$204.30 to \$208.06, and make the change effective for services rendered on and after October 1, 2019. The proposed changes are necessary for the department to provide notice of the change to Medicaid nursing facility provider rates.

The proposed change to the average statewide price for state fiscal year (SFY) 2020 equates to a 1.84% average increase over the July 1, 2019, SFY 2020 price. The rate calculation includes consideration of sufficient funding and access to services.

Copies of the department's proposed nursing facility Medicaid reimbursement rates are posted at: <https://dphhs.mt.gov/sltc/csb/privider#28702384-nursing-facilities-and-swing-bed-services> and <http://medicaidprovider.mt.gov/proposedfs>.

#### ARM 37.85.105

The proposed amendments to ARM 37.85.105(4)(a) and ARM 37.85.105(5)(b) update two fee schedules to reflect an increase from \$77.05 to \$78.80 in the Medicaid daily rate for assisted living facilities. These rates are published in the fee schedules for the Big Sky Waiver in Senior and Long-Term Care and the SDMI waiver in Addictive and Mental Disorders Division (AMDD). The rate will be effective for services rendered on and after October 1, 2019.

#### Fiscal Impact

Nursing facility reimbursement will include an average increase of 1.84% over the July 1, 2019, SFY 2020 statewide average price. The total cost for the SFY 2020 nursing facility reimbursement increase is estimated at approximately \$3.7 million of combined state funds, federal funds, and patient contributions.

Anticipated days for SFY 2020 are 1,006,337 using estimates from SFY 2019 Medicaid paid days. Seventy nursing facility providers participated in the Medicaid nursing facility payment program, and approximately 4,100 recipients received services in nursing facilities under Medicaid.

Assisted living facility reimbursement will include a 2.27% increase over the SFY 2020 July 1, 2019 maximum daily Medicaid rate. Anticipated days for fiscal year (FY) 2020 both Senior and Long-Term Care Division and AMDD waivers are 271,246. The estimated increase is based on 75% of annual days. The cost of the increase will be approximately \$356,010 of combined state and federal funds.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., November 1, 2019.

6. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. 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 for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

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

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

10. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Robert Lishman  
Robert Lishman  
Rule Reviewer

/s/ Laura Smith, Deputy Director, for  
Sheila Hogan, Director  
Public Health and Human Services

Certified to the Secretary of State September 24, 2019.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE  
MONTANA STATE AUDITOR

In the matter of the adoption of New	)	NOTICE OF ADOPTION AND
Rule I and the amendment of ARM	)	AMENDMENT
6.6.3501, 6.6.3515, and 6.6.3520,	)	
pertaining to Annual Audited Reports	)	
and Establishing Accounting	)	
Practices and Procedures to Be Used	)	
in Annual Statements, and Internal	)	
Audit Function Requirements	)	

TO: All Concerned Persons

1. On August 23, 2019, the Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI) published MAR Notice No. 6-256 pertaining to the proposed adoption and amendment of the above-stated rules at page 1216 of the 2019 Montana Administrative Register, Issue Number 16.

2. The department has amended ARM 6.6.3501, 6.6.3515, and 6.6.3520, as proposed.

3. The department has adopted New Rule I (6.6.3518) as proposed.

4. No comments or testimony were received.

/s/ Brett W. Olin  
Brett W. Olin  
Rule Reviewer

/s/ Michelle Dietrich  
Michelle Dietrich  
Chief Legal Counsel

Certified to the Secretary of State September 24, 2019.



BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE  
MONTANA STATE AUDITOR

In the matter of the amendment of            ) NOTICE OF AMENDMENT  
ARM 6.6.4603 pertaining to the            )  
Notice of Protection Provided by the        )  
Montana Life and Health Insurance        )  
Guaranty Association                        )

TO: All Concerned Persons

1. On August 23, 2019, the Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI) published MAR Notice No. 6-258 pertaining to the proposed amendment of the above-stated rule at page 1224 of the 2019 Montana Administrative Register, Issue Number 16.

2. The department has amended ARM 6.6.4603 as proposed.

3. No comments or testimony were received.

4. The amended rule shall become effective on January 1, 2020.

/s/ Brett W. Olin  
Brett W. Olin  
Rule Reviewer

/s/ Michelle Dietrich  
Michelle Dietrich  
Chief Legal Counsel

Certified to the Secretary of State September 24, 2019.

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the amendment of       ) NOTICE OF AMENDMENT  
ARM 10.55.602, 10.55.605, and       )  
10.55.606 pertaining to the       )  
Accreditation Process       )

TO: All Concerned Persons

1. On July 26, 2019, the Board of Public Education published MAR Notice No. 10-55-289 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 997 of the 2019 Montana Administrative Register, Issue Number 14.

2. The board has amended ARM 10.55.602, 10.55.605, and 10.55.606 as proposed.

3. No comments or testimony were received.

/s/ Pete Donovan  
Pete Donovan  
Rule Reviewer

/s/ Darlene Schottle  
Darlene Schottle  
Chair  
Board of Public Education

Certified to the Secretary of State September 24, 2019.

BEFORE THE BOARD OF OCCUPATIONAL THERAPY PRACTICE  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF AMENDMENT,
24.165.302 definitions, 24.165.401	)	ADOPTION, AND REPEAL
fees, 24.165.406 military training or	)	
experience, 24.165.407 examinations,	)	
24.165.501 supervision, 24.165.505	)	
deep modality endorsement,	)	
24.165.506 recognized educational	)	
programs, 24.165.507 standards of	)	
practice, 24.165.509 approved modality	)	
instruction, 24.165.510 approved	)	
training, 24.165.514 endorsement to	)	
apply topical medications, 24.165.516	)	
use of topical medications, 24.165.517	)	
protocols for use of topical medications,	)	
24.165.518 debriding agents protocols,	)	
24.165.519 anesthetic agents protocols,	)	
24.165.520 nonsteroidal anti-	)	
inflammatory agents protocols,	)	
24.165.521 antispasmodic agents	)	
protocols, 24.165.522 adrenocortico-	)	
steroid agent protocols, 24.165.524	)	
protocol for use of an approved	)	
medication as a neuropathic pain agent,	)	
24.165.601 temporary practice permit,	)	
24.165.604 inactive status, 24.165.2101	)	
continuing education, 24.165.2102	)	
continuing education – exemption,	)	
24.165.2301 unprofessional conduct,	)	
the adoption of New Rule I bactericidal	)	
agents protocols, and the repeal of	)	
24.165.404 applications for licensure,	)	
24.165.410 pass-fail criteria,	)	
24.165.502 supervision – methods,	)	
24.165.511 documentation of	)	
instruction and training, 24.165.513	)	
approval to use sound and electrical	)	
physical agent modalities endorsement,	)	
24.165.525 documenting education and	)	
competence to perform sound and	)	
electrical physical agent modalities –	)	
out-of-state practitioners	)	

TO: All Concerned Persons

1. On May 10, 2019, the Board of Occupational Therapy Practice (board) published MAR Notice No. 24-165-24 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 509 of the 2019 Montana Administrative Register, Issue No. 9.

2. On June 13, 2019, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules in Helena. Two comments were received by the June 13, 2019 deadline.

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

COMMENT 1: One commenter asked if functional dry needling was part of the proposed rules changes.

RESPONSE 1: The board notes this rule project does not specifically address functional dry needling.

COMMENT 2: One commenter suggested license renewal every 2 to 3 years.

RESPONSE 2: The board notes that the commenter seeks to amend ARM 24.101.413, the department rule that provides all renewal dates for the licensing boards. The suggested change is beyond the scope of the proposed rule amendments and cannot be done in a final rule notice.

4. The board has amended ARM 24.165.302, 24.165.401, 24.165.406, 24.165.407, 24.165.501, 24.165.505, 24.165.506, 24.165.507, 24.165.509, 24.165.510, 24.165.514, 24.165.516, 24.165.517, 24.165.518, 24.165.519, 24.165.520, 24.165.521, 24.165.522, 24.165.524, 24.165.601, 24.165.604, 24.165.2101, 24.165.2102, and 24.165.2301 exactly as proposed.

5. The board has adopted New Rule I (24.165.523) exactly as proposed.

6. The board has repealed ARM 24.165.404, 24.165.410, 24.165.502, 24.165.511, 24.165.513, and 24.165.525 exactly as proposed.

BOARD OF OCCUPATIONAL THERAPY  
PRACTICE

BRENDA TONER, OT  
PRESIDING OFFICER

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

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

Certified to the Secretary of State September 24, 2019.

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  
Rule I and the amendment of ARM ) AMENDMENT  
37.114.101, 37.114.105, 37.114.203, )  
37.114.204, 37.114.313, 37.114.314, )  
37.114.526, 37.114.546, 37.114.571, )  
37.114.590, 37.114.1001, and )  
37.114.1015 pertaining to )  
communicable disease control )

TO: All Concerned Persons

1. On August 23, 2019, the Department of Public Health and Human Services published MAR Notice No. 37-887 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1299 of the 2019 Montana Administrative Register, Issue Number 16.

2. The department has adopted the above-stated rule as proposed: New Rule I (37.114.559).

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

4. No comments or testimony were received.

5. This rule adoption and these rule amendments are effective January 1, 2020.

/s/ Robert Lishman  
Robert Lishman  
Rule Reviewer

/s/ Laura Smith, Deputy Director, for  
Sheila Hogan, Director  
Public Health and Human Services

Certified to the Secretary of State September 24, 2019.

## **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.  
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 June 30, 2019. This table includes notices in which those rules adopted during the period April 12, 2019, through September 20, 2019, 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 June 30, 2019, 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 2019 Montana Administrative Registers.

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

- |          |  |
|----------|--|
| 2-4-581  | Accounting and Financial Reporting Standards - Report Filing Fees - Filing Penalties - Waivers and Extensions of Penalties - Audit and Audit Reporting Standards - Roster of Independent Auditors - Resolution and Corrections of Audit Findings - Financial Reviews - Incorporation by Reference of Various Standards, Accounting Policies, and Federal Laws and Regulations - Audit Contracts, p. 761, 987 |
| 2-13-585 | Public Safety Answering Point (PSAP) Certification and Funding, p. 558, 903, 1368  |
| 2-21-584 | Voluntary Employees' Beneficiary Association (VEBA), p. 1195   |
| 2-59-590 | Renewal Fees for Mortgage Brokers, Lenders, Servicers, and Originators, p. 1545  |

(Public Employees' Retirement Board)

- |          |  |
|----------|--|
| 2-43-582 | Investment Policy Statements for the Defined Contribution Retirement Plan and the 457(b) Deferred Compensation Plan, p. 251, 424 |
| 2-43-583 | Investment Policy Statements for the Defined Contribution Retirement Plan and the 457(b) Deferred Compensation Plan, p. 410, 736 |

### AGRICULTURE, Department of, Title 4

- |          |                                       |
|----------|---------------------------------------|
| 4-19-255 | Hemp, p. 254, 532                     |
| 4-19-256 | Financial Responsibility, p. 264, 537 |

- 4-19-257 State Noxious Weed List, p. 413, 825
- 4-19-258 Hemp Processing and Associated Fees, p. 698, 1369
- 4-19-259 Certified Natural Beef Cattle Marketing Program, p. 702, 1047
- 4-19-260 Apiary Fees, p. 782, 1166
- 4-19-261 Pesticide Registrations - Worker Protection Standards - Containers and Disposal Program, p. 905, 1523
- 4-19-262 Commodity Dealer Licenses, p. 1104
- 4-19-263 Pesticide Records and Registrations - Use of 1080 Livestock Protection Collars - M-44 Cyanide Capsules and Devices, p. 1109, 1629

STATE AUDITOR, Office of, Title 6

(Commissioner of Securities and Insurance)

- 6-256 Annual Audited Reports - Establishing Accounting Practices and Procedures to Be Used in Annual Statements - Internal Audit Function Requirements, p. 1216
- 6-258 Notice of Protection Provided by the Montana Life and Health Insurance Guaranty Association, p. 1224

(Classification Review Committee)

- 6-260 Establishment, Deletion, or Revision of Classifications for Various Industries for Supplementing the NCCI Basic Manual for Workers' Compensation and Employers Liability, p. 1548

COMMERCE, Department of, Title 8

- 8-94-165 Administration of the 2020 Biennium Treasure State Endowment Program—Planning Grants, p. 415, 737
- 8-94-166 Administration of the Delivering Local Assistance (DLA) Program, p. 562, 955
- 8-94-171 Administration of the 2021 Biennium Federal Community Development Block Grant (CDBG) Program—Planning Grants, p. 1120, 1630
- 8-99-167 Certified Regional Development Corporation Program, p. 785, 1168
- 8-99-168 Implementation of the Big Sky Economic Development Trust Program, p. 788, 1169
- 8-100-169 Montana Board of Research and Commercialization Technology, p. 915, 1370
- 8-111-170 Administration of the Coal Trust Multifamily Homes (CTMH) Program, p. 992, 1631
- 8-119-164 Tourism Advisory Council, p. 417, 739

EDUCATION, Title 10

(Office of Public Instruction)

10-16-132 Special Education, p. 165, 790, 1371

(Board of Public Education)

10-54-288 Deadlines for Transformational Learning Aid, p. 793, 1048

10-55-286 Hazard and Emergency Plans, p. 564, 1049

10-55-289 Accreditation Process, p. 997

10-56-285 Student Assessment, p. 567, 1050

10-57-287 Educator Licensure, p. 573, 1051

FISH, WILDLIFE AND PARKS, Department of, Title 12

12-512 Closing the Smith River From Camp Baker to Eden Bridge, p. 393

12-513 Closing the Mallard's Rest Fishing Access Site in Park County, p. 395

12-514 Pilot Program for Aquatic Invasive Species in the Flathead Basin, p. 577, 963

12-518 Closing Cooney State Park in Carbon County, p. 743

12-519 Closing the Medicine River Fishing Access Site in Cascade County, p. 745

12-520 Closing the Fort Shaw Fishing Access Site in Cascade County, p. 747

(Fish and Wildlife Commission)

12-507 No Wake Zones on Canyon Ferry Reservoir, p. 2163, 273, 538

12-508 Recreational Use on the Bitterroot River, p. 193, 740

12-515 Two-Way Electronic Communication While Hunting, p. 919

12-516 Tagging Carcasses of Game Animals, p. 921

12-517 Animal Kill Site Verification, p. 923

12-521 List of Water Bodies With Specific Regulations Found in Administrative Rule, p. 925, 1379

GOVERNOR, Office of, Title 14

14-6 Energy Supply Emergency Rules, p. 1122

ENVIRONMENTAL QUALITY, Department of, Title 17

- 17-406 Technologically Enhanced Naturally Occurring Radioactive Material (TENORM) Waste, p. 1239
- 17-407 Junk Vehicles, p. 1439
- 17-408 Nutrient Variances, p. 1443

(Board of Environmental Review)

- 17-402 Implementing a Registration System for Certain Facilities That Currently Require a Montana Air Quality Permit, p. 2430, 425
- 17-403 Ground Water Standards Incorporated by Reference Into Department Circular DEQ-7, p. 2446, 196, 826
- 17-404 Definitions - Department Circulars DEQ-1, DEQ-2, and DEQ-3 - Setbacks Between Water Wells and Sewage Lagoons, p. 2455, 836
- 17-405 Subdivision and Public Water and Wastewater Review Fees - Certification Under 76-4-127, MCA, p. 1228

TRANSPORTATION, Department of, Title 18

- 18-173 Motor Carrier Services Safety Requirements, p. 314, 543
- 18-174 Motor Fuels Tax Electronic Refunds, p. 927, 1380
- 18-176 Motor Carrier Services Maximum Allowable Weight - Wintertime and Durational Permits, p. 1002, 1632
- 18-177 Electronic Utility Permitting for Right-Of-Way Occupancy, p. 1145

(Board of Aeronautics)

- 18-175 Loan and Grant Program - Pavement Preservation Grants, p. 930, 1525

JUSTICE, Department of, Title 23

- 23-16-258 Antique Gambling Devices - Gambling Operator License Applications and Processing - Escrowed Funds - Illegal Devices - VGM Permit Eligibility - Sports Pool Games and Sports Tabs - Shake-A-Day Games - VGM Specifications and Restrictions, p. 1448

LABOR AND INDUSTRY, Department of, Title 24

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

- 24-21-346 Registered Apprenticeship, p. 579, 934, 1381
- 24-29-343 Medical Utilization and Treatment Guidelines for Workers' Compensation Purposes, p. 317, 846
- 24-29-345 Medical Fee Schedules for Workers' Compensation Purposes, p. 390, 848
- 24-29-347 Certification of Workers' Compensation Claims Examiners, p. 1550

- 24-30-344 Occupational Safety and Health Rules for Public Sector Employees, p. 320, 849
- 24-117-33 Licensure and Regulation of Professional Boxing, p. 324, 544
- 24-301-347 Definitions - Incorporation by Reference of International Building Code - Calculation of Fees - Modifications to the International Building Code Applicable to the Department's Code Enforcement Program and to Local Government Code Enforcement Programs - Incorporation by Reference of International Residential Code - Incorporation by Reference of International Existing Building Code - Incorporation by Reference of International Mechanical Code - Incorporation by Reference of International Fuel Gas Code - Incorporation by Reference of International Swimming Pool and Spa Code - Incorporation by Reference of International Wildland-Urban Interface Code - Extent of Local Programs - Funding of Code Enforcement Program - Incorporation by Reference of Independent Accountant's Reporting Format for Applying Agreed-Upon Procedures During Audits of Certified City, County, or Town Building Code Enforcement Programs - Incorporation by Reference of Uniform Plumbing Code - Minimum Required Plumbing Fixtures - Incorporation by Reference of National Electrical Code - Enforcement, Generally - Site Accessibility, p. 1273

(Board of Alternative Health Care)

- 24-111-27 Definitions - Certification for Specialty Practice of Naturopathic Childbirth Attendance - Licensure of Out-of-State Applicants - Midwives Continuing Education Requirements - Minimum Education and Experience Requirements for Midwife and Midwife Apprentice Applicants After January 1, 2020 - Direct-Entry Midwife Apprenticeship Requirements for Midwife Apprentice Applicants After January 1, 2020 - Renewals, p. 1560

(Board of Architects and Landscape Architects)

- 24-114-37 Architect Examination - Architect Licensure by Examination - Education and Experience Required for Landscape Architect Licensure - Architect Continuing Education Requirements - Unprofessional Conduct, p. 275, 1052

(Board of Athletic Trainers)

- 24-118-5 Definitions - Fee Schedule - Renewals - Unprofessional Conduct - Limit on Nonlicensee Conduct, p. 170, 427

(Board of Dentistry)

- 24-138-75 Definition of Nonroutine Application - General Standards for Specialties - Specialty Advertising, p. 2361, 429
- 24-138-76 Definitions - Fees - Mandatory Certification - Dental Auxiliary Functions - Dental Hygienist Limited Prescriptive Authority - Dentist License by Examination - Dental Hygienists License by Examination -

Dentist License by Credentials - Dental Hygienist by Credentials - Dentist Specialist by Credentials - Dental Hygiene Local Anesthetic Certification - Dental Hygiene Limited Access Permit - Denturist License Requirements - Denturist Internship - Converting Inactive to Active Status - Reactivation of Expired License - Reporting Procedures - Dentist and Dental Hygienist Unprofessional Conduct - Denturist Unprofessional Conduct - Anesthesia Standards and Continuing Education - Approved Clinical Exam Criteria for Dentists and Dental Hygienists - Denturist Scope of Practice—Dentures Over Implants - Denturist Examination, p. 1461

(Board of Hearing Aid Dispensers)

24-150-41 Fees - Record Retention - Fee Abatement - Traineeship Requirements and Standards - Minimum Testing - Transactional Document Requirements—Form and Content - Continuing Education Requirements - Unprofessional Conduct - Standards for Approval, p. 582

(Board of Medical Examiners)

24-156-85 Definitions - Unprofessional Conduct - Reporting to the Board - ECP Licensure Qualifications - ECP License Application - Substantially Equivalent Education - Continuing Education and Refresher Requirements - Expired License - Fees - Medical Direction - Levels of ECP Licensure Including Endorsements - Endorsement Application - Procedures for Revision of Montana ECP Practice Guidelines or Curriculum - Scope of Practice - Training Courses - Final Pre-Licensing Examinations - Complaints - ECP License Renewal - ECP Training Program/Course Application and Approval - Examinations - Initial ECP Course Requirements - Post-Course Requirements - ECP Clinical Requirements, p. 83, 431

(Board of Nursing)

24-159-87 Definitions - Nonroutine Applications - Educational Facilities for Programs - Program Annual Report - Program Faculty - Curriculum Goals and General Requirements for Programs - Renewals - Alternative Monitoring Track - Biennial Continuing Education Requirements - Auditing of Contact Hours, p. 706, 1055

24-159-88 Use of Clinical Resource Licensed Practical Nurses, p. 1270

(Board of Occupational Therapy Practice)

24-165-24 Definitions - Fees - Military Training or Experience - Examinations - Supervision - Deep Modality Endorsement - Recognized Education Programs - Standards of Practice - Approved Modality Instruction - Approved Training - Endorsement to Apply Topical Medications - Use of Topical Medications - Protocols for Use of Topical Medications - Debriding Agents Protocols - Anesthetic Agents Protocols - Nonsteroidal Anti-Inflammatory Agents Protocols - Antispasmodic

Agents Protocols - Adrenocortico-Steroid Agent Protocols - Protocol for Use of an Approved Medication as a Neuropathic Pain Agent - Temporary Practice Permit - Inactive Status - Continuing Education - Continuing Education–Exemption - Unprofessional Conduct - Bactericidal Agents Protocols - Applications for Licensure - Pass-Fail Criteria - Supervision–Methods - Documentation of Instruction and Training - Approval to Use Sound and Electrical Physical Agent Modalities Endorsement - Documenting Education and Competence to Perform Sound and Electrical Physical Agent Modalities–Out-of-State Practitioners, p. 509

(Board of Outfitters)

24-171-39 Fees - Outfitter Records - Safety and First Aid Provisions - Insurance for Outfitters - Guide License, p. 280, 850

(Board of Pharmacy)

24-174-71 Fee Schedule - Military Training or Experience - Collaborative Practice Agreement Requirements - Internship Requirements - Preceptor Requirements - Required Forms and Reports - Registration Requirements - Use of Pharmacy Technician - Ratio of Pharmacy Technicians to Supervising Pharmacists - Transfer of Prescriptions - Registered Pharmacist Continuing Education–Requirements - Qualifications of Pharmacy Technician - Pharmacies–Annual Renewal - Pharmacy Technician–Renewal - Renewals - Registered Pharmacist Continuing Education–Noncompliance, p. 935, 1633

(Board of Professional Engineers and Professional Land Surveyors)

24-183-43 Definitions - Fee Schedule - Teaching of Advanced Engineering Subjects in Montana - Certificate of Authorization - Applications - Exhibits of Land Surveying Projects - Comity for Professional Engineers and for Professional Land Surveyors - Classification of Land Surveying Experience - Continuing Professional Competence-Continuing Education - Unprofessional Conduct, p. 13, 635

(Board of Psychologists)

24-189-40 Definitions - Required Supervised Experience - Continuing Education Implementation - Requirements for Licensees Providing Telehealth Services - Licensees From Other States or Canadian Jurisdictions, p. 1567

(Board of Public Accountants)

24-201-52 Alternatives and Exemptions - Verification - Exercise of Practice Privilege in Other Jurisdictions - Enforcement Against License Holders and Practice Privilege Holders, p. 1151

(Board of Real Estate Appraisers)

- 24-207-42 Appraisal Review - USPAP Exemption - Definitions - Examination - Application Requirements - Approval of Qualifying and Continuing Education Courses - Ad Valorem Appraisal Experience - Qualifying Experience - Inactive License/Certification - Inactive to Active License - Trainee Requirements - Mentor Requirements - Registration and Renewal of Appraisal Management Companies - Continuing Education-Compliance and Auditing - Unprofessional Conduct for Appraisers - Unprofessional Conduct for Appraisal Management Companies - Incorporation by Reference of the Real Property Appraiser Qualification Criteria - Appraiser Reporting Obligations to the Board - Appraisal Management Company Reporting Obligations to the Board - Regulatory Reviews - Experience-Number of Hours Required - Qualifying Education Requirements for Licensed Real Estate Appraisers - Qualifying Education Requirements for Residential Certification - Qualifying Education Requirements for General Certification - Scope of Practice - Continuing Education Noncompliance, p. 2166, 53, 636
- 24-207-43 Ad Valorem Tax Appraisal Experience, p. 420, 1382

(Board of Realty Regulation)

- 24-210-45 Fee Schedule - Applications for Examination and License in General—Broker and Salesperson - New Licensee Mandatory Continuing Education—Salespersons - Continuing Real Estate Education - Continuing Property Management Education - Waiver of Experience Requirement for Broker Licensing Prohibited - Board Approval of Courses, Providers, and Instructors, p. 588, 1056

(Board of Respiratory Care Practitioners)

- 24-213-21 Abatement of Renewal Fees - Continuing Education Requirements, p. 106, 749
- 24-213-22 Continuing Education Requirements - Acceptable Continuing Education - Waiver of Continuing Education Requirement - Traditional Education by Nonsponsored Organizations - Teaching - Papers, Publications, Journals, Exhibits, Videos, Independent Study, and College Course Work, p. 1007

LIVESTOCK, Department of, Title 32

- 32-18-292 Diagnostic Laboratory Fees, p. 1573
- 32-19-295 Manner, Positioning, and Size of Labeling, p. 285, 448
- 32-19-297 Subject Diseases or Conditions - Importation of Restricted or Prohibited Alternative Livestock, p. 714, 947
- 32-19-298 Identification - Definitions - Identification of Alternative Livestock - Waivers to Identification - Inspection of Alternative Livestock - Change of Ownership Testing Requirements for Alternative Livestock - Requirements for Alternative Livestock Gametes (Ova and Semen) and Embryos - Importation of Alternative Livestock - Quarantine



- Facility - Requirements for Mandatory Surveillance of Montana  
Alternative Livestock Farm Cervidae for Chronic Wasting Disease -  
Alternative Livestock Monitored Herd Status for Chronic Wasting  
Disease - Import Requirements for Cervids - Management of  
Alternative Livestock Cervid Herds Identified as CWD Trace Herds -  
Management of CWD Positive Alternative Livestock Cervid Herds -  
Management of Alternative Livestock Cervid Herds With at Least One  
Animal Diagnosed With CWD and With Low Probability of CWD  
Transmission, p. 1584
- 32-19-299 Requirements for Importation - Importation of Diseased Animals -  
Official Health Certificate Documents for Importation - Permits -  
Special Requirements for Goats, p. 1597

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

- 36-22-204 Water Rights - Water Reservations, p. 1295

(Board of Oil and Gas Conservation)

- 36-22-201 Privilege and License Tax, p. 1601

(Board of Water Well Contractors)

- 36-22-194 Location of Wells, p. 2494, 111, 851

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

- 37-830 Foster Care Licensing Requirements, p. 1636
- 37-847 Wholesale Foods and Food Standards, p. 598
- 37-865 Updating Requirements to Limit Opioid Supply for Members Without  
Cancer Diagnosis, p. 1012, 1637
- 37-873 Healthy Learning Environments in Montana Public Schools, p. 795,  
1016
- 37-874 Update of the Healthcare Effectiveness Data and Information Set  
(HEDIS), p. 198, 397
- 37-877 Rural Health Clinics and Federally Qualified Health Centers, p. 1017,  
1603
- 37-878 Medicaid Rates, Services, and Benefit Changes, p. 618, 964, 1061
- 37-879 Low Income Weatherization Assistance Program (LIWAP), p. 331, 545
- 37-880 Montana Trauma System Plan 2019, p. 822, 1170
- 37-881 Healthy Montana Kids (HMK) Dental Benefits, p. 335, 546
- 37-882 Nursing Facility Reimbursement, p. 631, 973
- 37-883 Updating the Federal Poverty Index Guidelines for the Montana  
Telecommunications Access Program (MTAP), p. 529, 853
- 37-885 Youth Care Facilities, p. 1034, 1526
- 37-886 Migrating Billing to Medicaid Management Information System  
(MMIS), p. 723, 1171
- 37-887 Communicable Disease Control, p. 1299
- 37-888 Medicaid Rates, Services, and Benefit Changes, p. 1156, 1640

- 37-889 Medical Marijuana Testing Laboratories, p. 1480
- 37-890 Private Alternative Adolescent Residential Programs or Outdoor Programs (PAARP), p. 1309, 1606
- 37-895 Medical Marijuana Program, p. 1364
- 37-896 Vital Records, p. 1607

PUBLIC SERVICE REGULATION, Department of, Title 38

- 38-2-243 Discovery and Pre-Filed Testimony Procedures, p. 1612

REVENUE, Department of, Title 42

- 42-1000 Industry Trade Shows - Catering Endorsements - Catered Events, p. 727, 1173
- 42-1002 Implementing Legislative Changes to Table Wine, Hard Cider, and Sacramental Wine Tax Reporting Requirements and Microdistillery Production Changes - Updating Labeling and Packaging Requirements, p. 1497
- 42-1003 Implementation of a Point-Based Penalty System - Revising Procedures Relating to Revocation, Lapse, or Suspension of Alcoholic Beverage Licenses, p. 1505
- 42-1004 Livestock Reporting Per Capita Fee Payment and Refund Process, p. 1619
- 42-1005 Access Control Systems (ACS), p. 1622

SECRETARY OF STATE, Office of, Title 44

- 44-2-232 Notaries Public, p. 948, 1530
- 44-2-233 Filing UCC Documents, p. 1040, 1532
- 44-2-234 Performance Standards for Devices That Provide Accessible Voting Technology for Electors With Hearing, Vision, Speech, or Ambulatory Impairments, p. 1045, 1517
- 44-2-236 Records and Information Management Fees, p. 1519, 1646
- 44-2-237 Scheduled Dates for the 2020 Montana Administrative Register, p. 1626

(Commissioner of Political Practices)

- 44-2-235 Contribution Limits, p. 1163, 1645

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