



## Economic Affairs Interim Committee

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### 65th Montana Legislature

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January 24, 2018

To: Economic Affairs Interim Committee  
From: Jameson Walker, Legislative Attorney  
Re: Administrative Rule Report, January 2018

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The Economic Affairs Interim Committee is responsible for reviewing administrative rules promulgated by several state agencies for compliance with the Montana Administrative Procedure Act (MAPA).<sup>1</sup> 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:** 4-17-243

**Subject:** Adoption and repeal of rules relating to the Montana Pulse Crop Committee.

**Summary:** The department proposes to adopt new rules implementing Senate Bill 285 from the 2017 Legislative session. SB 285 created the Montana Pulse Crop Committee and eliminated the need for the Montana Pulse Crop Advisory Committee. The new rules provide for committee organization, procedural rules, public participation, awarding of contracts, committee liaisons, grants, prohibition on indirect payments, pulse assessment and refunds, requirements for reports, and correction of errors on reports. The department proposes to repeal 4.6.401 through 4.6.404 relating to the Pulse Crop Advisory Committee.

**Notes/Hearing:** The department held a public hearing on January 11, 2018. This summary appeared in the January 12, 2018, email to the EAIC.

**MAR Notice Number:** 4-17-244

**Subject:** Repeal rules relating to the Montana Cherry Research and Development Program.

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<sup>1</sup> 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, Montana State Fund, 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.

Summary: The department proposes to repeal 4.6.301, 4.6.302, and 4.6.303, which implement the Montana Cherry Advisory Committee. The committee advised the department to consider eliminating the program in April 2017. In a subsequent mail referendum, cherry producers voted to eliminate the program by a vote of 52-17. The notice repeals the salient administrative rules pertaining to the committee.

Notes/Hearing: The department does not anticipate the need for a public hearing and proposes to adopt the rules on January 30, 2018. This summary appeared in the January 12, 2018, email to the EAIC.

### **Department of Commerce and administratively attached entities**

There are no pending rules.

### **Department of Labor and Industry and administratively attached entities**

**MAR Notice Number:** 24-17-327

Subject: Amendment of a rule pertaining to prevailing wage rates for public works projects.

Summary: The department proposes to amend 24.17.127 by updating references from the 2017 version of the "Montana Prevailing Wage Rates for Building Construction Services" to the 2018 version. This applies to prevailing wage rates for building construction services, heavy construction services, highway construction services, and nonconstruction services following the annual survey of wages provided for in 18-2-413, 18-2-414, and 18-2-415. Copies of the 2018 publications are available through the department.

Notes/Hearing: The department held a public hearing on December 1, 2017. This summary appeared in the January 12, 2018, email to the EAIC.

**MAR Notice Number:** 24-5-328

Subject: Amendment and adoption of rules pertaining to the workers' compensation court.

Summary: The department and Workers' Compensation Court propose to amend 24.5.301 (petition for trial), 24.5.302 (response to petition), 24.5.303 (service and filing), 24.5.306 (brevity in pleadings and form of paper presented for filing), 24.5.307 (third-party practice), 24.5.309 (intervention), 24.5.310 (time and place of trial generally), 24.5.311 (emergency trials), 24.5.316 (motions), 24.5.318 (pretrial conference, pretrial order, and exhibits), 24.5.319 (amended pleadings), 24.5.320 (computation of time), 24.5.322 (depositions), 24.5.325 (limiting discovery), 24.5.327 (default), 24.5.329 (summary judgment), 24.5.330 (requests to vacate, put in abeyance, or reset trial), 24.5.334 (settlement conference or mediation), 24.5.336 (trial briefs and proposed findings of fact and conclusions of law), 24.5.337 (motion for reconsideration), and 24.5.348 (certification of decisions, appeals to the Supreme Court). The Court proposes to adopt NEW RULE I (pretrial identification of witnesses and exhibits) and NEW RULE II (withdrawal of attorney). The general purpose of the amendments and adoption is part of the Workers' Compensation Court's annual review of its rules. The intent of the notice is to eliminate redundancy; clarify procedures, improve organization; increase internal consistency; and provide consistency with the Montana Rules of Civil Procedure.

Notes/Hearing: The department held a public hearing on January 8, 2018. This summary appeared in the January 12, 2018, email to the EAIC.

**MAR Notice Number:** 24-147-39

Subject: Amendment, transfer, adoption, and repeal of rules pertaining to the Board of Funeral Service.

Summary: The department proposes to amend 24.147.302 (funeral service definitions), 24.147.403 (inspections – mortuaries, branch establishments, and crematories), 24.147.408 (transportation and custody of human remains), 24.147.501 (out-of-state mortician licenses), 24.147.901 (mortuary and branch establishment operation standards), 24.147.904 (mortuary and branch establishment licenses and temporary permits), 24.147.1101 (crematory licenses, temporary permits, and operation standards), 24.147.2101 (continuing education requirements – morticians), and 24.147.2301 (unprofessional conduct). The department proposes to amend and transfer 24.147.402 to 24.147.507 (mortician licenses), 24.147.405 to 24.147.509 (examinations), 24.147.903 to 24.147.407 (name change, closure, transfer, or sale – mortuary, branch establishment, crematory, or cemetery). The department proposes to adopt NEW RULE I (change of mortician-in-charge or crematory operator-in-charge), NEW RULE II (nonlicensed personnel). The department proposes to repeal 24.147.2102 (sponsors). The department states that it is reasonably necessary to rename and reorganize some of the existing subchapters to allow for licensees and the public to identify and locate rules.

Notes/Hearing: The department held a public hearing on January 4, 2018. This summary appeared in the January 12, 2018, email to the EAIC.

**MAR Notice Number:** 24-29-330

Subject: Adoption of a rule pertaining to workers' compensation housing.

Summary: The department proposes to adopt NEW RULE I, providing for the value of employer-furnished housing. The department proposes to adopt the rule to implement House Bill No. 449 from the 2017 legislative session. The department states that the rules use the fair market rental rates used for Section 8 housing allowances for each county in Montana, set by the U.S. Department of Housing and Urban Development.

Notes/Hearing: The department held a public hearing on January 12, 2018. This summary appeared in the January 12, 2018, email to the EAIC.

**MAR Notice Number:** 24-189-38

Subject: Amendment and adoption of rules pertaining to the Board of Psychologists.

Summary: The department proposes to amend 24.101.413 (renewal dates and requirements), 24.189.601 (psychologist application procedures), 24.189.604 (minimum standards), 24.189.610 (work samples - examination), 24.189.630 (licensure as a psychologist by experience). The department proposes to adopt NEW RULE I (nonroutine psychologist applications), and NEW RULE II (nonroutine behavior analyst or assistant behavior analyst applications). The department states that the amendments are reasonably necessary to update and clarify existing rules relating to psychologists. The department states that the new rules are necessary to further implement 37-1-101 relating to routine license applications.

Notes/Hearing: The department held a public hearing on January 12, 2018. This summary appeared in the January 12, 2018, email to the EAIC.

**MAR Notice Number:** 24-210-44

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

Summary: The department proposes to amend 24.210.301 (definitions), 24.210.401 (fee schedule), 24.210.426 (trust account requirements), 24.210.601 (general license administration requirements), 24.210.624 (inactive licenses), 24.210.625 (inactive to active license status), 24.210.635 (renewals), 24.210.641 (unprofessional conduct), 24.210.646 (disciplinary guidelines -- public notice), 24.210.805 (property management trust account requirements), 24.210.827 (inactive status), and 24.210.828 (unprofessional conduct for property management licensees). The department states that it is amending various rules to align with standardized department procedures and uniform terminology among all licensing boards. Other changes are to implement recommendations made by the Legislative Audit Division.

Notes/Hearing: The department will held public hearing on January 12, 2018. This summary appeared in the January 12, 2018, email to the EAIC.

**MAR Notice Number:** 24-16-331

Subject: Amendment and repeal of rules pertaining to payment of wages, minimum wage, and overtime.

Summary: The department proposes to amend 24.16.102 (definitions), 24.16.211 (executive, administrative, and professional employees), 24.16.1010 (travel time), 24.16.1508 (tips or service charges), 24.16.7514 (computation of time periods), 24.16.7517 (electronic filings), 24.16.7520 (procedure for issuing wage claim determinations regarding employment status of independent contractor), 24.16.7521 (filing a claim), and 24.16.7527 (employer response to claim). The department generally states that amendment of the rules are for clarification. The department proposes to repeal 24.16.2301 (employment of learners), 24.16.6501 (seasonal amusement or recreational), 24.16.6701 (employment of student-learners), and 24.16.7547 (appeal of formal hearing). The department states that the repeal of these rules is for clarification and to eliminate redundant and unnecessary provisions.

Notes/Hearing: The department will hold a public hearing on February 6, 2018, to consider the rules.

**MAR Notice Number:** 24-126-36

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

Summary: The department proposes to amend 24.126.401 (fees), 24.126.402 (fee abatement), 24.126.501 (applications), 24.126.502 (military training or experience), 24.126.504 (license by examination), 24.126.507 (temporary permit), 24.126.510 (license by endorsement), 24.126.511 (display of license), 24.126.701 (inactive status and conversion to active status), 24.126.704 (intern and preceptor registration), 24.126.910 (impairment evaluator standards), 24.126.2103 (continuing education requirements), and 24.126.2105 (approved continuing education). The department states that the amendments are to make the rules consistent with statutory requirements.

Notes/Hearing: The department will hold a public hearing on February 2, 2018, to consider the rules.

**MAR Notice Number:** 24-207-41

Subject: Amendment of a rule pertaining to the Board of Real Estate Appraisers.

Summary: The department proposes to amend 24.207.504. The amendment allows 100 percent of qualifying education requirements to be online. The previous rule allowed up to 50%.

Notes/Hearing: The department did not anticipate the need for a public hearing.

### **Department of Revenue, Liquor Control Division**

There are no pending rules.

### **Department of Livestock and administratively attached entities**

**MAR Notice Number:** 32-17-287

Subject: Amendment of a rule pertaining to the livestock animal health division fees.

Summary: The department proposes to amend 32.2.401. The amendment decreases the fee for the SV-7GF alternative livestock cvi book from \$35.00 to \$20.00.

Notes/Hearing: The department does not anticipate the need for a public hearing.

**MAR Notice Number:** 32-18-288

Subject: Amendment of rules pertaining to milk control assessments.

Summary: The department proposes to amend 32.24.450 relating to milk control assessments. Specifically, the department proposes to increase certain fees. The department states that the increases seek to implement House Bill No. 377 and to ensure that fees are commensurate with costs.

Notes/Hearing: The department does not anticipate the need for a public hearing and proposes to adopt the rule on July 1, 2018.

### **State Auditor's Office**

**MAR Notice Number:** 6-240

Subject: Amendment and repeal of rules pertaining to the independent liability fund.

Summary: The department proposes to amend 6.6.2602 (independent liability fund definitions). The department states that the amendment will eliminate references to now-repealed statutes. The department proposes to repeal 6.6.2606 (penalties). The department states that the rule is unnecessary because it restates applicable statutes.

Notes/Hearing: The department does not anticipate the need for a hearing and proposes to adopt the rules in February 2018.

**MAR Notice Number:** 6-241

Subject: Amendment of rules pertaining to valuation of life insurance policies.

Summary: The department proposes to amend 6.6.6701, 6.6.6703, 6.6.6705, 6.6.6707, 6.6.6709, 6.6.6711 and 6.6.6713. The department states that the amendments are necessary to update citations to the implementing statutes. The statutes were renumbered in 2015.

Notes/Hearing: The department does not anticipate the need for a hearing and proposes to adopt the rules in February 2018.

### **Montana State Fund**

There are no pending rules.

### **Division of Banking & Financial Institutions**

**MAR Notice Number:** 2-59-567

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

Summary: The department proposes to amend 2.59.1738 pertaining to renewal fees. The department states that it is making the renewal fees consistent with the initial license application fees that exist in statute. It is also streamlining fees for mortgage loan originator licensees. The department is also eliminating a subsection that reduces renewal fees by 50 percent for 2017 because that provision sunsetted on March 1, 2017.

Notes/Hearing: The department does not anticipate the need for a public hearing and proposes to adopt the rules on February 16, 2018.

### **Governor's Office of Economic Development**

There are no pending rules.