MONTANA
ADMINISTRATIVE
REGISTER

BOARD OF OPTOMETRY
DEPARTMENT OF LABOR AND INDUSTRY

NOTICE OF ADOPTION

MAR NOTICE NO. 2026-316.2

Summary

Implementation of House Bill 246 pertaining to substantial equivalency and standardizing fees and application rules

Previous Notice(s) and Hearing Information

On May 22, 2026, the Board of Optometry (agency) published MAR Notice No. 2026-316.1 regarding the public hearing on the proposed changes to the agency's rules, in the 2026 Montana Administrative Register, Issue No. 10.

On June 11, 2026, a public hearing was held on the proposed changes to the rules via the videoconference and telephonic platform. Comments were received by the comment deadline.

Final Rulemaking Action – Effective September 26, 2026

ADOPT WITH CHANGES

The agency has adopted the following rule with changes from the original proposal, stricken matter interlined, new matter underlined:

NEW RULE 1 (24.168.410) SUBSTANTIAL EQUIVALENCY

(1) The board adopts and incorporates by reference the 2026 substantial equivalency list for the Board of Optometry publication. The publication is available on the board's website.

(2) The board ~~intends to~~ will review the publication annually. However, failure to review or adopt a new list does not change the effectiveness of the adoption in this rule.

(3) License applications from individuals licensed in substantially equivalent states are routine applications as to the education, examination, and experience requirements for licensure. Applications may be nonroutine on other bases.

Authorizing statute(s): 37-1-131, MCA

Implementing statute(s): 37-1-304, MCA

AMEND AS PROPOSED

The agency has amended the following rules as proposed:

24.168.401 FEE SCHEDULE

24.168.402 LICENSURE REQUIREMENTS

Statement of Reasons

The agency has considered the comments and testimony received. A summary of the comments received, and the agency's responses are as follows:

Comment 1: A commenter stated that endorsement applications were not historically a significant source of controversy, delay, or inconsistency. The commenter asserted that the notice relies on broad references to House Bill (HB) 246 and administrative efficiency but does not identify a specific optometry-related licensing problem that the proposed rule is intended to solve.

The commenter requested an explanation of what deficiency exists under the current endorsement process and how the proposed substantial equivalency process would correct that deficiency.

Response 1: The proposed rulemaking is intended to implement HB 246, enacted by the 2025 Montana Legislature, which standardized the definition and use of substantial equivalency in professional licensing and required professional licensing boards and programs to align endorsement processes with that statutory framework.

The purpose of the proposed rule is not limited to correcting a documented history of optometry-specific disputes. Rather, the rule implements the legislature's direction to standardize substantial equivalency determinations across professional licensing boards and programs, reduce unnecessary duplication in endorsement review, and create a more predictable process for applicants licensed in other jurisdictions.

The board further clarifies that the proposed rule is intended to implement the statutory changes enacted in HB 246 while preserving the board's ability to evaluate whether applicants satisfy Montana licensure standards and public-protection requirements. The board does not interpret the proposed rule as eliminating applicant-specific review required by law or rule.

Comment 2: A commenter stated that administrative efficiency is a worthwhile goal but should not be the sole justification for substantive changes to licensure review procedures. The commenter emphasized that the board's primary responsibility is protection of the public through appropriate professional regulation.

The commenter requested a more detailed explanation of how the proposed substantial equivalency process advances public protection while preserving the professional standards expected of Montana optometrists.

Response 2: The board agrees that public protection is a central purpose of professional licensing regulation. The proposed rule is intended to further public protection by identifying jurisdictions whose licensure standards are substantially equivalent to Montana's standards under the statutory definition established by HB 246.

Administrative efficiency is one reason for the proposed rule, but it is not the only consideration. The substantial equivalency process is intended to promote consistency, predictability, and timely processing while maintaining the board's responsibility to protect the public by ensuring that endorsement applicants are licensed under standards that are substantially equivalent to Montana's standards.

The board clarifies that the proposed substantial equivalency process does not waive Montana licensure requirements and does not eliminate applicant-specific review. Applicants remain subject to applicable application requirements, documentation requirements, fee requirements, and review for eligibility, completeness, disciplinary history, and other matters relevant to licensure.

Comment 3: A commenter stated that the notice says the board compared licensure standards for all 50 states and will adopt and incorporate by reference the board's 2026 substantial equivalency list. The commenter objected that the notice did not identify which states were determined to be substantially equivalent and which states were not.

The commenter asserted that licensees and interested members of the public cannot provide meaningful comments on the board's determinations unless the list and supporting analysis are available for review.

Response 3: The proposed rule provides that the board will adopt and incorporate by reference the board's initial approved list of states having substantially equivalent licensing standards and that the list will be published on the board's website.

The board clarifies that the substantial equivalency list is intended to be publicly available through the board's website and to serve as the board's published determination of jurisdictions with substantially equivalent licensing standards. The list identifies the jurisdictions for which the board has determined that the licensure standards are substantially equivalent for purposes of endorsement review under the proposed rule. The substantial equivalency list was posted to the board website during the Notice of Proposal public comment period. In addition, the substantial equivalency analysis was included in the public board book for the April 23, 2026 board meeting, and the public was invited to offer comment prior to the board discussing substantial equivalency analysis within that meeting.

To the extent the comment requests disclosure of the list and supporting materials, transparency in the substantial equivalency process is important. The board will maintain and make available the substantial equivalency list in accordance with the proposed rule and applicable public records and rulemaking requirements.

Comment 4: A commenter asked what criteria the board used to determine whether another state's licensure standards are substantially equivalent to Montana's standards. The commenter specifically asked whether the board considered education, examination requirements, scope of practice, therapeutic pharmaceutical authority, laser authority, disciplinary standards, continuing education requirements, and other licensure qualifications.

The commenter also asked whether the board assessed substantial equivalency against a specific level of Montana optometric licensure, given Montana's licensure structure and differences among other states.

Response 4: The board's determinations are based on the statutory definition of substantial equivalency in 37-1-302, MCA, as amended by HB 246, and on comparison of other jurisdictions' licensure standards to Montana's optometry licensure requirements.

The board considered licensing standards relevant to determining whether another jurisdiction's requirements are substantially equivalent to Montana's requirements. Those standards include education, examination, scope of practice, therapeutic pharmaceutical authority, laser authority where applicable, continuing education, disciplinary standards, and other licensure qualifications relevant to optometry practice.

The board clarifies that a substantial equivalency determination is a jurisdiction-level determination regarding the licensing standards of another state or jurisdiction. It does not eliminate applicant-specific review or the requirement that each applicant satisfy applicable Montana licensing requirements.

Comment 5: A commenter asked who made the substantial equivalency determinations: the board itself at a public meeting, board and department staff together, department staff, legal counsel, or another entity.

The commenter also asked where licensees and members of the public may review the analysis supporting the board's determinations.

Response 5: The substantial equivalency list reflects the board's determination of jurisdictions whose optometry licensure standards are substantially equivalent to Montana's standards for purposes of endorsement review under HB 246 and the proposed rule.

Department staff may assist the board by gathering information, comparing licensing requirements, preparing materials, and providing administrative or legal support. However, the substantial equivalency determination is a board decision made for purposes of implementing the board's licensing rules and responsibilities. The board conducted its analysis and review of staff materials at its April 23, 2026 meeting, the recording of which is available on the board's website or by making a public records request.

The board further clarifies that materials related to the substantial equivalency list may be reviewed in accordance with applicable public records requirements and the board's process for maintaining the incorporated publication.

Comment 6: A commenter objected to language stating that the board "intends" to review the substantial equivalency publication annually while also stating that failure to review or adopt a new list does not change the effectiveness of the adopted list.

The commenter stated that if annual review is important, the rule should require review. If annual review is not important, the commenter suggested the language should be deleted. The commenter also asked what mechanism would ensure the list remains accurate if another state materially changes its licensure requirements after adoption of the list.

Response 6: The board agrees with the commenter and replaces the words "intends to" with "will" to read, "The board will review the substantial equivalency list annually, and may review as needed." This amended language does not prevent the board from updating the list when appropriate, nor is it intended to prevent the board from responding to material changes in another jurisdiction's licensure standards.

The board further clarifies that the existing list remains effective unless and until it is amended or replaced through the applicable process. This approach provides certainty for applicants, staff, licensees, and the public while allowing the board to update the list as needed to reflect changes in other jurisdictions' licensing standards.

Comment 7: A commenter stated that treating applications from substantially equivalent states as routine applications may effectively delegate licensure determinations to a pre-approved equivalency list without sufficient public explanation.

The commenter asked the board to explain why the existing case-by-case process is insufficient and how the proposed process better serves the public.

Response 7: The proposed rule is intended to streamline endorsement review where the applicant's licensing jurisdiction has already been determined to have substantially equivalent standards.

The board clarifies that treating an application as routine based on licensure from a substantially equivalent jurisdiction means only that the substantial equivalency component of the endorsement analysis has been addressed by the board's published determination. It does not require issuance of a license to an applicant who fails to satisfy other applicable requirements.

Applicants remain responsible for satisfying application requirements, paying applicable fees, submitting required documentation, verifying licensure, and meeting any other criteria required by Montana law and board rule. The proposed rule does not prevent the board or department from reviewing applicant-specific qualifications, disciplinary history, completeness, eligibility, or other matters relevant to licensure.

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