

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 24.33.401, 24.33.406,)	PROPOSED AMENDMENT AND
24.33.411, 24.33.416, 24.33.421,)	REPEAL
24.33.431, 24.33.441, 24.33.461,)	
24.33.471, and 24.33.475 and the)	
repeal of ARM 24.33.445 and)	
24.33.486 pertaining to home)	
inspector program)	

TO: All Concerned Persons

1. On May 7, 2024, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/84169687633>
Meeting ID: 841 6968 7633, Passcode: 616013
-OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 841 6968 7633, Passcode: 616013

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on April 30, 2024, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

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

24.33.401 DEFINITIONS As used in this subchapter, the following definitions apply:

- (1) remains the same.
- (2) ~~"Department" means the Department of Labor and Industry.~~
- (3) remains the same but is renumbered (2).
- (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) remains the same but is renumbered (3).

~~(7) "ICEC" means the independent contractor exemption certificate issued by the department pursuant to 39-71-417, MCA.~~

~~(8) through (13) remain the same but are renumbered (4) through (9).~~

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

IMP: 39-9-212, MCA

REASON: "Department" is proposed to be repealed because it is statutorily defined. "Home inspection business" and "work" are proposed to be repealed because they have only their common meaning. "ICEC" is proposed to be repealed because it is statutorily defined.

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

~~(a) through (e) remain the same.~~

~~(f) photocopies, per page _____ 0.25~~

~~(2) remains the same.~~

AUTH: 39-9-103, MCA

IMP: 39-9-206, MCA

REASON: There is reasonable necessity to strike the fee for photocopies because it is not charged. A fee may nonetheless be applicable to public record requests.

24.33.411 INITIAL AND RENEWAL APPLICATION FOR HOME INSPECTION BUSINESS REGISTRATION (1) remains the same.

~~(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 ARM 24.33.431.~~

~~(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.~~
- (2) An incomplete application will be deemed denied after 30 days. Within six months of the deemed denial, an applicant may submit the required information for consideration of the application. After six months, the applicant must reapply.
- (3) Before a registration expires, a home inspection business may renew its registration by applying to the department and paying the required fee.
- ~~(10) remains the same but is renumbered (4).~~
- ~~(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

REASON: New (2) is proposed to clarify the requirements of an application and what occurs if an incomplete application is submitted. Sections (2) through (9) are repealed because they are substantially duplicative of statute. Additionally, the application is required to be submitted on departmental forms. As such, the additional required information will be set forth on the form and need not be reiterated here. Section (11) is proposed to be simplified and recodified as (2). New (3) is proposed to provide for renewals in this rule, allowing the repeal of ARM 24.33.445.

24.33.416 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)(1) 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 by mail to: Registration Section, Employment Relations Division, Department of Labor and Industry, P.O. Box 8011, Helena, MT 59604-8011, or electronically as specified by the department.~~

~~(3) remains the same but is renumbered (2).~~

~~(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 ARM 24.33.475.~~

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

REASON: Section (1) is proposed to be repealed as duplicative of 39-9-212(1), MCA. The address in (2) is out of date. To the extent the address is needed, it is set forth in the department's organizational rule and on the department's website. Section (4) is duplicative of 39-9-301, MCA. Section (5) is unnecessary because ARM 24.33.475 sets forth the right to appeal.

24.33.421 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 ARM 24.33.414.~~

(2) A home inspection worker who is engaged as an employee of a registered home inspection business must be listed on the employer's roster and does not need to separately register as a home inspection business, if the home inspection worker never:

(a) and (b) remain the same.

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

REASON: The rule is proposed to be amended to clarify that employees must be listed on the roster.

24.33.431 MINIMUM INITIAL QUALIFICATIONS FOR A HOME INSPECTION WORKER HOME INSPECTOR EXAMINATIONS AND COMPREHENSIVE EDUCATION COURSES (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)(1) Any organization wishing to be approved by the department for the purposes of offering an examination under (1)(b) for registration 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) through (j) remain the same.

(3)(2) Any organization wishing to be approved by the department for the purposes of offering a comprehensive educational program home inspection instruction 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: required for examination in (1).

(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)~~(3) Any organization wishing to be approved by the department for the purposes of offering a comprehensive home inspection instruction 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)~~(4) 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)~~(5) 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

REASON: Reasonable necessity exists to amend the catchphrase and (1) because the provisions are duplicative of 39-3-212, MCA. Amendments to (2) through (4) are proposed to align the rule language with 39-9-212, MCA, regarding instruction and examination. The websites listed in (5) and (6) are proposed to be removed because they are inaccurate and subject to change.

24.33.441 DUTY TO UPDATE ROSTER AND BUSINESS INFORMATION – SUSPENSION – REINSTATEMENT OF REGISTRATION (1) remains the same.

~~(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 ARM 24.33.431.~~

~~(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 ARM 24.33.421 meets the minimum initial qualifications and may begin work immediately.~~

(3) through (5) remain the same but are renumbered (2) through (4).

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

REASON: Reasonable necessity exists to strike (2) because it is statutorily required to have a registration with the department to perform work. As such, the requirement is duplicative of others and need not be restated.

24.33.461 RECOGNITION OF CONTINUING EDUCATION COURSES

(1) through (4) remain the same.

(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); and

(c) department-approved comprehensive courses.

(6) remains the same.

(7) A list of recognized continuing education sponsors and courses 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

REASON: New (5)(c) is proposed to clarify that department-approved comprehensive courses meet the requirements for continuing education. Section (8) is proposed to be stricken because it can more easily be incorporated into (7).

24.33.471 PENALTIES – CIVIL FINES – INJUNCTIVE RELIEF (1) and (2) remain the same.

~~(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: Section (3) is proposed to be stricken because it is unnecessary to reserve in rule what exists in statute. The implementation citations are proposed to be updated because 39-9-401, MCA is not applicable to this rule.

24.33.475 DISPUTE RESOLUTION PROCESS (1) A person receiving an adverse decision may request a hearing within 15 days from when the adverse decision is sent. This request does not prohibit efforts at conciliation or mediation.

(2) and (3) remain the same.

~~(4) A party may appeal the hearing officer's decision to the unemployment insurance appeals board (UIAB) within ten days of the date the decision was sent.~~

~~(5) A party may appeal a board decision by requesting judicial review per 39-51-2410, MCA.~~

AUTH: 2-4-201, 39-9-103, 39-9-212, MCA
IMP: 2-4-603, 39-9-212, ~~39-9-401~~, MCA

REASON: Section (1) is proposed to be amended to clarify that efforts at informal resolution are permissible. Sections (4) and (5) and the implementation citations are amended to reflect that 39-9-401, MCA is not applicable to this rule.

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

24.33.445 RENEWAL OF BUSINESS REGISTRATION

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

REASON: There is reasonable necessity to repeal this rule because it is substantially duplicative of statute, and the substance needed is proposed to be incorporated in ARM 24.33.411.

24.33.486 EDUCATION AND OUTREACH PROGRAM

AUTH: 39-9-103, 39-9-212, MCA
IMP: 39-9-206, MCA

REASON: There is reasonable necessity to repeal this rule because there is not a statutory requirement to use home inspector fees for education, or for business process to be set forth in rule.

5. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received no later than 5:00 p.m., May 10, 2024.

6. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and sosmt.gov/ARM/register.

7. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

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

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

10. Department staff has been designated to preside over and conduct this hearing.

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 2, 2024.