BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.21.102, 24.21.202, 24.21.302, and 24.21.421 pertaining to the apprenticeship and training program

NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On December 4, 2020, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the novel coronavirus, there will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting, https://mt-gov.zoom.us/j/94933880879
Meeting ID: 949 3388 0879; or

(b) Dial by telephone, +1 646 558 8656 or +1 406 444 9999
Meeting ID: 949 3388 0879

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., November 27, 2020, to advise us of the nature of the accommodation that you need. Please contact Jay Reardon, Registered Apprenticeship Workforce Services Division, P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-3556; facsimile (406) 444-4140; Montana TTD (406) 444-5549; or e-mail james.reardon@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: Reasonable necessity to amend these rules exists because the department proposes to adopt and incorporate by reference additional provisions from the U.S. Department of Labor, Code of Federal Regulations, Labor Standards for Registration of Apprenticeship Programs, 29 CFR 29, to provide consistency in administering its apprenticeship program and because the department seeks to obtain U.S. Department of Labor approval for its apprenticeship program.

4. The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

MAR Notice No. 24-21-362 21-11/6/20
24.21.102 DEFINITIONS  As used in this subchapter, the following definitions apply:

(1) "Apprenticeship agreement" has the meaning provided for by 39-6-104, 39-6-105, MCA, and includes an indenture agreement.

(2) "Department" means the Montana Department of Labor and Industry, as provided for by 2-15-1701, MCA. The department is the state apprenticeship agency.

(3) "Indenture agreement" means the specific written agreement between a sponsor and an individual apprentice regarding the terms and conditions of the apprentice's apprenticeship.

(4) "Joint apprenticeship committee" means a local or statewide committee operating pursuant to 39-6-104, MCA, and recognized by the department.

(5) "Registered apprentice" means an individual whose indenture apprenticeship agreement has been officially recognized and registered with a registration agency the department.

(6) "Registration agency" means any of the following:
   (a) the department;
   (b) the U.S. Department of Labor, acting through its employment and training administration; and
   (c) the federally recognized apprenticeship registration agency of another state or U.S. territory.

(7) "Sponsor" means an employer or a joint apprenticeship committee which operates an apprenticeship training program recognized by the department.

(8) "State apprenticeship advisory council" means the advisory body designated by the department pursuant to ARM 24.21.205. The term "State Apprenticeship Council" as defined by 29 CFR 29.2 shall be interpreted to refer to the same body.

(9) remains the same but is renumbered (5).

AUTH: 39-6-101, MCA
IMP: 39-6-101, 39-6-105, MCA

REASON: Reasonable necessity exists to amend this rule because the department proposes to adopt definitions from 29 CFR 29.2 by amending ARM 24.21.202. That adoption will provide uniformity in interpreting terms. Section (2) is proposed to be amended to clarify that the department is the state apprenticeship agency. Section (3) is proposed to be repealed because the term "indenture agreement" will be replaced by the term "apprenticeship agreement" which is defined in 39-6-105, MCA. Section (4) is proposed to be repealed because the term "joint apprenticeship committee" will be replaced with the term "apprenticeship committee" as defined in 29 CFR 29.2 which the department proposes to adopt in ARM 24.21.302(1)(a). Section (5) is proposed to be amended to replace the term "indenture" with "apprenticeship" and to replace the term "registration agency" with "the department" because the terms "indenture" and "registration agency" are proposed to be repealed. Section (6) is proposed to be repealed because the term "registration agency" will be replaced with the term "state apprenticeship agency" as defined in 29 CFR 29.2 which the department proposes to adopt in ARM 24.21.302(1)(a).
Section (7) is proposed to be repealed because the department proposes to adopt the definition of "sponsor" defined in 29 CFR 29.2 which the department proposes to adopt in ARM 24.21.302(1)(a). Section (8) is proposed to be amended to clarify that the term "state apprenticeship advisory council" shall be interpreted to refer to the same body as "State Apprenticeship Council" defined in 29 CFR 29.2 and proposed to be adopted in ARM 24.21.302(1)(a).

Three terms are expressly excepted from adoption: "apprentice," "apprenticeship agreement," and "department" because these terms are defined by Montana statute and therefore are unable to be changed by administrative rule.

24.21.202 STATE APPRENTICESHIP AND TRAINING PROGRAM

(1) There exists with the department's workforce services division an office which operates the state's apprenticeship and training program. The office functions as Montana's state apprenticeship agency and state office for apprenticeship, as those terms are used within 29 CFR part 29, subpart A. The office is organized as the apprenticeship and training program within the 21st century workforce technology, apprenticeship, and training bureau of the workforce services division of the department.

(2) and (3) remain the same.

(4) The state apprenticeship and training program's main office is located at the Walt Sullivan Building, 1327 1315 Lockey Avenue, Helena, Montana, 59601.

(a) through (d) remain the same.

AUTH: 39-6-101, MCA
IMP: 39-6-101, MCA

REASON: Reasonable necessity exists to amend ARM 24.21.202 to correct typographical errors. The word "is" was inadvertently omitted from the third sentence in the previous version and the department's address in (4) was incorrect. The addition of subpart A to the citation for 29 CFR part 29 is the specific subpart in the Code of Federal Regulations.

24.21.302 FEDERAL REGULATIONS INCORPORATED BY REFERENCE

(1) The department adopts and incorporates by reference the following federal regulations for use in the operation of its state apprenticeship and training program:

(a) 29 CFR section 29.2, definitions, as in effect on May 11, 2020. The department expressly excludes from this adoption the definitions of "apprentice," "apprenticeship agreement," and "department";

(a) (b) 29 CFR section 29.3, eligibility and criteria for registration of an apprenticeship program, as in effect on July 1, 2010 May 11, 2020;

(b) and (c) remain the same but are renumbered (c) and (d).

(d) (e) 29 CFR section 29.6, program performance standards, as in effect on July 1, 2010 May 11, 2020;

(e) and (f) remain the same but are renumbered (f) and (g).

(h) 29 CFR section 29.9, reinstatement of program registration, as in effect on October 29, 2008;
(g) remains the same but is renumbered (i).
(h) (j) 29 CFR section 29.11, limitations, as in effect on July 1, 2010 May 11, 2020; and
(k) 29 CFR section 29.13, recognition of state apprenticeship agencies, as in effect on May 11, 2020; and
(i) remains the same but is renumbered (l).

(2) The department is not formally adopting by reference the various other portions of 29 CFR part 29 because those portions either address matters related to the internal operations of government or are otherwise addressed by the administrative rules contained in this subchapter. As an example, the provisions of 29 CFR section 42 29.12 regarding complaint procedures, are addressed in ARM 24.21.416, and more generally under the Montana Administrative Procedure Act. Likewise, while the department is subject to 29 CFR section 29.13 for purposes of its recognition as the state apprenticeship agency, those provisions are by their terms not applicable to sponsors, employers, apprentices, or the public at large.

(3) remains the same.

AUTH:  2-4-201, 39-6-101, MCA
IMP:     2-4-201, 39-6-101, MCA

REASON: Reasonable necessity exists to adopt and incorporate by reference 29 CFR 29.2, definitions, 29 CFR 29.9, reinstatement of program registration, and 29 CFR 29.13, recognition of state apprenticeship agencies. This rule also adopts updated versions of previously adopted CFR provisions: 29 CFR 29.3, 29 CFR 29.6, and 29 CFR 29.11. The department is adopting 29 CFR 29.2, 29 CFR 29.9, and 29 CFR 29.13 now and adopting the updated versions of previously adopted rules to obtain U.S. Department of Labor approval for its apprenticeship program. The citation to "section 12" was deleted in favor of the more precise citation to 29.12.

24.21.421 EQUAL EMPLOYMENT OPPORTUNITY  (1) Title 29, C.F.R. Part 30 29 CFR part 30 is a federal regulation which was implemented by the Apprenticeship Bureau to retain federal recognition as the apprenticeship regulatory agency. The Apprenticeship Bureau has drawn up a state plan entitled "Equal Employment in Apprenticeship." Copies of the proposed final approved state plan, effective June 2019 January 2020, are available and can be accessed electronically at http://apprenticeship.mt.gov/state-eeo-plan apprenticeship.mt.gov. The department consented to omission of the The text of the plan which is omitted because it is cumbersome and inexpedient. Printed copies are available at no cost and may be obtained at the Apprenticeship Bureau office.

AUTH:  39-6-101, MCA
IMP:     39-6-101, 39-6-105, MCA

REASON: Reasonable necessity exists to amend this rule because the U.S. Department of Labor has approved the department's proposed EEO State Plan and to update the URL where the plan is available. "Title 29, C.F.R. Part 30" was deleted in favor of "29 CFR part 30" for consistent citation form.
5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Jay Reardon, Registered Apprenticeship Workforce Services Division, P.O. Box 1728, Helena, MT 59624-1728; fax (406) 444-4140; or e-mail to james.reardon@mt.gov, and must be received no later than 5:00 p.m., December 7, 2020.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices, and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, or e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

7. An electronic copy of this notice of public hearing is available through the department's web site at http://dli.mt.gov/events/calendar.asp, under the Calendar of Events, Administrative Rules Hearings Section. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. Pursuant to 2-4-111, MCA, the department has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses. To the extent that there is an impact, it will be beneficial because the proposed changes provide uniformity and clarity to the apprenticeship rules. There are no direct cost implications to apprenticeship sponsors.

10. The department's Office of Administrative Hearings has been designated to preside over and conduct this hearing.

/s/ QUINLAN L. O'CONNOR        /s/ BRENSDA NORDLUND
Quinlan L. O'Connor             Brenda Nordlund, Acting Commissioner
Alternate Rule Reviewer         DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State on October 27, 2020.