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Economic Affairs Interim Committee

67th Montana Legislature

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August 9, 2022

TO: Economic Affairs Interim Committee
FROM: Jameson Walker, Staff Attorney
RE: Administrative Rulemaking and Rule Review, August 2022

The Economic Affairs Interim Committee is required to review administrative rules promulgated by the Department of Agriculture, Department of Commerce, Department of Labor and Industry, Department of Livestock, State Auditor's Office, Division of Banking and Financial Institutions, Governor's Office of Economic Development, and Department of Revenue, Alcoholic Beverage Control Division for compliance with the Montana Administrative Procedure Act (MAPA). 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

There are no new rules.

Department of Commerce and administratively attached entities

MAR Notice Number: 8-94-199

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

Summary: The department proposes to amend 8.94.3727, 8.94.3729, 8.94.3730, and 8.94.3731. The rule amendments generally increase the application limits and streamline processes for improved clarity and ease of use.

Notes/Hearing: The department will hold a public meeting on August 25, 2022, to consider the notice.

Department of Labor and Industry and administratively attached entities

MAR Notice Number: 24-174-79

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

Summary: The board proposes to amend 24.101.413, 24.174.401, 24.174.1201, 24.174.1202, 24.174.1203, 24.174.1207, 24.174.1208, 24.174.1211, 24.174.1702, 24.174.1703, and 24.174.1704. The board proposes to repeal 24.174.1212 and 24.174.1213. Generally, the board

states that rule notice is reasonably necessary to implement Senate Bill 68 from the 2017 legislative session. These legislative amendments reflect federal provisions required through the U.S. Food and Drug Administration (FDA) specific to the Drug Supply Chain Security Act. The board states that it delayed initial rulemaking while awaiting FDA rules. The board states that it delayed rulemaking again due to COVID-19 in 2020. The board states that it is reasonably necessary to propose the rule amendments now to establish core license types based on currently available information. Further, the board states that having four distinct license types will clarify a facility's scope of practice and role within the drug supply chain, better identify the different types of facilities licensed under the board, and set a base for implementation of licensing requirements.

Notes/Hearing: The board will hold a public hearing on August 12, 2022, to consider the notice.

Department of Livestock and administratively attached entities

MAR Notice Number: 32-22-330

Subject: Amendment of rules pertaining to transfer of quota and reassignment of quota from the unassigned quota pool and readjustment of quota into the statewide quota system.

Summary: The department proposes to amend 32.24.504 and 32.24.505. The department states that the rule amendments will amend two rules as part of the milk industry's collective response to a performance audit of milk market regulation, which found that the current amount of quota in the state is too high. Additionally, the department states that the board, in collaboration with milk producers, agreed to reestablish a 10% reduction on quota transfers and implement the forfeiture of unassigned quota. This change will have no immediate financial impact on current producers and, over time, should increase the value of their quota remaining in the system.

Notes/Hearing: The department does not contemplate the need to conduct a public hearing.

MAR Notice Number: 32-22-331

Subject: Amendment of rules pertaining to producer pricing.

Summary: The department proposes to amend 32.24.480 by imposing one price per pound on Montana Class III Butterfat. The department states that the amendment is part of the Governor's red tape relief initiative and removes outdated language from the current rule.

Notes/Hearing: The department does not contemplate the need to conduct a public hearing.

MAR Notice Number: 32-22-332

Subject: Amendment of rules pertaining to testing within the Designated Surveillance Area.

Summary: The department proposes to amend 32.3.435. The department proposes the most frequently granted variances to be included in the administrative rule as standard exemptions to streamline the process.

Notes/Hearing: The department does not contemplate the need to conduct a public hearing.

State Auditor's Office

MAR Notice Number: 6-271

Subject: Amendment of rules pertaining to annuities, periodic payment of premium taxes, and surplus lines insurance transactions.

Summary: The department proposes to amend 6.6.803, 6.6.2707, 6.6.2809, and 6.6.5701. The department states that the rule amendments are necessary as part of the department's housekeeping review of rules and the amendments generally correct minor errors.

Notes/Hearing: The department does not contemplate the need to conduct a public hearing.

MAR Notice Number: 6-272

Subject: Amendment of rules pertaining to life insurance illustrations.

Summary: The department proposes to amend 6.6.706 and 6.6.707. The department states that the rule amendments to 6.6.706 implement House Bill 379 from the 2021 legislative session. This bill allowed for the consideration of sex and marital status in accepted ratemaking methodologies when establishing insurance premium rates. The amendment to 6.6.706 implements this change. The department states that the amendment to 6.6.707 is a housekeeping change to fix a clerical error in the rule.

Notes/Hearing: The department does not contemplate the need to conduct a public hearing.

MAR Notice Number: 6-273

Subject: Amendment of rules pertaining to exemptions.

Summary: The department proposes to amend 6.10.303 to remove a filing fee of \$50. The department states that the rule amendment is necessary because the legislature authorized another fee in 2019.

Notes/Hearing: The department does not contemplate the need to conduct a public hearing.

MAR Notice Number: 6-274

Subject: Amendment of rules pertaining to the collection of stamping fees.

Summary: The department proposes to amend 6.6.2804 to remove the stamping fee on the base premium. The department states that the fee was previously collected to assist with the costs of processing certain forms as part of the regulation of surplus lines. This fee, however, is discretionary under 33-2-321, MCA.

Notes/Hearing: The department does not contemplate the need to conduct a public hearing.

Division of Banking and Financial Institutions

MAR Notice Number: 2-59-630

Subject: Adoption of a new rule pertaining to banking.

Summary: The department proposes to adopt New Rule I (Activities Requiring a License):

NEW RULE I ACTIVITIES REQUIRING A LICENSE (1) For purposes of 32-9-124(1)(h), MCA, the department adopts by reference Appendices A through D of 12 CFR 1008 (Regulation H) (July 1, 2022). The appendices may be found on the department's website at banking.mt.gov.

The department states that the new rule will comply with the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, 12 U.S.C. 5101 through 5116.

Notes/Hearing: The department does not contemplate the need to conduct a public hearing.

MAR Notice Number: 2-59-632

Subject: Amendment of a rule pertaining to banking.

Summary: The department proposes to amend 2.59.138 (definitions) by removing rule references. The department states that the definitions in the rule should apply to the statute and not just the rules that interpret the statute.

Notes/Hearing: The department does not contemplate the need to conduct a public hearing.

Department of Revenue, Alcoholic Beverage Control Division and Cannabis Control Division

MAR Notice Number: 42-1052

Subject: Adoption and amendment of rules pertaining to alcohol.

Summary: The department proposes to adopt New Rule I (Noncontiguous Alcoholic Beverage Storage Areas; Resort Alternative Retail Alcoholic Beverage Storage Facilities) and amend 42.12.106, 42.12.111, 42.12.118, 42.12.133, 42.12.143, 42.12.145, 42.12.146, 42.12.147, 42.12.149, 42.12.209, 42.12.301, 42.13.106, 42.13.111, 42.13.405, 42.13.601, 42.13.802, 42.13.1102 through 42.13.1105, and 42.13.1202. Generally, the department states that the rule amendments implement House Bills 157, 226, 525, 705 and Senate Bill 320 enacted by the 2021 Legislature. These bills collectively revised licensee ownership thresholds, retailer and manufacturer operating conditions and premises proximity standards, licensed premises standards, and the department's authority to regulate certain licensee—and nonlicensee—activities.

Notes/Hearing: The department will hold a public hearing on August 12, 2022, to consider the notice.

MAR Notice Number: 42-1058

Subject: Adoption and amendment of rules pertaining to marijuana canopy tiers.

Summary: The department proposes to adopt New Rule I (Marijuana Cultivator Tier 13 through 15 Canopy License and Registered Premises Requirements). This will recognize canopy tiers 13 through 15. Generally, the department states that the additional tiers in New Rule I are necessary because the department has received requests from providers that are at the current tier 12 maximum to increase their cultivation space. The department proposes the stated sizes because the tier increases of 10,000 square feet per increase are consistent with the square footage increases between tiers 10, 11, and 12. The department states that creating three additional tiers will allow those providers at the current maximum of tier 12 to increase their tier level, at a minimum, for 3 years as tier increases can happen only once a year, at annual license renewal, for licensees above a tier 5. Additionally, the department proposes to amend 42.39.104 (License, Application, and Renewal Fees) to include the following changes in tier fees:

- (xii) \$32,000 for a cultivator with a tier 11 canopy license; ~~and~~
- (xiii) \$37,000 for a cultivator with a tier 12 canopy license; ~~;~~
- (xiv) \$42,000 for a cultivator with a tier 13 canopy license;
- (xv) \$47,000 for a cultivator with a tier 14 canopy license; and
- (xvi) \$52,000 for a cultivator with a tier 15 canopy license.

The department proposes to increase the tier fees by the same incremental amount: \$5,000 as with tiers 10 through 12 canopy licenses.

Notes/Hearing: The department will hold a public hearing on August 16, 2022, to consider the notice.

MAR Notice Number: 42-1059

Subject: Adoption of rules pertaining to the authorization of marijuana dispensary customer loyalty programs.

Summary: The department proposes to adopt New Rule I (Marijuana Dispensary Customer Loyalty Programs):

NEW RULE I MARIJUANA DISPENSARY CUSTOMER LOYALTY

PROGRAMS (1) A marijuana dispensary may enroll customers in its loyalty program, which incentivizes customer purchases from the dispensary.

(2) A customer may not be automatically enrolled in a loyalty program using an identification scan or by any other means. To comply with [16-12-104](#)(12), MCA, all metadata obtained from an identification scan must be used for purposes of determining a person's age only and must be permanently deleted within 180 days of purchase.

(3) A customer loyalty program may not offer or reward a customer with free marijuana or marijuana products in violation of [16-12-207](#)(7), MCA.

(4) If loyalty points or similar customer rewards are offered consistently and are available to all customers, then the loyalty points are considered nontaxable. Loyalty points may be accumulated and applied as a discount to a dispensary's established retail price. A customer must be charged the applicable tax rate based on the discounted retail price after redemption of any loyalty points.

(5) A dispensary that has already enrolled customers automatically in a loyalty program, as prohibited in (2), must purge all metadata for affected customers within 90 days of adoption of this rule.

Relating to the rule, the department states: "Section 16-12-207, MCA, prohibits a marijuana licensee from giving away marijuana or marijuana products, but despite this restriction and despite the department's repeated reminders to dispensaries to comply, the department consistently learns of dispensaries that offer free marijuana or marijuana products to customers in exchange for customer "loyalty" to the dispensary. The department proposes a solution - through the adoption of New Rule I - to acknowledge that loyalty programs are permissible (see proposed (1)) but reinforces in proposed (2) that a dispensary is prohibited from automatically enrolling customers and maintaining data obtained with an identification scan under 16-12-104, MCA.

Section (3) is a necessary reiteration of statutory requirements in 16-12-207, MCA, prohibiting the giving away of marijuana or marijuana products.

Section (4) proposes to notify dispensaries how to tax products subject to a loyalty discount or earned with loyalty points.

Section (5) proposes to provide a grace period for voluntary licensee compliance of the requirements set forth in the rule."

Notes/Hearing: The department will hold a public hearing on August 16, 2022, to consider the notice.

MAR Notice Number: 42-1060

Subject: Amendment of rules pertaining to a waste management process revision.

Summary: The department proposes to amend 42.39.310 by adding subsection (1), pertaining to waste management:

42.39.310 WASTE MANAGEMENT [(1) through (9) remain the same.]

(10) After the expiration of the 72-hour period in (9), a licensee may dispose of marijuana stalks and stems without rendering them unusable pursuant to (3) by releasing them to a third-party contractor to render them unusable. A licensee shall provide the department

with a copy of the waste removal agreement with the third-party contractor before commencing services and shall maintain the contract in the binder of documents required by ARM 42.39.105(6). The third-party contractor may process marijuana stalks and stems into nonmarijuana products or otherwise render the marijuana stalks and stems unusable.

The department states that this will allow a marijuana licensee to dispose of marijuana stalks and stems in a more sustainable manner. The department states that 16-12-102, MCA, defines "usable marijuana" to exclude "stalks."

Notes/Hearing: The department will hold a public hearing on August 26, 2022, to consider the notice.

Governor's Office of Economic Development

There are no new rules.