



Economic Affairs Interim Committee

66th Montana Legislature

SENATE MEMBERS

JASON ELLSWORTH
NATE MCCONNELL
FRANK SMITH
GORDON (GORDY) VANCE

HOUSE MEMBERS

DEREK HARVEY
JOSH KASSMIER
MARK NOLAND
VINCE RICCI
SHARON STEWART PEREGOY
KATIE SULLIVAN

COMMITTEE STAFF

PATRICIA MURDO, Research Analyst
JAMESON WALKER, Staff Attorney
FONG HOM, Secretary

August 25, 2020

To: Economic Affairs Interim Committee
From: Jameson Walker, Legislative Attorney
Re: Administrative Rule Report, August 2020

The Economic Affairs Interim Committee (EAIC) 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 Agriculture and administratively attached entities

MAR Notice Number: 4-20-268

Subject: Amendment and adoption of rules pertaining to violations in commodity reporting.

Summary: The department proposes to adopt two new rules and amend 4.9.402 and 4.21.402 (requirements for reports). Both amendments will provide that failing to produce past dues is for a fine of not less than \$50 or more than \$5,000. This is an increase from \$25 and \$500, respectively. The proposed new rules will provide for a penalty matrix.

Notes/Hearing: The department held a public hearing July 16, 2020, to consider the notice.

MAR Notice Number: 4-20-269

Subject: Adoption of rules pertaining to the Montana Hemp Research and Market Development Program.

Summary: The department proposes to adopt New Rules I through IV. New Rule I provides for the Montana hemp advisory committee. New Rule II provides definitions. New Rule III provides for the annual hemp assessment of 1% on net receipts of hemp crops produced in the state. New

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, 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.

Rule IV provides for applications for hemp research and marketing project funds. The department states that the reason for the proposed rules is that upon the advice of the Montana Hemp Advisory Committee, Montana hemp growers petitioned and successfully passed a referendum to create a hemp assessment.

Notes/Hearing: The department held a public hearing August 13, 2020, to consider the notice.

Department of Commerce and administratively attached entities

MAR Notice Number: 8-94-184

Subject: Amendment of a rule pertaining to the 2021 Biennium Federal Community Development Block Grant (CDBG) Program -- planning grants.

Summary: The department is proposing to amend 8.94.3728 to update references in the rule to the 2020 CDBG guidelines.

Notes/Hearing: The department will hold a public hearing on August 27, 2020, to consider the notice.

Department of Labor and Industry and administratively attached entities

MAR Notice Number: 24-11-360

Subject: Adoption of a new rule pertaining to unemployment insurance benefits related to the COVID-19 pandemic.

Summary: The department proposes to adopt New Rule I (COVID-19 claims for unemployment insurance benefits for weeks of unemployment beginning on or after July 12, 2020). The department states that the proposed rule will allow the department to comply with recently enacted federal laws that provide for reimbursement to the state of unemployment insurance benefits for pandemic-related layoffs. Such federal laws require the department to provide flexibility in eligibility. Accordingly, the proposed rule clarifies that employees subject to quarantines or temporarily laid off by their employer due to the pandemic will be eligible for benefits. The proposed rule provides the department with the flexibility required by federal law and will allow the department to reasonably respond to the needs of Montana employees and employers. The rule further allows the program to continue to meet its core purpose by mitigating the economic effects of the COVID-19 pandemic on employment in Montana, such as they currently exist under the declaration of emergency.

Notes/Hearing: The department held a public hearing on July 31, 2020, to consider the notice.

MAR Notice Number: 24-138-78

Subject: Amendment and adoption of rules pertaining to the board of dentistry.

Summary: The board proposes to amend 24.138.504 (approved clinical exam criteria for dentists and dental hygienists) to allow for dental students who graduate in the year 2020 to be allowed to substitute the Western Regional Examining Board's mannequin-based operative exam in lieu of the patient-based examinations. The board proposes to amend 24.138.3102 (specialty advertising) to apply to oral medicine and dental anesthesiology. The board states that this rule amendment in light of the National Commission on Recognition for Dental Specialties and Certifying Board's recognition of dental anesthesiology and oral medicine as an approved speciality. The board also proposes to adopt New Rule I (dental hygienists -- temporary practice

permits). The board states that the new rule is reasonably necessary in response to the COVID-19 pandemic. The temporary practice permit would allow graduates adequate opportunities to enter the workforce while awaiting licensure.

Notes/Hearing: The board held a public hearing on July 31, 2020, to consider the notice.

MAR Notice Number: 24-189-41

Subject: Amendment of rules pertaining to the board of psychologists.

Summary: The board proposes to amend 24.189.401 (fee schedule), 24.189.601 (psychologist application procedures), 24.189.610 (examination), 24.189.633 (temporary permit), and 24.189.910 (behavior analyst experience and supervision). Generally, the board proposes to remove examination fees and requirements. Specifically, the board determined that it is reasonably necessary to amend the rules to no longer require an oral exam for Montana licensure. The board also proposes to amend rules to increase the number of student interns a behavior analyst can supervise.

Notes/Hearing: The board held a public hearing on August 5, 2020, to consider the notice.

MAR Notice Number: 24-2-361

Subject: Active Supervision of the Board of Professional Engineers and Professional Land Surveyors.

Summary: The department is holding a public hearing to take public comment regarding a proposal for the amendment of 24.183.303(11). The comments will focus on whether the proposal for a new rule adding experience with the public land survey system is necessary to protect the public health, safety, and welfare.

Notes/Hearing: The board will hold a public hearing on September 2, 2020, to consider the notice.

MAR Notice Number: 24-301-348

Subject: Amendment of rules pertaining to the Underground Facility Protection Program.

Summary: The department proposes to amend 2.301.1003 (assessment and collection of civil penalties), 24.301.1007 (collection of annual fees), 24.301.1009 (disputes regarding penalties and fines – mediation), and 24.301.1011 (training and educational grants). The department states that the amendments changing archaic phrasing, updating grammar and language voices, eliminating repetitive language, and substituting active voice for passive voice are mostly technical in nature.

Notes/Hearing: The department will hold a public hearing on September 1, 2020, to consider the notice.

Department of Revenue, Liquor Control Division

MAR Notice Number: 42-1022

Subject: Amendment of rules pertaining to state liquor warehouse inventory practices.

Summary: The department proposes to amend 42.11.104, 42.11.105, 42.11.106, 42.11.405, 42.11.406, 42.11.409, 42.11.421, and 42.11.424. Generally the amendments provide for department inventory practices, amendments to bailment limits, and revisions to department product classification and product price posting. The department states that the changes are

necessary in light of the growth of liquor sales, which is almost 3% per year, and the limiting size of the liquor warehouse. Additionally, the department proposes rule amendments to implement SB 193 from the 2015 legislative session.

Notes/Hearing: The department will hold a public hearing on August 31, 2020, to consider the notice.

Department of Livestock and administratively attached entities

MAR Notice Number: 32-20-308

Subject: Adoption of rules pertaining to label review.

Summary: The board proposes to adopt New Rule I (label review). The proposed rule will allow the label for a single ingredient product produced in an establishment under state inspection to be used on that product without prior review by the department. The department states that the rule will formalize longstanding department practices.

Notes/Hearing: The board does not contemplate the need to hold a public hearing.

MAR Notice Number: 32-18-293

Subject: Adoption of a new rule pertaining to recalls.

Summary: The board proposes to adopt New Rule I (recalls). The department states that it is proposing the rule to formalize the recall process that was drafted and adopted by the department following a series of public meetings with the meat and poultry industry. The rule does not create a new recall process.

Notes/Hearing: The board does not contemplate the need to hold a public hearing.

MAR Notice Number: 32-20-311

Subject: Amendment of rules pertaining to special requirements.

Summary: The board proposes to amend 32.3.217 (special requirements for poultry) and 32.3.221 (special requirements for alternative livestock). The department proposes the rule amendments to provide consistency with the National Poultry Improvement Plan.

Notes/Hearing: The board does not contemplate the need to hold a public hearing.

State Auditor's Office

There are no pending rules.

Division of Banking & Financial Institutions

MAR Notice Number: 2-59-602

Subject: Amendment of rules pertaining to report due dates for mortgage servicers and when initial mortgage license applications are deemed abandoned.

Summary: The department proposes to amend 2.59.1743 (reporting forms for mortgage servicers) and 2.59.1753 (applications for initial license near year-end; when application for initial license may be deemed abandoned). The amendments generally provide for an extension to the deadline for reporting. The department states that the rule notice is reasonably necessary in light of the COVID-19 pandemic.

Notes/Hearing: The department doesn't contemplate the need to conduct a public hearing.

MAR Notice Number: 2-59-596

Subject: Amendment, adoption, and repeal of rules pertaining to bank branches, limitations on loans, and bank branch relocations.

Summary: The department proposes to adopt New Rules I through XXIII. The department states that the rule amendments are necessary to enact Senate Bill 58 from the 2019 session. The adoption of the rules is necessary to describe current banking practices and procedures used by the department. The department proposes to amend 2.59.1101 through 2.59.1103. The amendments make the existing rules consistent with the new rules. The department proposes to repeal 2.59.108 and 2.59.901 to maintain consistency with the proposed new rules.

Notes/Hearing: The department doesn't contemplate the need to conduct a public hearing.

MAR Notice Number: 2-59-603

Subject: Amendment of a rule pertaining to model bylaws and statutory references.

Summary: The department proposes to amend 2.59.429 to update references in the rule.

Notes/Hearing: The department doesn't contemplate the need to conduct a public hearing.

Governor's Office of Economic Development

There are no pending rules.

CI0425 0238jwca.