



Economic Affairs Interim Committee

65th Montana Legislature

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April 24, 2018

To: Economic Affairs Interim Committee
From: Jameson Walker, Legislative Attorney
Re: Updated Administrative Rule Report, April 2018

The Economic Affairs Interim Committee is responsible for reviewing administrative rules promulgated by several state agencies for compliance with the Montana Administrative Procedure Act (MAPA).¹ The following notices are filed with the Secretary of State's Office for publication in the Montana Administrative Register (MAR). Notices are available at <http://www.mtrules.org> (search by notice number).

PROPOSAL NOTICES

Department of Commerce and administratively attached entities

MAR Notice Number: 8-94-156

Subject: Amendment of rules pertaining to the Treasure State Endowment Program (TSEP).

Summary: The department proposes to amend 8.94.3814 and 8.94.3815. These rules apply to the submission and review of applications for funding under the TSEP. The amendments propose to update the department's citation to its website: <http://comdev.mt.gov/Programs/TSEP>.

Notes/Hearing: The department held a public hearing on April 5, 2018, to consider the notice.

MAR Notice Number: 8-94-157

Subject: Amendment of rules pertaining to the Federal Community Development Block Grant (CDBG) program.

Summary: The department proposes to amend 8.94.3728. The proposed amendments updates the reference in the rule to the 2018-2019 application period.

Notes/Hearing: The department held a public hearing on April 5, 2018, to consider the notice.

¹ The Committee reviews rules promulgated by the following entities: Department of Agriculture, Department of Commerce, Department of Labor and Industry, Department of Livestock, State Auditor's Office, Montana State Fund, Division of Banking & Financial Institutions, Governor's Office of Economic Development, and Department of Revenue, Liquor Control Division. This report does not represent any action or opinion of the Committee and does not preclude additional action that may be taken by the Committee pursuant to its authority under the Montana Administrative Procedure Act, Title 2, chapter 4, MCA.

Department of Agriculture and administratively attached entities

There are no pending rules.

Department of Labor and Industry and administratively attached entities

MAR Notice Number: 24-17-334

Subject: Amendment of a rule pertaining to classification of workers for heavy construction services on public works projects.

Summary: The department proposes to amend 24.17.127 to reference the 2018 revised version of the "Montana Prevailing Wage Rates for Heavy Construction Services" publication. The department states that the rule incorporates the results of its recent survey that determined the proper classification of work on water or wastewater treatment facilities.

Notes/Hearing: The department held a public hearing on March 2, 2018.

MAR Notice Number: 24-33-333

Subject: Adoption, amendment, and repeal of rules pertaining to Construction Contractor Registration and the Independent Contractor Central Unit.

Summary: The department proposes to adopt New Rules I through IV. The department states that these rules are reasonably necessary as part of the general obligation of the department to periodically review administrative rules under its purview. The proposed rules seek to restate and provide clarity regarding the department interpretation of the Independent Contractor Exemption Certificate law, which has been affirmed by the Workers' Compensation Court. The department proposes to amend 24.33.121, 24.33.131, 24.33.142, 24.33.151, 24.35.101, 24.35.111, 24.35.117, 24.35.121, 24.35.131, 24.35.202, 24.35.205, and 24.35.206. These amendments update fees for the issuance, renewal, or reinstatement of a construction contractor certificate. Additional amendments to rules seek to clarify procedures and eliminate duplicative rule provisions. The department proposes to repeal 24.33.101, 24.35.141, and 24.35.207. The department states that the repeal will shorten and simplify administrative rules.

Notes/Hearing: The department held a public hearing on March 1, 2018.

MAR Notice Number: 24-26-336

Subject: Amendment of rules relating to public sector collective bargaining and the Board of Personnel Appeals.

Summary: The department proposes to amend 24.26.612, 24.26.614, 24.26.618, 24.26.643, and 24.26.680. The board states that the amendments are necessary to eliminate the filing of unnecessary copies of petitions and administrative delays in the processing of petitions.

Notes/Hearing: The department held a public hearing on April 6, 2018.

MAR Notice Number: 24-138-74

Subject: Amendment and adoption of rules relating to the Board of Dentistry.

Summary: The department proposes to amend 24.138.407 (functions for dental hygienists), 24.138.425 (limited access permit treatment guidelines – practicing under public health supervision), 24.138.509 (dental hygiene limited access permit), 24.138.2102 (subject matter acceptable for dentist and dental hygienist continuing education), and 24.138.2104 (requirements and restrictions). The board states that the changes implement SB 120 from the 2017 legislative session. This bill allowed for dental hygienists to administer local anesthetics under general supervision and allow limited prescriptive authority for topical agent prescriptions for specific fluoride agents, oral anesthetics, and nonsystemic oral antimicrobials. The board proposes to adopt New Rule I pertaining to limited prescriptive authority, qualifications, and allowable percentages of topical agents.

Notes/Hearing: The department held a public hearing on March 16, 2018.

MAR Notice Number: 24-171-38

Subject: Amendment of rules relating to the Board of Outfitters.

Summary: The department proposes to amend 24.171.410 and 24.171.2301. The amendments implement House Bill 289 from the 2017 legislative session. Specifically, the department proposes to update the rules relating to the hiring of outfitter assistants is through emergencies. The proposed amendments seek to clarify what constitutes an emergency and information provided by the outfitter to the board relating to the emergency. The rule proposal also seeks to clarify that outfitters may be held accountable for violating outfitter's assistant laws and that outfitter's assistants are held to the same standard of conduct as licensed guides.

Notes/Hearing: The department held a public hearing on April 12, 2018.

MAR Notice Number: 24-174-70

Subject: Amendment and repeal of rules relating to the Board of Pharmacy.

Summary: The department proposes to amend 24.174.501 (examination for licensure as a registered pharmacist), 24.174.526 (requirements to become a clinical pharmacist practitioner), 24.174.1704 (requirements for submitting prescription registry information to the board). The department proposes to repeal 24.174.2401 (screening panel), 24.174.2402 (complaint procedure), and 24.174.2403 (legal suspension or revocation). The department states that the rule amendments are to implement the new testing and retesting provisions implemented by the National Association of Boards of Pharmacy, to reflect recent changes made by the Board of Pharmacy Specialities to certification authority, and to improve accuracy and timeliness of prescription information available through the Montana Prescription Drug Registry. The board proposes to repeal several rules by virtue of being unnecessary and duplicative.

Notes/Hearing: The department held a public hearing on April 6, 2018.

MAR Notice Number: 24-189-39

Subject: Amendment of rules relating to the Board of Psychologists.

Summary: The department proposes to amend 24.189.901 and 24.189.907 pertaining to application procedures for behavior analysts and assistant behavior analysts. The proposed amendments remove reference forms regarding good moral character. The department states that applicants informed staff of the difficulty of finding required references to moral character. The

department states that adequate information to demonstrate an applicant's character is obtained through the application.

Notes/Hearing: The department held a public hearing on April 6, 2018.

MAR Notice Number: 24-29-335

Subject: Amendment of rules pertaining to workers' compensation facility service rates and conversion factors.

Summary: The department proposes to amend 24.29.1433, 24.29.1534, and 24.29.1538. The rules seek to amend the fees for medical services provided to injured workers.

Notes/Hearing: The department will hold a public hearing on April 20, 2018.

MAR Notice Number: 24-155-7

Subject: Amendment and adoption of rules pertaining to the Board of Massage Therapy.

Summary: The department proposes to amend 24.155.604 (licensure by examination), 24.155.608 (licensure of out-of-state applicants), 24.155.801 (continuing education requirements), 24.155.901 (unprofessional conduct). The amendments remove reference forms regarding good moral character. The department states that it will allow applicants alternative methods of demonstrating education qualifications. The notice also proposes to amend rules relating to continuing education and unprofessional conduct. The department proposes to adopt New Rule I. This rule would apply to school instructors and assistants requiring a license in massage therapy. The proposed rule also allows for an exemption.

Notes/Hearing: The department will hold a public hearing on April 23, 2018.

MAR Notice Number: 24-159-85

Subject: Amendment, adoption, and repeal of rules pertaining to the Board of Nursing.

Summary: The department proposes to amend 24.159.501 (definitions). The department proposes to adopt New Rule I (enhanced nurse licensure compact). The department proposes to repeal 24.159.504 (issuance of a license by a compact state), 24.159.507 (limitations on multistate licensure privilege - discipline), and 24.159.510 (information system). Overall, the rule notice seeks to implement Senate Bill 166 from the 2017 legislative session. This act adopted the enhanced Nurse Licensure Compact. The department states that the amendment, adoption, and repeal of these rules is necessary to reduce confusion and recognize that the Nurse Licensure Compact Administrators commission's rules are binding on Montana as a party state.

Notes/Hearing: The department does not anticipate the need for a public hearing and will adopt the rules on April 30, 2018.

Department of Revenue, Liquor Control Division

MAR Notice Number: 42-2-992

Subject: Amendment, adoption, and repeal of rules pertaining to license competitive bidding.

Summary: The department proposes to adopt New Rules I through V. New Rule I provides definitions. New Rule II governs the department's publishing of alcoholic beverage license

availability. New Rule III relates to competitive bid forms. New Rule IV provides processes for successful bidders. New Rule V governs determination of boundaries for the location of premises. The department proposes to amend 42.12.104 (action taken with census update), 42.12.111 (processing fees), 42.12.124 (rejection of application because of number of existing licenses), 42.12.130 (determination of license quota areas), 42.12.131 (applications for licenses available in quota areas, and application processing times), and 42.12.144 (transfers between quota areas - procedures and documentation). The department states that the rules are necessary to comply with Senate Bill 5 from the 2017 special session. The majority of amendments to the administrative rules concern the combined quota areas and former lottery process. The department proposes to repeal 42.12.125 (combined area quotas), 42.12.202 (transfers within combined areas), 42.12.401 (definitions), 42.12.404 (application limit per premises), 42.12.405 (restaurant beer and wine license application fees), 42.12.406 (lottery application process), 42.12.408 (final application process following successful appointment under a lottery), 42.12.412 (when lottery will be held), 42.12.414 (how applicants will be chosen), and 42.12.416 (alteration of premises following receipt of restaurant beer/wine license - seating capacity). The department states that repealing the administrative rules pertaining to the lottery is necessary despite the fact that the lottery will return when the competitive bidding process sunsets on December 31, 2023. Notes/Hearing: The department held a public hearing on April 9, 2018, and is accepting public comment.

Department of Livestock and administratively attached entities

MAR Notice Number: 32-18-289

Subject: Adoption of a rule relating to board oversight of agency actions.

Summary: The department proposes to amend 32.2.102. The department states that the purpose is to ensure that the department employees most familiar with the circumstances of an appeal will evaluate the appeal first.

Notes/Hearing: The department does not anticipate the need for a public hearing.

State Auditor's Office

MAR Notice Number: 6-242

Subject: Amendment and repeal of rules relating to public adjusters.

Summary: The department proposes to amend 6.6.1601, 6.6.1605, 6.6.1607, 6.6.1608, 6.6.1610, 6.6.1611, and 6.6.1613. The department proposes to repeal of 6.6.1602, 6.6.1603, 6.6.1604, 6.6.1606, 6.6.1609, 6.6.1612, 6.6.1614, 6.6.1615, and 6.6.1616. The department is amending several rules to correct citations to implementing statutes and to make nonsubstantive changes. The department proposes to repeal several rules on the basis of duplication or unnecessary regulation of public adjusters.

Notes/Hearing: The department held a public hearing on February 15, 2018.

MAR Notice Number: 6-243

Subject: Amendment of rules relating to health maintenance organizations.

Summary: The department proposes to amend 6.6.2503, 6.6.2504, 6.6.2505, 6.6.2506, 6.6.2507, 6.6.2508, and 6.6.2509. The department proposes changes to clarify definitions, remove citations to incorrect statutory authority, address Montana law that conflicts with federal law, address preexisting condition exclusionary language, provide greater uniformity of regulation of health maintenance organizations, and restructure existing language.

Notes/Hearing: The department held a public hearing on March 16, 2018.

Montana State Fund

There are no pending rules.

Division of Banking & Financial Institutions

MAR Notice Number: 2-59-571

Subject: Amendment of rules pertaining to banking.

Summary: The department proposes to amend 2.59.310, 2.59.318, 2.59.705, 2.59.1701, 2.59.1738, and 2.59.1748. The amendments pertain to annual reporting for consumer loan licensees, escrow business reference updates, mortgage definitions, mortgage renewal fees, and escrow funds held by mortgage companies. The department states that it is part of its biennial review of rules. The amendments clarify procedures and citations to authority. The amendment proposes to reduce renewal fees by 75% for 2019.

Notes/Hearing: The department does not anticipate the need for a public hearing.

Governor's Office of Economic Development

There are no pending rules.

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