



Economic Affairs Interim Committee

67th Montana Legislature

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FONG HOM, Secretary

September 21, 2021

TO: Economic Affairs Interim Committee
FROM: Jameson Walker, Staff Attorney
RE: Administrative Rulemaking and Rule Review, September 2021 Updated

The Economic Affairs Interim Committee (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 & Financial Institutions, Governor's Office of Economic Development, and Department of Revenue, Liquor 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 pending rules.

Department of Commerce and administratively attached entities

There are no pending rules.

Department of Labor and Industry and administratively attached entities

MAR Notice Number: 24-11-375

Subject: Amendment of rules pertaining to disqualification for unemployment insurance benefits due to failure or refusal of a drug test, and requalification.

Summary: The department proposes to amend 24.11.463 (lie detector tests-drug and alcohol testing). The proposed changes will exempt the rule for a drug test for marijuana who is a registered cardholder. The department states that the changes are necessary to implement House Bill 655 (2021) and to remain compliant with the federal Unemployment Tax Act, 26 U.S.C. 3304.

Notes/Hearing: The department will hold a hearing on September 21, 2021, to consider the notice.

MAR Notice Number: 24-171-41

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

Summary: The board proposes to amend 24.171.401 (fees), 24.171.408 (outfitter records), 24.171.410 (outfitter's assistants), 24.171.412 (safety and first aid provisions), 24.171.501 (application for outfitter license), 24.171.502 (outfitter qualifications), 24.171.505 (fishing outfitter operations plan), 24.171.509 (insurance for outfitters), 24.171.513 (outfitter acting as guide), 24.171.520 (operations plans and amendments), 24.171.701 (NCHU categories, transfers, and records), 24.171.2101 (renewals), 24.171.2301 (unprofessional conduct and misconduct), and 24.171.2305 (web site posting of license discipline). The board states that the rule amendments are to implement Senate Bill 275 (2021). Among many things, Senate Bill 275 eliminated certain reporting requirements for licensed outfitters in addition to removing the distinction between hunting outfitters who provide "big game" services and those providing other hunting services. The rule amendments implement these changes. The department also proposes to reduce certain fees for licensees in order to ensure that fees are commensurate with costs.

Notes/Hearing: The department will hold a hearing on September 22, 2021, to consider the notice.

MAR Notice Number: 24-174-74

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

Summary: The board proposes to amend 24.174.301 (definitions), 24.174.524 (collaborative practice agreement requirements), 24.174.835 (transfer of prescriptions), 24.174.1111 (drug distribution and control in an institutional or correctional facility), 24.174.1114 (use of drug kits in certain institutional facilities), 24.174.1412 (additions, deletions, and rescheduling of dangerous drugs), 24.174.2106 (registered pharmacist continuing education–approved programs). The board states that the amendments are reasonably necessary to provide consistent rules relating to drug kits, clarify and streamline rules relating to collaborative practice agreements, update drug laws as it pertains to federal laws, and streamline standardized renewal and audit procedures relating to continuing education. The board proposes to repeal 24.174.1115 (use of contingency kits in certain institutional facilities). The department states that the pertinent provisions of his rule are being incorporated into 24.174.1114.

Notes/Hearing: The department will hold a hearing on September 16, 2021, to consider the notice.

MAR Notice Number: 24-21-378

Subject: Amendment and adoption of rules pertaining to Montana's registered apprenticeship program and recognition of pre-apprenticeship programs.

Summary: The department proposes to amend 24.21.102 (definitions) and 24.21.1003 (apprentice-to-journeyman ratio). The department states that the rule amendments are reasonably necessary to define necessary terms for the standardization of pre-apprenticeship programs in the state and to provide a definition for "apprentice-to-journey worker occupations". The department proposes to amend new rules I through IV:

Rule #	Short Title
New Rule I	Pre-apprenticeship program recognition application.
New Rule II	Pre-apprenticeship program application evaluation.

New Rule III	Program recognition and apprenticeship articulation agreement.
New Rule IV	Reapplication and discontinuing recognition.

The department states that the new rules are necessary to acknowledge and standardize the requirements of a pre-apprenticeship program.

Notes/Hearing: The department will hold a hearing on October 12, 2021, to consider the notice.

MAR Notice Number: 24-26-377

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

Summary: The board proposes to amend 24.26.254 and 24.26.1002. Generally, the rule amendments are to make the administrative rules comply with the statutory requirements of the Montana Administrative Procedure Act relating to contested case proceedings. The board proposes to repeal 24.26.301, 24.26.302, 24.26.303, 24.26.304, 24.26.401, 24.26.402, 24.26.403, and 24.26.404. Generally, the board states that the rule repeals are necessary to comply with Senate Bill 56 from the 2021, session. The bill makes the grievance procedures for Montana Department of Transportation and Montana Department of Fish, Wildlife and Parks consistent with all other state employees.

Notes/Hearing: The department will hold a hearing on October 5, 2021, to consider the notice.

MAR Notice Number: 24-35-376

Subject: Amendment and adoption of rules pertaining to the independent contractors.

Summary: The department proposes to amend 24.11.2407 and 24.35.203. Generally, the rules are to implement Senate Bill 367 from the 2021 legislative session. The department states that Senate Bill 367 potentially impacts the holdings in several cases. The department further provides that the bill "does not change the conclusive presumption of independent contractor status for a worker holding and working under an Independent Contractor Exemption Certificate (ICEC), as required by 39-71-417, MCA. Instead, it creates questions for those who do not have an ICEC, though statutorily required to do so to be an independent contractor. This rule, therefore, clarifies the instances in which a worker's status is determined pursuant to the AB test, rather than the conclusive presumption based on ICEC status. In all disputes regarding worker status which do not fall within one of the four instances of this rule and when an ICEC is required, worker status will continue to be determined based on ICEC status. Through consideration of these four options for application of the AB test, worker status is not determined "solely" through lack of ICEC." Additionally, the department proposes to adopt New Rule I relating to misrepresentations regarding independent contractor status.

Notes/Hearing: The department will hold a hearing on October 8, 2021, to consider the notice.

MAR Notice Number: 24-122-2

Subject: Amendment of rules pertaining to low-pressure boiler operating engineer's licenses.

Summary: The department proposes to amend 24.122.405, 24.122.505, 24.301.710, and 24.301.714. The proposed rule amendments seek to administer Senate Bill 396 from the 2021, session. This bill created a limited low-pressure boiler operating engineer license. The rules flesh out training, license application, and fee requirements for this new type of license.

Notes/Hearing: The department will hold a hearing on October 4, 2021, to consider the notice.

MAR Notice Number: 24-142-3

Subject: Amendment and repeal of rules pertaining to the Elevator Licensing Program.

Summary: The department proposes to amend 24.142.402 (fee schedule) and 24.142.2103 (continuing education credits required). The department proposes to repeal 24.142.2102 (continuing education sponsors and courses). Generally, the department states that the rule notice is necessary to reduce fees, clean up statutory references, and eliminate repetitive language. Additionally, the department is repealing 24.142.2102 because it no longer pre-approves continuing education courses and sponsors. The department states that this process unnecessarily burdened licensees who must obtain continuing education credits for continued licensure.

Notes/Hearing: The department will hold a hearing on October 14, 2021, to consider the notice.

Department of Revenue, Liquor Control Division and Cannabis Control Division

MAR Notice Number: 42-1032

Subject: Adoption and amendment of rules relating to Marijuana provider canopy tier size increases and limitations on advertising

Summary: This is an amended notice which clarifies the department's rule notice from July. In this notice, the department proposes to amend only one rule, 42.39.123. Specifically, the amended notice allows marijuana licensees to advertise their products electronically.

Notes/Hearing: The department held a public hearing on the amended notice. The amended rule notice was emailed to the EAIC.

MAR Notice Number: 42-1037

Subject: Amendment of rules relating to temporary operating authority for alcoholic beverage license applicants.

Summary: The department proposes to amend 42.12.208. The department states that after a periodic legal review of the rule, it determined that the rule was not aligned with the authorizing statute 16-4-404. The department proposes to amend the rule to permit a qualified purchaser to operate a business to be transferred pending final approval if there has not been a change in location and the application for transfer has been filed with the department.

Notes/Hearing: The department will hold a public hearing on the proposed notice on October 4, 2021.

Department of Revenue, Liquor Control Division

There are no pending rules.

Department of Livestock and administratively attached entities

There are no pending rules.

State Auditor's Office

There are no pending rules.

Division of Banking & Financial Institutions

MAR Notice Number: 2-59-617

Subject: Amendment of rules pertaining to semiannual assessments and supervisory fees for banks and credit unions.

Summary: The department proposes to amend 2.59.104 and 2.59.401. The amendments generally seek to provide fees that are consistent with the department's expenditures. The department proposes a one-time reduction for assessments and supervisory fees collected in 2022.

Notes/Hearing: The department does not anticipate the need to hold a public hearing. It proposes to adopt the rule on October 9, 2021.

MAR Notice Number: 2-59-618

Subject: Amendment of rules pertaining to renewal fees of mortgage brokers, mortgage lenders, mortgage servicers, and mortgage loan originators.

Summary: The department proposes to amend 2.59.1738 to adjust fees to be consistent with the department's expenditures. The department states that with the increase in licensees, it will require a reduction in the fees charged by the department.

Notes/Hearing: The department does not anticipate the need to hold a public hearing. It proposes to adopt the rule on October 9, 2021.

Governor's Office of Economic Development

There are no pending rules.