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Economic Affairs Interim Committee

67th Montana Legislature

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January 18, 2022

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

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 new pending rules.

Department of Commerce and administratively attached entities

MAR Notice Number: 8-111-192

Subject: Amendment of rules pertaining to the housing credit allocation procedures.

Summary: The Montana Board of Housing proposes to amend ARM 8.111.602 (definitions) and 8.111.603 (housing credit allocation procedure). The board is proposing to amend these rules to incorporate by reference the board's Housing Credit Program 2023 Qualified Allocation Plan and the board's Qualified Contract Policy dated November 15, 2021.

Notes/Hearing: The department will hold a public hearing on February 3, 2022 to consider the notice.

Department of Labor and Industry and administratively attached entities

MAR Notice Number: 24-16-379

Subject: Amendment, adoption, and repeal of rules pertaining to procedures for wage and prevailing wage claims, complaints, investigations, and appeals.

Summary: Generally, the department states that the rule notice is in support of the Governor's Red Tape Relief Initiative. Part of this program includes a comprehensive review of the department's administrative rules, including adopting new rules to consolidate and standardize terminology and processes in the area of wage and prevailing wage claims, complaints, investigations, and appeals. The department proposes to clarify potentially confusing methods and processes. The department additionally proposes amending citations to accurately reflect all statutes implemented through the rules. Resultingly, the department proposes to amend ARM 24.16.7506, 24.16.7535, 24.17.103, 24.33.475, 24.35.205, and 24.35.206. The department proposes to adopt New Rules I through IX and repeal 24.16.7503, 24.16.7514, 24.16.7517, 24.16.7519, 24.16.7521, 24.16.7524, 24.16.7527, 24.16.7531, 24.16.7534, 24.16.7536, 24.16.7537, 24.16.7541, 24.16.7544, 24.17.814, 24.17.817, 24.17.821, 24.17.822, 24.17.824, 24.17.827, 24.17.829, 24.17.831, 24.17.834, 24.17.837, 24.17.838, 24.17.841, 24.17.844, and 24.17.847.

Notes/Hearing: The department held a public hearing on January 4, 2022.

MAR Notice Number: 24-23-384

Subject: Adoption of rules pertaining to the employer job growth incentive tax credit.

Summary: The department proposes to adopt New Rules I through V. Generally, the department states that the rule notice is necessary for the department to implement the Employer Job Growth Incentive Tax Credit, authorized in House Bill 629 (2021). Specifically, 39-11-404, MCA creates a tax credit for employers who foster job growth in specific industries in Montana and includes rulemaking authority for the department to administer the certification necessary to claim the credit. The department states that the credit will be available for tax years beginning after December 31, 2021. The new rules include qualifications to apply for the certificate.

Notes/Hearing: The department held a public hearing on January 6, 2022.

MAR Notice Number: 24-210-48

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

Summary: The board proposes to amend ARM 24.210.401 (fee schedule), 24.210.601 (general license administration requirements), 24.210.604 (supervising broker endorsement), 24.210.611 (application for license—salesperson and broker), 24.210.801 (fee schedule), 24.210.807 (property management license transfer requirements), and 24.210.828 (unprofessional conduct for property management licensees). The board proposes to repeal 24.210.610 (predetermination for licensing). Generally, the board is reducing fees to be commensurate with costs, strengthen supervision requirements for supervising brokers, clarify continuing education requirements, and implement provisions of Senate Bill 77 (2019). The board states that the rule notice generally implements a 2016 Legislative Audit Division report on the licensing of real estate professionals.

Notes/Hearing: The department will hold a public hearing on January 18, 2022.

MAR Notice Number: 24-174-78

Subject: Amendment of rules pertaining to The Board of Pharmacy.

Summary: The board proposes to amend ARM 24.174.701 (pharmacy technician registration requirements), 24.174.711 (ratio of pharmacy technicians and interns to supervising pharmacists), and 24.174.712 (application for approval of utilization plan). Generally, the board states that the rule notice will remove the 1:4 pharmacist to pharmacy technician ratio, change technician utilization plan requirements, and recognize the use of other health care licensees to

vaccine administration. The amendments recognize provisions implemented through the board's emergency rule, MAR Notice No. 24-174-77 (September 14, 2021) which waived the ratio for purposes of administering COVID-19 vaccines and tests and other vaccines and allowed other health care licensees to assist pharmacists in vaccine administration if authorized within their own scopes of practice.

Notes/Hearing: The department will hold a public hearing on February 4, 2022.

Department of Revenue, Liquor Control Division and Cannabis Control Division

MAR Notice Number: 42-1044

Subject: Amendment of rules pertaining to competitive bid form requirements.

Summary: The department proposes to remove 42.12.503(4)(g). This subsection provides that a competitive bidder is disqualified from the bidding process if the irrevocable letter of credit fails to specify the license type and quota area. The department states that the amendment is part of the Governor's Red Tape Relief Initiative and that the requirement that the irrevocable letter of credit is outside the applicant's direct control. The department states that it will increase the number of successful alcoholic beverage license competitive bids by virtue of reducing disqualified bids.

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

Department of Livestock and administratively attached entities

MAR Notice Number: 32-21-325

Subject: Amendment of rules pertaining to milk control assessments.

Summary: The Board of Milk Control proposes to amend 32.24.450 (milk control assessments) as follows:

32.24.450 MILK CONTROL ASSESSMENTS (1) Pursuant to [81-23-202](#), MCA, the following assessments are levied upon the Act licensees of this department for the purpose of securing funds to administer and enforce the Act.

(a) A fee of ~~\$0.0475~~ ~~\$0.05250~~ per hundredweight, with no assessment for fees less than \$5.00 per month, on the total volume of all milk subject to the Act produced and sold by a producer-distributor.

(b) A fee of ~~\$0.02375~~ ~~\$0.02625~~ per hundredweight, with no assessment for fees less than \$5.00 per month, on the total volume of all milk subject to the Act sold by a producer.

(c) A fee of ~~\$0.02375~~ ~~\$0.02625~~ per hundredweight, with no assessment for fees less than \$5.00 per month, on the total volume of milk subject to the Act sold by a distributor, excepting that which is sold to another distributor. If the distributor is foreign, the assessment must be paid either by the foreign distributor or by the import jobber.

(2) through (6) remain the same.

The board states that the rule amendment is necessary to raise enough revenue to provide for the administration of Title 81, chapter 23, MCA and ensure that assessments are commensurate with costs.

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

MAR Notice Number: 32-21-326

Subject: Amendment of rules pertaining to the Board of Milk Control.

Summary: The board proposes to amend ARM 32.24.512 (reports and records), 32.24.513 (computation of the quota price and excess price to be paid to pool producers for pool milk), and 32.24.514 (procedures for pooling of returns from pool milk). The board proposes to amend the rules to allow the Montana State Prison to transition to a producer-distributor from a pool producer. The board states that the proposed removal of the Montana Correctional Enterprise from the milk pool would reduce the monthly payment by \$1,982.88.

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

State Auditor’s Office

There are no new pending rules.

Division of Banking & Financial Institutions

MAR Notice Number: 2-59-612

Subject: Amendment and repeal of rules pertaining to consumer loans.

Summary: The department proposes to amend ARM 2.59.310, 2.59.315, 2.59.705, 2.59.1201, 2.59.1515, 2.59.1701, and 2.59.1707. These rules pertain to standardized forms and procedures of the NMLS for consumer loan licenses, escrow business licenses, sales finance company licenses, and deferred deposit lender licenses, consumer loan license surrender, definitions for mortgage licensees, and revocation, suspension, or surrender of mortgage licenses. The department states that the amendments will streamline regulation. Additionally, the department states that the revisions will make it easier for applicants for consumer loan, escrow business, sales finance, and deferred deposit loan licenses to access relevant licensing information by consolidating the information into one rule. The department proposes to repeal 2.59.313, 2.59.314, 2.59.316, 2.59.708, 2.59.709, 2.59.710, 2.59.711, 2.59.1204, 2.59.1205, 2.59.1206, 2.59.1207, 2.59.1517, 2.59.1518, 2.59.1519, 2.59.1520, and 2.59.1708. These rules pertain to initial applications through NMLS for consumer loan licenses, escrow business licenses, sales finance company licenses, and deferred deposit lender licenses, consumer loan license amendments and fees, escrow business license amendments, license surrender, and fees, sales finance company license amendments, license surrender, and fees, and deferred deposit lender license amendments, license surrender, and fees, and table funding requiring licensure for mortgage licensees. The department states that the repeal of these rules will further streamline processes relating to consumer loans.

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

MAR Notice Number: 2-59-615

Subject: Adoption of rules pertaining to mutual savings and loan associations.

Summary: The department proposes to adopt New Rules I through LI. The department states that the new rules will implement Senate Bill 308 (2021). This bill was the Mutual Savings and Loan Association Act. The proposed new rules are as follows:

Rule Number	Title
I	APPLICATION PROCEDURE FOR A CERTIFICATE OF AUTHORIZATION FOR A STATE-CHARTERED MUTUAL ASSOCIATION
II	PERSUASIVE SHOWING OF REASONABLE PUBLIC NECESSITY AND DEMAND

III	MANAGEMENT OF PROPOSED MUTUAL ASSOCIATION
IV	CAPITAL ADEQUACY OF PROPOSED NEW MUTUAL ASSOCIATIONS
V	MUTUAL ASSOCIATIONS - FDIC INSURANCE REQUIRED
VI	PRO FORMA STATEMENT
VII	CONVERSION OF A NATIONAL MUTUAL ASSOCIATION TO A STATE MUTUAL ASSOCIATION
VIII	FEE FOR CONVERSION OF A NATIONAL MUTUAL ASSOCIATION TO A STATE MUTUAL ASSOCIATION
IX	SEMIANNUAL ASSESSMENT
X	ADOPTION OF EXAMINATION PROCEDURE
XI	MERGER APPLICATION
XII	MERGER APPLICATION PROCEDURES
XIII	MUTUAL ASSOCIATIONS - DIRECT LEASING OF PERSONAL PROPERTY
XIV	RETENTION OF MUTUAL ASSOCIATION RECORDS
XV	FORM TO REPORT DIRECTORS AND OFFICERS
XVI	DEFINITIONS
XVII	APPLICATION PROCEDURE FOR APPROVAL TO ESTABLISH A NEW BRANCH
XVIII	REVIEW PROCEDURE FOR APPLICATIONS FOR APPROVAL TO ESTABLISH A NEW BRANCH
XIX	PROCEDURE FOLLOWING APPROVAL OF AN APPLICATION TO ESTABLISH A NEW BRANCH
XX	BRANCHES
XXI	MONTANA MUTUAL ASSOCIATIONS BRANCHING OUTSIDE MONTANA
XXII	MUTUAL ASSOCIATIONS ORGANIZED OUTSIDE OF MONTANA BRANCHING INTO MONTANA
XXIII	CLOSURE OR RELOCATION OF A BRANCH
XXIV	TEMPORARY EMERGENCY CLOSURE OF BRANCH
XXV	EMERGENCY CLOSURE OF BRANCH
XXVI	LOAN PRODUCTION OFFICE ACTIVITIES
XXVII	LOAN PRODUCTION OFFICE
XXVIII	DEFINITIONS
XXIX	DEBT CANCELLATION AND DEBT SUSPENSION PROGRAMS – REQUIREMENTS
XXX	REQUIRED DISCLOSURES
XXXI	PROHIBITED ACTS OR PRACTICES
XXXII	REFUNDS OF FEES UPON TERMINATION OR PREPAYMENT OF COVERED LOAN
XXXIII	METHOD OF PAYMENT OF FEES
XXXIV	AFFIRMATIVE ELECTION TO PURCHASE AND ACKNOWLEDGMENT OF RECEIPT OF DISCLOSURES
XXXV	DISCLOSURE FORMS
XXXVI	GUARANTEED ASSET PROTECTION (GAP) FEATURE
XXXVII	NONCONFORMING LOANS AND EXTENSIONS OF CREDIT
XXXVIII	U.S. TREASURY AND U.S. GOVERNMENT AGENCY ISSUES

XXXIX	OTHER APPROVED QUASI-GOVERNMENT SECURITIES
XL	STATE, COUNTY, AND MUNICIPAL ISSUES
XLI	CORPORATE BONDS
XLII	MUTUAL FUNDS
XLIII	OTHER APPROVED INVESTMENTS
XLIV	DEBT SECURITIES FOR DEBTS PREVIOUSLY CONTRACTED
XLV	DEFINITIONS
XLVI	LEGAL LENDING LIMIT
XLVII	COMBINATIONS OR GUARANTEES
XLVIII	DIRECT BENEFIT
XLIX	COMMON ENTERPRISE
L	EXCLUSIONS
LI	CREDIT EXPOSURE ARISING FROM DERIVATIVES AND SECURITIES FINANCING TRANSACTIONS

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

MAR Notice Number: 2-59-616

Subject: Amendment and repeal of rules pertaining to investment policies.

Summary: The department proposes to amend ARM 2.59.112. The department proposes to repeal ARM 2.59.131, 2.59.133, and 2.59.137 (pertaining to the report of declaration and payment of dividend – dividend approval request form, oaths of directors, and parity with national banks). The department states that the rule notice is necessary to streamline regulation for state-chartered banks as part of the Governor's Red Tape Relief Initiative.

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

Governor's Office of Economic Development

There are no new pending rules.