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Economic Affairs Interim Committee

68th Montana Legislature

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January 4, 2023

TO: Economic Affairs Interim Committee
FROM: Jameson Walker, Staff Attorney
RE: Administrative Rulemaking and Rule Review, January 2024

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 and Cannabis 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

MAR Notice Number: 4-23-281

Subject: Amendment and repeal of rules pertaining to updating administrative rule references and citations.

Summary: The department proposes to amend 4.2.101, 4.2.102, 4.5.303, 4.7.101, 4.9.101, 4.9.402, 4.10.1003, 4.10.1011, 4.10.1501, 4.12.729, 4.12.731, 4.12.742, 4.12.743, 4.12.1027, 4.12.1407, 4.12.1409, 4.12.1431, 4.12.1438, 4.12.1439, 4.12.1439, 4.12.1440, 4.12.1441, 4.12.1442, 4.12.1443, 4.12.1444, 4.12.2205, 4.12.2615, 4.12.3002, 4.12.3008, 4.12.3501, 4.12.3502, 4.12.3503, 4.12.3504, 4.12.3505, 4.13.1002, 4.13.1005, 4.13.1006, 4.13.1007, and 4.16.101. The department proposes to repeal 4.7.101 and 4.12.2607. Generally, the department states that the rule notice is necessary to implement the Governor's Red Tape Relief Initiative by updating outdated rules.

Notes/Hearing: The board held a public hearing on December 8, 2023, to consider the notice.

MAR Notice Number: 4-23-282

Subject: Amendment and adoption of rules pertaining to seed rules.

Summary: The department proposes to amend 4.12.3104. The department states that the rule amendment modernizes the rule to include proper labeling options for the current crops of

Montana consistent with what varietal information is needed to comply with intellectual property laws and concerns. The department proposes to adopt New Rule I:

NEW RULE I GENUINE GROWER DECLARATION FORM

- (1) What is a genuine grower declaration form? A document required by state law when seeds are cleaned or conditioned that creates a written record to help comply with intellectual property laws.
- (2) What is required in a genuine grower declaration form? The grower declaration must contain:
 - (a) a statement that the grower either grew the seeds or from whom they received them;
 - (b) the kind and variety of seed if known; and
 - (c) a signature by the person requesting seed cleaning.
- (3) When is a genuine grower declaration form needed? Before any seed is cleaned or conditioned on equipment not owned by the farmer.
- (4) Who keeps a copy of the genuine grower declaration form? Both the farmer and the business providing cleaning or conditioning services or rental equipment.
- (5) Can the genuine grower declaration form be electronic? Yes.
- (6) Must we use the genuine grower declaration form on the department's website? No. It is only an example. Each business can create a different form so long as it contains the requirements of this rule.

The department states that the rule implements House Bill 487, which required the department to adopt a genuine grower declaration form at the request of the seed trade industry.

Notes/Hearing: The board held a public hearing on December 8, 2023, to consider the notice.

Department of Commerce and administratively attached entities

MAR Notice Number: 8-99-205

Subject: Adoption of new rules pertaining to the administration of the Montana Growth Fund, a part of the Big Sky Economic Development Program.

Summary: The department proposes adopt New Rule I:

- NEW RULE I (8.99.1101) INCORPORATION BY REFERENCE OF GUIDELINES FOR ADMINISTRATION OF THE MONTANA GROWTH FUND, A PART OF THE BIG SKY ECONOMIC DEVELOPMENT PROGRAM
- (1) The department adopts and incorporates by reference the Program Guidelines for the Montana Growth Fund, a part of the Big Sky Economic Development Program (MGF).
 - (2) The guidelines establish how the department will administer the MGF Program.
 - (3) As stated in the guidelines, the department will consider eligible applicants' proposals to obtain MGF funding for economic development projects in the form of:
 - (a) low-interest loans;
 - (b) forgivable loans; and
 - (c) grants (collectively, MGF funding).
 - (4) The guidelines state what applicants must submit to the department to be considered for MGF funding.
 - (5) The guidelines set matching requirements applicants must meet to obtain MGF funding.
 - (6) The guidelines set the factors the department considers when assessing MGF applications, including incentives for rural counties.
 - (7) The guidelines identify how successful applicants may use MGF funding.
 - (8) Copies of the guidelines may be obtained from the department's Business MT Division, 301 South Park Avenue, P.O. Box 200528, Helena, Montana 59620-0528, or on the department's web site at <https://business.mt.gov>.

The department provided the following reason for the proposed rule:

REASON: The proposed rule is necessary to implement and administer the MGF in accordance with HB 881, which was enacted by the 2023 Montana Legislature.

HB 881 directs the department to provide MGF funding to eligible applicants for economic development projects from the special revenue account established by 90-1-205, MCA. HB 881 identifies what information eligible applicants must provide to the department to be eligible for MGF funding, including cost estimates and matching funds. See 90-1-204, MCA. HB 881 also directs the department to award MGF funding to advance certain Legislative goals. See 90-1-202 through 90-1-204, MCA. HB 881 further provides that recipients of MGF funding only may use the funds for certain purposes. See 90-1-204, MCA. Finally, HB 881 permits the department to provide greater incentives for rural counties. Id.

The department proposes adopting NEW RULE I, which incorporates by reference the MGF Program Guidelines. The proposed MGF guidelines are consistent with HB 881. The proposed MGF guidelines and other relevant information and resources can be reviewed on the department's web site at <https://business.mt.gov>. Interested persons may comment on the guidelines in accordance with this notice.

Adopting the guidelines is necessary to provide public notice on how the department plans to administer the MGF program, as further described in HB 881.

Notes/Hearing: The department will hold a public hearing on January 11, 2024, to consider the notice.

MAR Notice Number: 8-99-206

Subject: Adoption of new rules pertaining to the administration of the Big Sky Film Grant Program.

Summary: The department proposes adopt New Rule I and New Rule II:

NEW RULE I (8.119.401) INCORPORATION BY REFERENCE OF RULES GOVERNING SUBMISSION AND REVIEW OF APPLICATIONS FOR THE BIG SKY FILM GRANT PROGRAM (BSFG) (1) The department adopts and incorporates by reference the Montana Film Office, Big Sky Film Grant Program Application Guidelines as rules governing the submission and review of applications under the program (guidelines).

(2) Copies of the guidelines may be obtained from the department's Brand MT Division, 301 South Park Avenue, P.O. Box 200204, Helena, Montana 59620-0528, or on the department's web site at https://www.montanafilm.com/mfo_bigskyfilmgrant/.

Notes/Hearing: The department will hold a public hearing on January 11, 2024, to consider the notice

NEW RULE II (8.119.402) INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE BIG SKY FILM GRANT PROGRAM (BSFG)

(1) The department adopts and incorporates by reference the BSFG Project Administration Manual.

(2) The BSFG Project Administration Manual relates to the following:

- (a) project start-up requirements;
- (b) grant contract requirements;
- (c) request for funds requirements;
- (d) reporting requirements;
- (e) deliverables requirements; and
- (f) project closeout.

(3) The BSFG Project Administration Manual may be obtained from the department's Montana Film Office, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523, or on the MFO's web site at https://www.montanafilm.com/mfo_bigskyfilmgrant/.

Generally, the department states that the proposed new rules are to implement Senate Bill 540, which authorized the department to provide Montana-based film grants to eligible participants.

Notes/Hearing: The department will hold a public hearing on January 11, 2024, to consider the notice.

MAR Notice Number: 8-99-207

Subject: Adoption of new rules pertaining to the administration of the Pilot Community Tourism Grant Program.

Summary: The department proposes adopt New Rule I:

NEW RULE I (8.119.501) INCORPORATION BY REFERENCE OF RULES GOVERNING THE GUIDELINES FOR THE PILOT COMMUNITY TOURISM GRANT PROGRAM (1) The department adopts and incorporates by reference Guidelines for the Pilot Community Tourism Grant Program (PCTG Program), with the most current version being posted on the Tourism Grant Program website (guidelines), as rules governing how the department will administer the program.

(2) The guidelines address the following:

- (a) Introduction;
- (b) Definitions;
- (c) Eligible Applicants;
- (d) Eligible Uses of Funds;
- (e) Ineligible Uses of Funds;
- (f) Application Process;
- (g) Application Review Process and Ranking Criteria; and
- (h) Pilot Community Tourism Grant Program Administration.

(3) Copies of the guidelines may be obtained from the department's Brand MT Division, Office of Tourism, 301 South Park Avenue, PO Box 200501, Helena, Montana, 59620-0501, or on its web site at <https://brand.mt.gov/Programs/Office-Of-Tourism/Tourism-Grant-Program>.

The department states that this rule is necessary to implement Senate Bill 540.

Notes/Hearing: The department will hold a public hearing on January 11, 2024, to consider the notice.

Department of Labor and Industry and administratively attached entities

MAR Notice Number: 42-241-1

Subject: Adoption and repeal of rules pertaining to registered sanitarians.

Summary: The department proposes to adopt NEW RULES I through V:

NEW RULE I FEE SCHEDULE

- | | |
|---|-------|
| (1) Application | \$200 |
| (2) Renewal | 175 |
| (3) Additional standardized fees are in ARM 24.101.403. | |
| (4) All fees are nonrefundable. | |

NEW RULE II EXAMINATION (1) Sanitarian applicants must pass the National Environmental Health Association (NEHA) examination or its equivalent.

NEW RULE III EDUCATION EQUIVALENCY (1) An equivalent degree per 37-40-302, MCA, is a bachelor's degree from an accredited college or university having a minimum of 45 quarter or 30 semester hours in the physical and biological sciences, including courses in chemistry, biology, and at least one general microbiology course. Acceptable general microbiology courses must focus on basic microbiology concepts including the activities of bacteria, viruses, and other microorganisms, and their impact on humans. Courses focusing primarily on cellular biochemistry, cellular genetics, and intracellular functions are not acceptable.

NEW RULE IV SANITARIAN-IN-TRAINING (1) Applicants meeting all licensure qualifications except for the approved microbiology course per [NEW RULE III] will be issued a sanitarian-in-training permit and must pass the microbiology course during the one-year permit period.

- (2) Sanitarians-in-training who work must do so under the supervision of a registered sanitarian.

- (a) Applicants must provide the supervisor's name and description of the expected work experience to the department.
- (b) "Supervision" means the supervisor is available for immediate communication and consultation.

NEW RULE V UNPROFESSIONAL CONDUCT (1) In addition to the provisions of 37-1-410, MCA, it is unprofessional conduct for registered sanitarians and sanitarians-in-training to:

- (a) violate a federal, state, or local law or rule relating to the conduct of the profession;
- (b) fail to cooperate with or respond to a department request;
- (c) fail to properly supervise a sanitarian-in-training; and
- (d) commit any act of sexual abuse, misconduct, or exploitation whether or not it is related to the licensee's practice.

The department proposes to repeal 24.216.101, 24.216.201, 24.216.202, 24.216.402, 24.216.502, 24.216.503, 24.216.506, 24.216.508, 24.216.511, 24.216.512, 24.216.2102, 24.216.2104, and 24.216.2301. Generally, the department states that the rule amendments are to implement the Governor's Red Tape Relief Initiative and to implement Senate Bill 457:

This review focuses on updating rules to current standards and procedures, and eliminating unnecessary, redundant, and overburdensome regulations and those duplicated in statute. Other changes replace out-of-date terminology for current language and processes, and amend rules and catchphrases for accuracy, consistency, simplicity, better organization, and ease of use for customers and staff. The streamlined rules will increase department efficiencies by further standardizing procedures used among all licensing boards and programs.

The 2023 Montana Legislature enacted Chapter 484, Laws of 2023 (Senate Bill (SB) 457), an act generally revising laws related to sanitarians and sanitarians-in-training and transferring regulatory oversight from the Board of Sanitarians to a department program. The bill was signed by the Governor on May 8, 2023, and became effective October 1, 2023. It is reasonably necessary to repeal the board's rules and adopt new, updated program rules to implement the bill.

The department determined it is reasonably necessary to repeal thirteen rules and adopt five new rules to align with the Red Tape Relief Initiative and implement the 2023 legislative changes. The new program rules will be placed in a new ARM chapter. Where additional specific bases for a proposed action exist, the department will identify those reasons immediately following the specific rule.

Notes/Hearing: The department held a hearing January 4, 2024, to consider the notice.

MAR Notice Number: 24-138-84

Subject: Amendment of rules pertaining to the Board of Dentistry

Summary: The department proposes to amend 24.138.509 as follows:

24.138.509 DENTAL HYGIENE LIMITED ACCESS PERMIT (1) remains the same.

~~(2) Application material remains valid for six months from receipt in the board office. If the application is not completed within six months a new application and fees must be submitted.~~

~~(3) A LAP dental hygienist shall maintain 48 hours of continuing education credits for each three-year cycle following initial issuance of a LAP. The 48 hours includes the 36 hours required for a dental hygiene license and an additional 12 hours required for the LAP. If the LAP dental hygienist qualifies for limited prescriptive authority pursuant to 37-4-405, MCA, and ARM 24.138.419, the dental hygienist shall maintain an additional three continuing education credits for each three-year cycle.~~

~~(4) LAPs must be renewed annually.~~

~~(5) (2) Pursuant to 37-4-405, MCA, the board identifies~~ In addition to the authorized public health facilities already defined under 37-4-405, MCA, the board identifies the following additional public health facilities and programs at which where LAP services under a LAP may be provided:

- (a) ~~Dedson School~~ schools that receive federal funds under Title I of the Elementary and Secondary Education Act;
- (b) ~~Great Falls Rescue Mission~~ schools in which at least 65% of the student population is eligible for free or reduced price lunch under federal guidelines;
- (c) ~~Harlem Elementary School~~ hospice facilities;
- (d) ~~Harlem Junior/Senior High School~~ family violence shelters; and
- (e) ~~Paris Gibson Education Center~~ homeless shelters.

The board provided this statement relating to the rule notice's necessity:

REASON: In 2021, the board discussed moving forward with proposing amendments to this rule by evaluating schools under a two-part test prior to adding additional schools as board-defined public health facilities or programs under [37-4-405](#), MCA. The board never formally began the rulemaking process under the Montana Administrative Procedure Act as the Commissioner of the Department of Labor and Industry received a request for active supervision of the potential rule amendments under [37-1-121](#) and [37-1-122](#), MCA.

As required by the department's active supervision process, the commissioner requested information from the board regarding its proposal. After receiving the board's response, the commissioner requested supplemental information from the board. In its supplementary response, the board considered proposing amendments to require a collaborative agreement structure between dentists and hygienists relating to LAP hygienists' work.

In February 2022, following her analysis of public comments, professional association comments, and the information provided by the board, the commissioner determined that access to oral health care is a continuing issue in Montana, especially among American Indian and low-income children; and, that the public health concerns that led to creation of the LAP still existed in 2021.

The commissioner further determined the language in the potential rule proposal was not taken pursuant to a clearly articulated state policy and that the rule unduly restrained the trade of dental hygienists. The commissioner's opinion noted the proposal was devoid of any process by which a new facility may be named. As to the board's suggestion of a collaborative agreement, the commissioner noted that while the board may disagree with the Legislature's determination of the scope of practice for an LAP, it may not contravene legislative determinations that LAP practice is permitted. The commissioner disapproved of the proposed rule language, and no changes to the board's rule were enacted.

To address the issues noted by the commissioner, the board is proposing these amendments to allow for a more general guidance for approved facilities, rather than listing individual locations. The board proposes using federal guidelines for free or reduced lunch and Title I funding for schools in defining facilities and programs. This is based on research staff and the board conducted on the laws in other states which allow for similar practice and methodology to identify students who may not receive regular dental care due to the financial constraints of their parents.

Additionally, the board is adding hospice facilities in (2)(c) to correspond with the nursing homes, long term care facilities, and home health agencies as already defined by the Legislature in [37-4-405](#), MCA. The board is including family violence and homeless shelters under (2)(d) as those facilities contain "patients or residents of facilities or programs who, due to age, infirmity, disability, or financial constraints, are unable to receive regular dental care."

Finally, the board is proposing to repeal (2), (3), and (4) as they are unnecessarily duplicative of existing rules that address application procedures, continuing education, and renewals.

Notes/Hearing: The board will hold a public hearing on January 26, 2024, to consider the notice.

Department of Livestock and administratively attached entities

MAR Notice Number: 32-23-340

Subject: Amendment of rules pertaining to records.

Summary: The department proposes to amend 32.15.102. The department states that the rule amendments comply with the revisions of 81-8-213, 81-8-251, 81-8-252, 81-8-264, and 81-8-

265 by House Bill 153 (Ler), at the request of the department. The changes proposed by the department ensure that those operating sales have the same requirements as physical livestock markets and make payment to consigners at the conclusion of a sale.

Notes/Hearing: The board is taking public comment to consider the notice.

State Auditor's Office

There are no new rules.

Division of Banking and Financial Institutions

There are no new rules.

Department of Revenue, Alcoholic Beverage Control Division and Cannabis Control Division **MAR Notice Number:** 42-1072

Subject: Adoption and amendment of rules pertaining to House Bills 128, 903, and 948.

Summary: The department proposes to adopt New Rules I through III:

NEW RULE I MARIJUANA MANUFACTURER LICENSE – CHEMICAL MANUFACTURING (1) A marijuana manufacturer licensee that applies to engage in chemical manufacturing must indicate that type of manufacturing activity on its initial license or license renewal application. There is no additional cost for a marijuana manufacturer licensee who elects a chemical manufacturing designation on its initial license or license renewal application.

(2) A marijuana manufacturer licensee that engages in chemical manufacturing must:

(a) use only hydrocarbon-based solvents that are at least 99 percent pure, except when using solvents outlined in (3)(a);

(b) only use food grade nonhydrocarbon-based solvents, such as water, vegetable glycerin, vegetable oils, or animal fats;

(c) use a professional grade, closed-loop extraction system designed to recover the solvents;

(d) have processing equipment approved for use by the fire code official with jurisdiction over the licensed premises;

(e) have an emergency eye-wash station in any room in which chemical manufacturing is occurring;

(f) have all applicable safety data sheets readily available at the licensed premises; and

(g) have a current, written standard operating procedure available for inspection at the licensed premises that details employee training on closed-loop extraction system operation and proper handling of solvents and gasses used in processing or stored on the licensed premises.

(3) A marijuana manufacturer licensee that engages in chemical manufacturing may use:

(a) a chemical extraction process using a nonhydrocarbon-based or other solvent, such as water, vegetable glycerin, vegetable oils, animal fats, isopropyl alcohol, or ethanol; or

(b) a chemical extraction process using the solvent carbon dioxide, provided that the process:

(i) does not involve the use of heat over 180 degrees Fahrenheit; and

(ii) uses a professional grade closed-loop carbon dioxide gas extraction system where every vessel is rated to a minimum of 600 pounds per square inch.

(4) A marijuana manufacturer licensee that engages in chemical manufacturing may not use class 1 solvents according to the Q3 Tables and List Guidance for Industry published by the U.S. Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, Center for Biologics Evaluation and Research.

NEW RULE II MARIJUANA MANUFACTURER LICENSEE – INFUSED PRODUCTS (1) A marijuana manufacturer licensee that applies to engage in marijuana-infused product manufacturing must indicate that type of manufacturing activity on its initial license or license renewal application. There is no additional cost for a marijuana manufacturer licensee who elects an infused product manufacturing designation on its initial license or license renewal application.

- (2) A marijuana manufacturer licensee that engages in marijuana-infused product manufacturing must store all products that require refrigeration or freezing in a refrigerator or freezer until the time of sale and affix these foods with a label that indicates the product must be kept refrigerated or frozen, as appropriate.
- (3) A marijuana manufacturer licensee that engages in marijuana-infused product manufacturing may not:
- (a) utilize a branded, commercially manufactured food product (e.g., Chex Mix, Nerds Ropes) as a marijuana-infused product except when commercially manufactured food products are used as ingredients in a marijuana-infused product in a way that renders them unrecognizable as the commercial food product in the final marijuana-infused product and the licensee does not state or advertise to the consumer that the final marijuana-infused product contains the commercially manufactured food product;
 - (b) infuse any food with marijuana that requires heated, time-temperature control or a hot holding unit to keep it safe for human consumption and may not serve hot or heated foods that promote onsite consumption;
 - (c) infuse raw or cooked meat; or
 - (d) infuse root vegetables, including but not limited to garlic and onion, in oil.
- (4) A marijuana manufacturer licensee that produces marijuana-infused products must have current, written SOPs at the licensed premises available for inspection that detail the following:
- (a) an employee illness policy that requires employees to report to the person in charge information about their health and activities as they relate to diseases that are transmissible through food; and
 - (b) procedures for monitoring and maintaining refrigeration and cold holding equipment, if applicable.

NEW RULE III MARIJUANA MANUFACTURING LICENSE – MECHANICAL MANUFACTURING

- (1) A marijuana manufacturer licensee that applies to engage in mechanical manufacturing must indicate that type of manufacturing activity on its initial license or license renewal application. There is no additional cost for a marijuana manufacturer licensee who elects a mechanical manufacturing designation on its initial license or license renewal application.
- (2) A marijuana manufacturer licensee must have current, written SOPs at the licensed premises available for inspection that details the procedures for the safe handling, maintenance, and storage of a hydraulic press.

Additionally, the department proposes to amend 42.39.104, 42.39.115, 42.39.401, 42.39.405, 42.39.409, 42.39.413, and 42.39.415. Generally, the department states that the rule notice implements several pieces of legislation in House Bills 128, 903, and 948.

Notes/Hearing: The department will hold a public hearing on January 18, 2024, to consider the notice.

MAR Notice Number: 42-1073

Subject: Adoption and amendment of rules pertaining to packaging and labeling of marijuana, marijuana wholesaling, and marijuana advertising.

Summary: The department proposes to adopt New Rules I and II:

NEW RULE I LABELING OF SEEDS OR PLANTS (1) Each package of marijuana seeds or plants shall be labeled with the following information:

- (a) name and license number of the dispensary selling the seeds or plants and the cultivator that produced the seeds or plants;
- (b) net weight or number of individual seeds;
- (c) number or plants;
- (d) name of the strain; and
- (e) the universal marijuana symbol as required in ARM 42.39.314.

NEW RULE II WHOLESALE PACKAGE AND LABEL APPLICATIONS

- (1) For purposes of this rule and ARM 42.39.320, "wholesale" means the act of a licensed cultivator, manufacturer, or dispensary engaged in selling marijuana or marijuana products in bulk or in quantities

sufficient for resale, repackaging, or distribution by another licensee. The term does not include the sale of marijuana flower from licensed cultivator to licensed cultivator.

(2) Wholesalers of marijuana or marijuana products must comply with the package and label application requirements of ARM 42.39.320.

(3) All label and package applications for wholesale marijuana and marijuana products must contain photographs or accurate renderings of proposed labels and packages.

(4) A wholesaler must apply and receive approval to use all wholesale packaging and labels before distributing wholesale products.

The department also proposes to amend 42.39.102, 42.39.123, 42.39.314, 42.39.315, 42.39.316, 42.39.317, 42.39.318, 42.39.319, and 42.39.320. Generally, the department states that the rule notice establishes minimal labeling protocols involved in the sale or transfer of marijuana seeds or plants, provides packaging and labeling requirements applicable to all licenses, provides new definitions, revising laws relating to advertising specifically relating to marketing and branding versus advertising, improves clarity and consistency within the rules relating to quality assurance testing and sampling requirements, distinguishes pre-rolls for the purposes of labeling, revises rules relating to edible marijuana labeling, and improves clarity regarding required product allergen disclosures.

Notes/Hearing: The department held a public hearing on January 19, 2024, to consider the notice.

Governor's Office of Economic Development

There are no new rules.