

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 22

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after print publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 444-2055.

Page Number

TABLE OF CONTENTS

PROPOSAL NOTICE SECTION

AGRICULTURE, Department of, Title 4

4-16-234 Notice of Public Hearing on Proposed Amendment - Grain Fee Schedule. 2089-2093

FISH, WILDLIFE AND PARKS, Department of, Title 12

12-465 (Fish and Wildlife Commission) Notice of Public Hearings on Proposed Amendment and Adoption - Recreational Use on Rivers in Montana. 2094-2101

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-769 Amended Notice of Public Hearing on Proposed Amendment - Annual Training Requirements for Child Care Facilities. 2102-2103

37-778 Notice of Public Hearing on Proposed Amendment and Repeal - Updating Child Support Enforcement Rules. 2104-2116

REVENUE, Department of, Title 42

42-2-967 Notice of Public Hearing on Proposed Adoption, Amendment, Transfer and Amendment, and Repeal - Premises Suitability Requirements - Conditions for Operating All Types of Alcoholic Beverage Licenses. 2117-2169

42-2-968 Notice of Public Hearing on Proposed Amendment - Alcoholic Beverage Establishment Location Managers - Compliance With Laws and Rules - Penalty Schedule - Consumer Promotions - Contract Manufacturing. 2170-2181

SECRETARY OF STATE, Office of, Title 44

44-2-222 (Commissioner of Political Practices) Notice of Proposed Amendment - Payment Threshold--Inflation Adjustment for Lobbyists. No Public Hearing Contemplated. 2182-2184

RULE ADOPTION SECTION

ADMINISTRATION, Department of, Title 2

2-63-548 (Montana Lottery Commission) Notice of Amendment - General Provisions - Revocation or Suspension of License - Prizes. 2185

STATE AUDITOR, Office of, Title 6

6-226 (Commissioner of Securities and Insurance) Notice of Adoption and Repeal - Credit for Reinsurance - Letters of Credit Used in Reduction of Liability for Reinsurance Ceded. 2186-2187

REVENUE, Department of, Title 42

42-2-959 Notice of Adoption - Golf Course Valuation. 2188-2197

42-2-960 Notice of Amendment and Repeal - Corporate Income Tax. 2198-2204

42-2-963 Corrected Notice of Adoption - Application of Penalties and Interest - Reasonable Cause - Timeframe for Appealing Notices of Assessment. 2205

SPECIAL NOTICE AND TABLE SECTION

| | |
|---|-----------|
| Function of Administrative Rule Review Committee. | 2206-2207 |
| How to Use ARM and MAR. | 2208 |
| Accumulative Table. | 2209-2219 |
| Boards and Councils Appointees. | 2220-2225 |
| Vacancies on Boards and Councils. | 2226-2256 |

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 4.13.1001A pertaining to Grain) PROPOSED AMENDMENT
Fee Schedule)

TO: All Concerned Persons

1. On December 15, 2016, at 2:00 p.m., the Department of Agriculture will hold a public hearing in the Jubilee Room of the Sheridan County Library, 100 W. Laurel Ave., Plentywood, Montana, to consider the proposed amendment of the above-stated rule.

On December 16, 2016, at 10:00 a.m., the Department of Agriculture will hold a public hearing in the Annex Meeting Room of the Hill County Courthouse, 302 4th Ave., Havre, Montana, to consider the proposed amendment of the above-stated rule.

On December 19, 2016, at 11:00 a.m., the Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, 302 N. Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Agriculture no later than 5:00 p.m. on December 9, 2016, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, 302 N. Roberts, Helena, Montana, 59601; telephone (406) 444-3144; fax (406) 444-5409; or e-mail agr@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

4.13.1001A GRAIN FEE SCHEDULE (1) The effective date of this rule is ~~July 1, 2014~~ February 1, 2017.

(2) General provisions applying to all sections of this rule are as follows:

(a) normal office hours are 8 a.m. to 5 p.m., Monday through Friday. All other hours and holidays will be considered overtime.

(i) sampling hours are 8 a.m. to 5 p.m. Monday through Friday. Sampling hours will need to be scheduled the day before if required outside the normal office hours. All other hours and holidays will be considered overtime.

(b) the regular hourly rate for travel time and stand-by fee is ~~\$24~~ \$40 per hour per individual assessed in half-hour intervals with a minimum of two hours charged.

(c) overtime and holiday hourly rate is ~~\$36~~ \$60 per hour per individual assessed in half-hour intervals. A minimum ~~two-hour~~ four-hour charge will be

assessed except for a continuation of a regular work day, then only actual overtime hours will be charged.

(d) holidays are as adopted in 1-1-216, MCA (e.g., New Year's Day, Martin Luther King Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day, and Election Day).

(e) Mileage, travel time, and travel expenses are as follows:

(i) mileage charges shall be assessed per Title 2, chapter 18, part 5, MCA for state employees which is equal to the United States Internal Revenue Service (IRS) mileage allotment. Any change to the mileage rate is effective when the IRS changes their standard mileage rate. The mileage charges will be prorated where possible. Mileage will not be charged within five miles of an official state grain laboratory location.

(ii) for each out-of-town trip requested, the applicant will be charged at the regular hourly rate, except when work is conducted while in overtime status or on holidays. Work conducted while in overtime status or on holidays will be charged at the overtime rate, prorated where possible.

(iii) travel expenses, i.e., per diem, lodging, and mileage will be assessed the applicant in addition to other fees and charges.

(f) Copies of certificates, per certified copy.....\$2.50
In case of a data entry or typographical error, a corrected certificate will be issued without a fee.

(g) Fax charge, per transmission.....\$3.00

(h) Actual postage or delivery service charges will be added to sampling and other fees.

(i) The priority service fee shall be ~~\$2.50~~ \$10.00 per submitted sample in addition to the fees set forth in this rule. Submitted priority samples shall be done within 48 hours or less, on a first arrival basis. Priority service includes electronic report. Priority service will be automatically suspended if backlog of regular samples exceeds two weeks. If priority service is suspended, all submitted sample fees will be assessed at the appropriate rate.

~~(j) Requests for services not covered by this rule will be performed at the applicable hourly rate stated herein plus mileage and travel time if applicable~~
Retests/Regrading will cost the same as the original test/grading. If a significantly different result is obtained, the fee may be waived at the lab's discretion.

(k) Processing and handling fee for sample preparation and export documentation (per request).....\$7.50

(3) Fees for official services provided under the United States Grain Standards Act (USGSA) – includes federal grain inspection services (FGIS) supervision fees.

(a) All general provisions of (2) ~~above~~ shall apply.

(b) Official lot inspection sampling with grade, bulk, boxcar, hopper car or truck/trailer, per request, sampling and grade only:

(i) level one official sampling service when the state grain laboratory furnishes the sampling crew (per unit).....~~\$21.00~~ \$25.00

(ii) level two official sampling service when the state grain laboratory furnishes a licensed sampler to write identification tickets, supervise elevator

| | | |
|--|--------------------|----------------|
| employees while sampling and seal samples for delivery to the state grain laboratory (per unit)..... | \$16.00 | <u>\$18.00</u> |
| (iii) Official lot reinspection based on new sample – all regular fees assessed. | | |
| (c) Sampling only (does not include grade) – bulk, boxcar, hopper car or truck/trailer, per request, (all grains)..... | \$9.00 | <u>\$10.00</u> |
| (d) Stowage examination per unit (in excess of one hour – hourly rate applies)..... | \$7.00 | <u>\$8.00</u> |
| (e) Submitted sample inspection – include DKT (damaged kernels total) identified, FM (foreign material) identified, SHBN (shrunken and broken kernels), and DEF (total defects)..... | | \$8.00 |
| (f) Submitted Canola per sample..... | | <u>\$16.00</u> |
| (g) Submitted Spring Wheat (Includes DHV testing) per sample | | <u>\$13.00</u> |
| (i) Submitted (Other USGSA) per sample..... | \$8.00 | <u>\$10.00</u> |
| (ii) reinspection based on file sample (original numerical grade sustained) regular fee assessed..... | | \$8.00 |
| (iii) reinspection based on file sample (original numerical grade changed) – no fee will be assessed. | | |
| (f) (h) Protein tests, per sample: | | |
| (i) near infrared transmittance (NIRT) wheat, barley, and corn ... | \$5.50 | <u>\$6.00</u> |
| (ii) protein retest – (original protein test sustained)..... | | \$5.50 |
| (iii) protein retest – (original protein test changed) – differences of more than 0.3% – no fee will be assessed. | | |
| (g) (i) DHV, HVAC or factor only determination: e.g., dark, hard vitreous (DHV) kernels; hard, vitreous kernels of amber color (HVAC), per factor.. | \$2.50 | <u>\$3.00</u> |
| (h) (j) Additional statements, factors, or results as requested by the applicant..... | \$2.50 | <u>\$3.00</u> |
| (i) (k) Malting barley analysis, includes actual percent of plump barley, skinned and broken kernels, and thin barley, per request..... | | \$5.00 |
| (j) (l) Vomitoxin (DON) per quantitative analysis test..... | | \$30.00 |
| (k) (m) Aflatoxin per quantitative analysis test..... | | \$30.00 |
| (l) (n) Official commercial services performed under the USGSA: | | |
| (i) official commercial inspection services and fees may be negotiated on a case-by-case basis. | | |
| (4) Fees for official services provided under the Agricultural Marketing Act of 1946 (AMA) as amended – beans, peas, and lentils. | | |
| (a) All general provisions of (2) above shall apply. | | |
| (b) Sampling fees: | | |
| (i) bulk samples from boxcars, hopper cars, truck/trailers <u>per unit</u> | \$9.00 | <u>\$10.00</u> |
| (ii) bagged..... | | Hourly Rate |
| (c) Grade only per lot or sample: | | |
| (i) field run..... | \$13.00 | <u>\$20.00</u> |
| (ii) other than field run..... | \$11.00 | <u>\$15.00</u> |
| (d) Factor only determination, per factor..... | \$2.50 | <u>\$3.00</u> |
| (e) Falling numbers only determination..... | | \$11.00 |
| (f) Additional statements, factors, or results as requested by the applicant (per factor)..... | \$2.50 | <u>\$3.00</u> |

- (5) Fees for laboratory services not performed under the USGSA or AMA:
 - (a) All general provisions of (2) above shall apply.
 - (b) lot inspection sampling with grade for bulk, boxcar, hopper car or truck/trailer, per request, sampling and grade only:
 - (i) level one sampling service fee when the state grain laboratory furnishes the sampling crew per sample.....~~\$21.00~~ \$25.00
 - (ii) level two sampling service fee when the state grain laboratory furnishes a licensed sampler to write identification tickets, supervise elevator employees while sampling, and seal samples for delivery to the state grain laboratory per sample.....~~\$16.00~~ \$18.00
 - (iii) lot reinspection – all regular fees assessed.
 - (c) Sampling only (does not include grade) – bulk, boxcar, hopper car or truck/trailer, per request, (all grains).....~~\$9.00~~ \$10.00
 - (d) Stowage examination per unit (in excess of one hour, hourly rate applies).....~~\$7.00~~ \$8.00
 - (e) Submitted Montana specialty crop grades (unless specifically listed) per sample.....~~\$8.00~~ \$10.00
 - (f) Submitted buckwheat grades, per sample:
 - (i) processed.....~~\$8.00~~ \$14.00
 - (ii) field run.....~~\$13.00~~ \$15.00
 - (g) Submitted hulless or hulless waxy barley grades, per sample.....~~\$12.00~~ \$14.00
 - (h) Reinspection for grade based on file sample:
 - (i) original numerical grade sustained – regular fee assessed.
 - (ii) original numerical grade changed – no fee will be assessed.
 - (i) Protein test, per sample:
 - (i) non-official NIRT, (e.g., khorasan).....~~\$5.50~~ \$6.00
 - (ii) protein retest – original protein test sustained – regular protein fee assessed.
 - (iii) protein retest – original protein test changed – differences of more than 0.3% – no fee will be assessed.
 - (j) Malting barley:
 - (i) germination, 72 hour hydrogen peroxide, or 72 hour blotter, per determination.....~~\$7.00~~ \$7.00
 - (k) vomitoxin (DON) per quantitative analysis test.....~~\$30.00~~ \$30.00
 - (l) falling numbers only determination.....~~\$11.00~~ \$11.00
 - (m) aflatoxin per quantitative analysis test.....~~\$30.00~~ \$30.00
 - (n) DHV, HVAC or factor only determination, per factor.....~~\$2.50~~ \$3.00
 - (o) additional statements, factors, or results as requested by the applicant (per factor).....~~\$2.50~~ \$3.00

AUTH: 80-4-403, 80-4-721, MCA
 IMP: 80-4-721, MCA

REASON AND ECONOMIC IMPACT: The current fee structure does not generate enough revenue to pay for continued required services to the industry. Certain fees did not reflect the actual added cost (in time) to perform the tests. The new rule will

generate \$80,000 to \$200,000 revenue every year depending on use of the lab. A typical user will pay \$3.50 per sample in fees a year. A large user will pay \$3.50 to \$5.00 per sample in fees a year. The majority of the fee increase will be paid by the largest user.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Cort Jensen, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-3144; fax (406) 444-5409; or e-mail agr@mt.gov, and must be received no later than 5:00 p.m., January 4, 2017.

5. Cort Jensen, Department of Agriculture, has been designated to preside over and conduct these hearings.

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 that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works 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.

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

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will significantly and directly impact small businesses.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Ron de Yong
Ron de Yong
Director
Agriculture

Certified to the Secretary of State November 14, 2016.

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

| | | |
|--------------------------------------|---|------------------------------|
| In the matter of the amendment of |) | NOTICE OF PUBLIC HEARINGS ON |
| ARM 12.11.501, 12.11.610, |) | PROPOSED AMENDMENT AND |
| 12.11.630, 12.11.640, |) | ADOPTION |
| 12.11.645,12.11.2206, 12.11.4101 |) | |
| and the adoption of NEW RULES I |) | |
| through X pertaining to recreational |) | |
| use on rivers in Montana |) | |

TO: All Concerned Persons

1. On January 3, 2017, at 6:00 p.m., the Fish and Wildlife Commission (commission) will hold a public hearing at the Fish, Wildlife and Parks Region 1 Office, 490 North Meridian Road, Kalispell, Montana, to consider the proposed amendment and adoption of the above-stated rules.

On January 4, 2017, at 6:00 p.m., the commission will hold a public hearing at the Fish, Wildlife and Parks Region 2 Office, 3201 Spurgin Road, Missoula, Montana, to consider the proposed amendment and adoption of the above-stated rules.

On January 5, 2017, at 6:00 p.m., the commission will hold a public hearing at the Fish, Wildlife and Parks Region 3 Office, 1400 South 19th Avenue, Bozeman, Montana, to consider the proposed amendment and adoption of the above-stated rules.

On January 9, 2017, at 6:00 p.m., the commission will hold a public hearing at the Fish, Wildlife and Parks Region 5 Office, 2300 Lake Elmo Drive, Billings, Montana, to consider the proposed amendment and adoption of the above-stated rules.

On January 11, 2017, at 6:00 p.m., the commission will hold a public hearing at the Fish, Wildlife and Parks Region 4 Office, 4600 Giant Springs Road, Great Falls, Montana, to consider the proposed amendment and adoption of the above-stated rules.

On January 11, 2017, at 6:00 p.m., the commission will hold a public hearing at the Fish, Wildlife and Parks Headquarters, 1420 East 6th Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than December 9, 2016, to advise us of the nature of the

accommodation that you need. Please contact Kaedy Gangstad, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-4594; or e-mail kgangstad@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

- 12.11.501 LIST OF WATER BODIES (1) through (16) remain the same.
(17) BOULDER RIVER [NEW RULE X]
(17) through (25) remain the same but are renumbered (18) through (26).
(27) CLARKS FORK YELLOWSTONE RIVER [NEW RULE VII]
(26) through (38) remain the same but are renumbered (28) through (40).
(41) FLATHEAD RIVER ARM 12.11.2206
(39) through (70) remain the same but are renumbered (42) through (73).
(74) LAZY CREEK [NEW RULE III]
(71) through (78) remain the same but are renumbered (75) through (82).
(83) MARIAS RIVER [NEW RULE V]
(79) through (102) remain the same but are renumbered (84) through (107).
(108) STILLWATER RIVER (FLATHEAD COUNTY) [NEW RULE I]
(109) STILLWATER RIVER (STILLWATER COUNTY) [NEW RULE IX]
(103) remains the same but is renumbered (110).
(111) SUN RIVER [NEW RULE IV]
(104) and (105) remain the same but are renumbered (112) and (113).
(114) SWIFT CREEK [NEW RULE II]
(115) TETON RIVER [NEW RULE VI]
(106) through (116) remain the same but are renumbered (116) through
(126).
(127) YELLOWSTONE RIVER [NEW RULE VII]

AUTH: ~~23-1-106, 23-2-302,~~ 87-1-301, 87-1-303, MCA
IMP: ~~23-1-106,~~ 87-1-303, MCA

12.11.610 BITTERROOT RIVER (1) Bitterroot River is closed to use of any motorized watercraft except any motorized watercraft powered by 20 horsepower or less are permitted from October 1 through January 31 from the headwaters of the Bitterroot River to the confluence with the Clark Fork River.

(2) All tributary streams of the Bitterroot River are closed to use of any motorized watercraft.

AUTH: ~~23-1-106,~~ 87-1-303, MCA
IMP: ~~23-1-106,~~ 87-1-303, MCA

12.11.630 MISSOURI RIVER (1) All tributary streams of the Missouri River are closed to use of any motorized watercraft, except any motorized watercraft powered by 10 horsepower or less, from May 15 through September 15 from the headwaters of the Missouri River to the confluence with Prewett Creek.

~~(1)~~ (2) In ~~Broadwater County~~ the Missouri River is closed to all swimming, boating, sailing, and floating in the following areas:

- (a) between Toston dam and 300 feet downstream of the dam; and
- (b) the reservoir between the Toston dam and the boat barrier.

(3) Missouri River from Holter Dam to Wolf Creek bridge is restricted:

- (a) to a no wake speed, as defined in ARM 12.11.101(1); and
- (b) vessels are restricted to traveling in the direction of the flow of the river.

(4) Missouri River from Wolf Creek Bridge to Pelican Point FAS is closed to motorized water craft, except any motorized watercraft powered by 10 horsepower or less, from June 1 through September 15.

~~(2)~~ (5) The following areas of the Missouri River are closed to use of any motor-propelled watercraft:

~~(a) in Cascade County;~~

~~(i)~~ (a) that portion of the Missouri River from the Burlington Northern Railway Bridge No. 119.4 at Broadwater Bay in Great Falls to Black Eagle; and

~~(ii)~~ (b) that portion of the Missouri River from the Warden Bridge on 10th Avenue South in Great Falls to the floater take-out facility constructed near Oddfellows Park at Broadwater Bay as posted.

AUTH: 23-1-106, 87-1-303, MCA

IMP: 23-1-106, 87-1-303, MCA

12.11.640 SWAN RIVER (1) Swan River is located in Missoula, Flathead, and Lake counties.

(2) Swan River is limited to a controlled no wake speed, as defined in ARM 12.11.101, in the following areas:

(a) in Missoula County, from the headwaters of Swan River to the confluence with Lindbergh Lake; and

(b) from Lindbergh Lake to the mouth of Swan Lake in Lake County.

~~(2) In Lake County, the Swan River is limited to a controlled no wake speed, as defined in ARM 12.11.101, in the following area:~~

~~(a) from the mouth of Swan Lake to Porcupine Bridge approximately 4 1/2 miles.~~

(3) In Flathead and Lake counties, the Swan River is limited from July 1 to September 15 of each year to either a controlled no wake speed, as defined in ARM 12.11.101, or the minimum operating speed necessary to progress upstream in the following area:

(a) from where the Swan River flows out of Swan Lake in Lake County, as marked, to where Bear Creek enters the Swan River in Flathead County.

AUTH: 23-1-106, 87-1-303, MCA

IMP: 23-1-106, 87-1-303, MCA

12.11.645 WHITEFISH RIVER (1) Whitefish River is located in Flathead County.

(2) Whitefish River is limited to a controlled no wake speed, as defined in ARM 12.11.101(1), from its confluence with Whitefish Lake to the bridge on JP Road.

(3) Whitefish River is limited to manually and electric powered watercraft from its confluence at the railroad trestle south of Whitefish Lake outlet to the bridge on JP Road.

(4) Whitefish River is limited to a controlled no wake speed, as defined in ARM 12.11.101(1), from JP Road to the confluence with Stillwater River from July 1 to September 15.

(5) Personal watercraft are prohibited on the Whitefish River from JP Road to the confluence with Stillwater River.

AUTH: ~~23-1-106~~, 87-1-303, MCA

IMP: ~~23-1-106~~, 87-1-303, MCA

12.11.2206 FLATHEAD RIVER (1) A portion of the Flathead River is located in Flathead County.

(2) Church Slough is closed to boating March 1 to April 10.

(3) Fennon Slough is restricted to a controlled no wake speed, as defined in ARM 12.11.101(1).

(4) A portion of the Flathead River from the confluence of the South Fork of the Flathead River to the Highway 35 Bridge is:

(a) closed to all personal watercraft; and

(b) restricted no wake, as defined in ARM 12.11.101(1), from June 1 to October 15.

~~(4)~~ (5) The North Fork of the Flathead River:

(a) is closed to all motorboats from the Canadian border to the Camas Bridge; and

(b) is closed to all motorboats with motors greater than 10 horsepower from Camas Bridge to the confluence of the Middle Fork of the Flathead River.

~~(5)~~ (6) The Middle Fork of the Flathead River:

(a) is closed to all motorboats from the Bob Marshall Wilderness boundary to the Highway 2 Bridge at Essex; and

(b) is closed to all motorboats with motors greater than 10 horsepower from the Highway 2 Bridge at Essex to the confluence of the South Fork of the Flathead River.

~~(6)~~ (7) The South Fork of the Flathead River:

(a) is closed to all motorboats from Spotted Bear Footbridge to the Bob Marshall Wilderness boundary; and

(b) is closed to all motorboats with motors greater than 10 horsepower from Spotted Bear Footbridge to Hungry Horse Reservoir at full pool (3850 feet elevation).

AUTH: ~~23-1-106~~, 87-1-303, MCA

IMP: ~~23-1-106~~, 87-1-303, MCA

12.11.4101 PARK COUNTY (1) All rivers and streams in Park County east of the continental divide are closed to the use of all watercraft propelled by machinery of over 10 horsepower with the following exceptions:
(a) ~~on the Yellowstone River, downriver from Highway 89 bridge (near mouth of Shields River).~~

AUTH: ~~23-1-106~~, 87-1-303, MCA
IMP: ~~23-1-106~~, 87-1-303, MCA

4. The rules as proposed to be adopted provide as follows:

NEW RULE I STILLWATER RIVER (1) Stillwater River is located in Flathead County.

(2) Stillwater River is limited to a controlled no wake speed, as defined in ARM 12.11.101(1), from Upper Stillwater Lake to the confluence with Flathead River.

(3) Personal watercraft are prohibited on the Stillwater River from Upper Stillwater Lake to the confluence with Flathead River.

AUTH: 87-1-303, MCA
IMP: 87-1-303, MCA

NEW RULE II SWIFT CREEK (1) Swift Creek is located in Flathead County.
(2) The use of motorized watercraft is prohibited on Swift Creek.

AUTH: 87-1-303, MCA
IMP: 87-1-303, MCA

NEW RULE III LAZY CREEK (1) Lazy Creek is located in Flathead County.
(2) The use of motorized watercraft is prohibited on Lazy Creek.

AUTH: 87-1-303, MCA
IMP: 87-1-303, MCA

NEW RULE IV SUN RIVER (1) Sun River from its headwaters to Ulm-Vaughan Road Bridge is closed to motorized watercraft, except any motorized watercraft powered by 10 horsepower or less.

AUTH: 87-1-303, MCA
IMP: 87-1-303, MCA

NEW RULE V MARIAS RIVER (1) Marias River is closed to motorized watercraft, except any motorized watercraft powered by 10 horsepower or less, and personal watercraft from:

- (a) its headwaters to Tiber Reservoir; and
- (b) Tiber Dam to the confluence with Missouri River.

AUTH: 87-1-303, MCA

IMP: 87-1-303, MCA

NEW RULE VI TETON RIVER (1) Teton River is closed to motorized watercraft, except any motorized watercraft powered by 10 horsepower or less, and personal watercraft from its headwaters to its confluence with the Marias River.

AUTH: 87-1-303, MCA

IMP: 87-1-303, MCA

NEW RULE VII YELLOWSTONE RIVER (1) Yellowstone River is closed to motorized watercraft, except any motorized watercraft powered by 10 horsepower or less, from Yellowstone National Park to Reed Point from July 15 to September 15.

(2) Yellowstone River is closed to use of personal watercraft from Highway 89 Bridge to Reed Point.

(3) Stream tributaries of the Yellowstone River are closed to motorized watercraft, except any motorized watercraft powered by 10 horsepower or less, from Yellowstone National Park to the confluence with Clarks Fork Yellowstone River.

AUTH: 87-1-303, MCA

IMP: 87-1-303, MCA

NEW RULE VIII CLARKS FORK YELLOWSTONE RIVER (1) Clarks Fork Yellowstone River is closed to motorized watercraft, except any motorized watercraft powered by 10 horsepower or less, from the Wyoming border to the confluence with the Yellowstone River.

AUTH: 87-1-303, MCA

IMP: 87-1-303, MCA

NEW RULE IX STILLWATER RIVER (1) Stillwater River is located in Stillwater County.

(2) Stillwater River is closed to motorized watercraft, except any motorized watercraft powered by 10 horsepower or less, from the Custer National Forest to the confluence with the Yellowstone River.

AUTH: 87-1-303, MCA

IMP: 87-1-303, MCA

NEW RULE X BOULDER RIVER (1) Boulder River is closed to motorized watercraft, except any motorized watercraft powered by 10 horsepower or less, from the Park County line to its confluence with the Yellowstone River.

AUTH: 87-1-303, MCA

IMP: 87-1-303, MCA

REASON: The commission received a petition submitted by Backcountry Hunters and Anglers titled the Quiet Waters Initiative. The petition states Montana has experienced advanced motorized technology on its waterways penetrating waters thought to be unusable to motorized watercraft in the past. These high performance watercraft threaten traditional uses or are capable of penetrating previously quiet waters. The commission initiated rulemaking on the petition at their May 12, 2016 meeting stating that the commission should consider being proactive instead of reactive to the changes in recreation on Montana's waterways to avoid conflicts and protect traditional and safe recreational uses.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Department of Fish, Wildlife and Parks, Attn: Quiet Waters Petition, P.O. Box 200701, Helena, Montana, 59620-0701; or e-mail QuietWaters@mt.gov, and must be received no later than January 13, 2017.

6. Jessica Snyder or another hearing officer appointed by the department has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be made by completing the request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works 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.

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

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and adoption of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Rebecca Dockter
Rebecca Dockter
Rule Reviewer

/s/ Dan Vermillion
Dan Vermillion
Chairman
Fish and Wildlife Commission

Certified to the Secretary of State November 14, 2016.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of) AMENDED NOTICE OF PUBLIC
ARM 37.95.162, 37.95.622, and) HEARING ON PROPOSED
37.95.703 pertaining to annual) AMENDMENT
training requirements for child care)
facilities)

TO: All Concerned Persons

1. On September 23, 2016, the Department of Public Health and Human Services published MAR Notice No. 37-769 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1649 of the 2016 Montana Administrative Register, Issue Number 18.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on November 28, 2016, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. It has come to the department's attention that the original proposed amendments that require orientation and on-going training as well as CPR and First Aid for child care providers and caregivers did not include legally certified providers. The Child Care and Development Block Grant Act of 2014 (CCDBG) requires legally certified providers to complete these training requirements. The proposed supplemental language is necessary in order to meet the CCDBG requirements.

4. ARM 37.95.162 remains as proposed, but with the following changes to the original proposal, new matter underlined, deleted matter interlined:

37.95.162 DAY CARE FACILITIES: TRAINING (1) through (5) remain as proposed.

(6) Each legally certified provider must complete:

(a) the orientation training described in (2) within 90 days of approval. The orientation training may count toward the first year of continuing education and training;

(b) eight hours of training annually; and

(c) infant, child, and adult CPR, infant choking response, and standard first aid. Course completion means direct instruction which includes the practice and

demonstrated applications of CPR methods as taught by instructors from accredited entities.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

5. The statement of reasonable necessity is being amended as follows, new matter underlined:

ARM 37.95.162

At page 1653 of the proposal notice, the following text is being added after paragraph four:

The department proposes adding new language under (6) to require legally certified providers to participate in training and completion of CPR and first aid. The Child Care and Development Block Grant Act of 2014 (CCDBG) requires legally certified providers to complete these training requirements.

6. ARM 37.95.622 and 37.95.703 remain as proposed.

7. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Kenneth Mordan, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on December 5, 2016. The department has extended the comment period ten days. Comments may also be faxed to (406) 444-9744 or e-mailed to dphhslegal@mt.gov.

/s/ Francis X. Clinch
Francis X. Clinch, Chief Counsel
Rule Reviewer

/s/ Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State November 14, 2016.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

| | | |
|-------------------------------------|---|-----------------------------|
| In the matter of the amendment of |) | NOTICE OF PUBLIC HEARING ON |
| ARM 37.62.501, 37.62.705, |) | PROPOSED AMENDMENT AND |
| 37.62.945, 37.62.1101, 37.62.1103, |) | REPEAL |
| 37.62.1115, 37.62.1117, 37.62.1301, |) | |
| 37.62.1317, 37.62.1501, 37.62.1503, |) | |
| 37.62.1505, 37.62.1701, 37.62.1705, |) | |
| 37.62.1707, 37.62.2103, and |) | |
| 37.62.2119, and the repeal of ARM |) | |
| 37.62.1107, 37.62.1119, 37.62.1905, |) | |
| and 37.62.1907 pertaining to |) | |
| updating child support enforcement |) | |
| rules |) | |

TO: All Concerned Persons

1. On December 15, 2016, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on December 7, 2016, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.62.501 TERMS AND CONDITIONS (1) and (2) remain the same.

(3) To receive and to continue to receive CSED services under 40-5-205, MCA, a customer must:

(a) through (h) remain the same.

(i) except for the information available through the CSED's voice response unit (VRU) or the CSED's ~~customer services unit~~ online payment lookup web site, submit all requests for specific case information in writing to the CSED. In making any request for information, the customer must provide sufficient information to identify the customer as the person or entity entitled to receive the information.

(4) through (6) remain the same.

(7) ~~Except as provided in (9) of this rule, a~~ A customer cannot specify which of the CSED services that customer may want to receive. The CSED will determine which services are appropriate and the timing and duration of those services in accordance with Title IV-D of the Social Security Act, and the regulations promulgated thereunder.

(8) and (9) remain the same.

~~(10) Unless the customer is an obligee whose child is receiving medicaid benefits or is covered by the medicaid program, the CSED shall, upon receipt of a written request from the customer, refrain from the establishment or enforcement of health insurance orders.~~

(11) through (13) remain the same, but are renumbered (10) through (12).

AUTH: 40-5-202, MCA

IMP: 40-5-203, MCA

37.62.705 FEE SCHEDULE (1) As authorized by 40-5-210, MCA, the CSED adopts the following schedule:

(a) for each person, including the child, submitted or resubmitted for paternity blood testing, ~~a standardized fee of \$81.00 at the contract rate;~~

~~(b) for mileage, each way and for each mile, when using a personal or state owned automobile to travel for in-person appearances at judicial or administrative hearings or trials as witness, hearing officer, CSED attorney or other CSED representative, a mileage allowance at a rate equal to the mileage allotment allowed by the United States internal revenue service for the preceding year;~~

~~(c) for meals and lodging associated with travel for in-person appearances at judicial or administrative hearings or trials as witness, hearing officer, CSED attorney or other case prosecutor, a meal and lodging allowance as provided in 2-18-501, MCA;~~

~~(d) for time, effort and expenses in responding to petitions for judicial review including making typed transcriptions of hearing record and preparing briefs, a standardized fee of \$250.00;~~

~~(e) for deposing or taking the deposition, including stenographic recording, and the taking of audio visual depositions, of a witness who resides more than 100 miles from the place of administrative hearing or who is unable to personally attend an administrative hearing because of age, illness, infirmity or imprisonment, a fee equal to actual cost incurred;~~

~~(f) for subpoena of a witness to personally appear at an administrative hearing, a fee equal to the actual amount paid to the witness as provided in 2-4-104, MCA, and recoverable under 25-10-201, MCA;~~

~~(g) for each hour in taking a responsive or corrective action in an existing judicial proceeding or in commencing an independent judicial action to set aside, declare void or vacate any order, decree or judgment in which the CSED is not a party or is not joined as a party to the action as provided by the rules of civil procedure and which purports to affect, expressly or implicitly, any right or interest of the CSED, a standardized fee of \$75.00 for each CSED attorney and a standardized fee of \$50.00 for each CSED investigator; and~~

~~(h) (b) for other actual costs and actual expenses incurred by the CSED: in a judicial proceeding, as awarded by the court; and~~

~~(i) for each payment of support distributed to an obligee, whether by warrant, electronic funds transfer, direct deposit in a financial institution or by any other means a fee may be assessed. For each distribution, the fee shall be no greater than \$7.00, or 10% of the distribution, whichever is less. This fee may be assessed against the individual or entity receiving CSED services. If the obligee or another state is receiving CSED services, the fee may be deducted from the support collection, before distribution. The total fee incurred against an individual or entity for payment distribution alone shall not exceed \$364.00 per year, per case. The payment distribution fee may be assessed over and above any other fee permitted by this rule. However, the payment distribution fee only applies to distributions made in cases being enforced by the CSED under Title IV-D of the Federal Social Security Act.~~

~~(j) (c) a fee of \$25.00 for each application for non-assistance related services. This fee shall be collected from the applicant at the time of application in the form of a cashier's check or money order. If the appropriate fee is not included with the application, the CSED will not open or reopen the case until such fee is paid. The fee shall be \$25.00 for an individual whose annual household income is at least \$20,000. The fee shall be \$15.00 for an individual whose annual household income is at least \$10,000, but less than \$20,000. The fee shall be \$5.00 for an individual whose annual household income is less than \$10,000. If the applicant misrepresents or errs in reporting annual household income, the CSED may assess an additional application fee against the applicant at any time. The additional fee shall be the difference between the amount which was paid at the time of application, and the amount that would have paid for the application if there had been no misrepresentation or error of annual household income.~~

~~(2) remains the same.~~

~~(3) Whenever the CSED is the prevailing party in an action or whenever the CSED is not a party to an action but incurs expenses and costs related to an action maintained by any other party, the fees in (1)(b) through (h) shall be assessed to the party whose act, failure to act, negligence or omission caused the CSED to incur the costs and expenses which are the basis for these fees.~~

~~(4) In addition to the fees charged in (1), the CSED will charge fees to review and modify child support orders as follows:~~

~~(a) for a determination that a review is not appropriate or modification consent order entered prior to a review hearing, no fee; or~~

~~(b) for entry of a modification order resulting from a stipulated agreement obtained during review hearing, a fee of \$200.00 assessed to the party or parties requesting the review hearing; or~~

~~(c) if the parties are unable to agree following a review hearing and the matter is submitted for arbitration, for entry of a modification order based on the arbitrator's recommendation, a fee of \$550.00 assessed to the party or parties who failed to stipulate to a negotiated support order during the review hearing; or~~

~~(d) if the arbitrator's recommendation is disputed and a modification hearing is requested, for entry of a modification order subsequent to the modification~~

hearing, a fee of \$750.00 to be assessed against the party or parties requesting the hearing; and

~~(e) if a fee under (4)(b) through (d) is assessed to more than one party, the fee shall be apportioned equally between those parties; and~~

~~(f) for each party who requests a review hearing, arbitration or modification hearing and then withdraws from the requested proceeding after the CSED has prepared documents necessary to initiate the proceeding, a handling fee of \$50.00.~~

~~(5) Under some circumstances, fees assessed to a party with low income under (4)(b) through (e) may be reduced. To determine if a reduction is appropriate, the CSED will refer to the child support determination worksheet (form CS-404A) prepared as part of the review and modification process. The CSED will then divide the figure shown on the worksheet for income available for children by the personal allowance. If the resultant number is greater or equal to 50%, no reduction of the fee is appropriate. If the resultant number is less than 50%, it shall be doubled and multiplied by the amount of the fee. The number determined by this process is the reduced fee amount to be assessed to the low income party.~~

~~(6) remains the same, but is renumbered (3).~~

~~(7) (4)~~ In no case may a fee authorized under this rule be charged to or collected from a person while that person is a recipient of public assistance in Montana unless federal regulations pertaining to operation of the Title IV-D program allow the charging or collection of that fee. Fees will not be charged to individuals receiving a FAIM financial assistance cash grant under the federal TANF (Temporary Assistance to Needy Families) Block Grant in Montana.

~~(8) and (9) remain the same, but are renumbered (5) and (6).~~

AUTH: 40-5-202, 40-5-210, MCA

IMP: 40-5-210, MCA

37.62.945 PROCEDURE AT HEARING (1) through (9) remain the same.

(10) The ALJ shall cause the hearing to be recorded ~~on audio tape~~ at the CSED's expense. The CSED is not required to prepare a transcript at its own expense. Any interested person, at the person's expense, may request a typed transcription of the ~~tape~~ recording or may cause additional audio, video, or stenographic recordings to be made during the hearing if the making of additional recordings does not cause distraction or disruption.

(11) remains the same.

AUTH: 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825, 40-5-906, MCA

IMP: 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824, 40-5-906, MCA

37.62.1101 DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) and (2) remain the same.

(3) "Notice" means a notice of ~~intent to withhold income~~ withholding issued pursuant to 40-5-413, MCA.

(4) remains the same.

AUTH: 40-5-405, MCA

IMP: 40-5-401, 40-5-402, 40-5-403, 40-5-404, 40-5-405, 40-5-411, 40-5-412, 40-5-413, 40-5-414, 40-5-415, 40-5-416, 40-5-417, 40-5-418, 40-5-421, 40-5-422, 40-5-423, 40-5-424, 40-5-431, 40-5-432, 40-5-433, 40-5-434, MCA

37.62.1103 WITHHOLDING ENTITY (1) The CSED is hereby designated the "~~income withholding entity~~ state disbursement unit" pursuant to 42 USC 666(b)(5).

AUTH: 40-5-405, MCA

IMP: 40-5-401, 40-5-402, 40-5-403, 40-5-404, 40-5-405, 40-5-411, 40-5-412, 40-5-413, 40-5-414, 40-5-415, 40-5-416, 40-5-417, 40-5-418, 40-5-421, 40-5-422, 40-5-423, 40-5-424, 40-5-431, 40-5-432, 40-5-433, 40-5-434, MCA

37.62.1115 EFFECT OF HARDSHIP DETERMINATION (1) through (3) remain the same.

(4) Whenever the CSED has determined that a hardship adjustment is appropriate, it shall issue ~~an~~ a withholding order, or a modification of an existing withholding order, which reflects the hardship adjustment. No order may be issued for the withholding of less than:

(a) the amount of current support plus ~~\$25.00 per month~~ the monthly hardship payment determined by the CSED if the obligor owes an ongoing current support obligation; or

(b) ~~\$25.00 per month~~ the monthly hardship payment determined by the CSED if the obligor's current support obligation has terminated.

(5) remains the same.

AUTH: 40-5-405, MCA

IMP: 40-5-416, MCA

37.62.1117 PROCEDURES FOR DETERMINING HARDSHIP ADJUSTMENTS (1) The CSED will use the following procedures as a guideline for the exercise of its discretion in determining hardship adjustments:

(a) ~~The obligor must request a review of the case in writing. Such~~ The review will determine if the obligor is eligible for a reduction of the amount which would normally be withheld to defray the support delinquency and interest, if any.

(b) The review will be conducted ex parte by the CSED's regional office based ~~solely upon the financial affidavit and supporting documents, if any, provided by the obligor. Since financial hardship may affect all members of the obligor's current household, the financial affidavit must include information pertaining to everyone residing with the obligor~~ on financial information provided by the obligor or obtained from other sources.

(c) The standard for review will be the application of a formula developed by the CSED, ~~which takes into consideration the total net income and assets of the obligor and his current household, the United States poverty index promulgated each year by the United States Department of Health and Human Services, the actual amount of allowable special expenses described in ARM 37.62.1113, and other support obligations actually being paid by the obligor.~~ The CSED will, upon request, provide copies of the formula to any interested person.

(d) The CSED will determine the length of time the hardship adjustment will continue, ~~based on the information provided by the obligor.~~ The hardship adjustment will terminate at the end of the determined period, or cessation of the hardship condition, whichever occurs first. In the event the hardship condition continues after the end of such period, it shall be the obligor's duty to request further review at that time.

(e) remains the same.

(f) If a request for further review is received, the division administrator or designee will review the previous determination and make an independent determination based on ~~the documents and affidavits provided by the obligor,~~ and upon all other relevant considerations. The decision of the division administrator or designee will be final for all purposes.

(g) remains the same.

AUTH: 40-5-405, MCA

IMP: 40-5-416, MCA

37.62.1301 PURPOSE STATEMENT (1) The purpose of this subchapter is to facilitate the implementation of the process to suspend licenses for nonsupport as provided in 40-5-701, et seq., MCA, or failure to comply with a subpoena or warrant, and establishing criteria for claiming hardship and requesting an immediate stay of suspension.

AUTH: 40-5-713, MCA

IMP: 40-5-713, MCA

37.62.1317 CONTESTED CASE HEARING PROCEDURES (1) Except as otherwise provided in these rules or the authorizing statutes, administrative hearings shall be requested and conducted as provided in ARM Title 46 37, chapter 30 62, subchapter 6 9.

AUTH: 40-5-713, MCA

IMP: 40-5-703, 40-5-713, MCA

37.62.1501 OFFSET OF STATE TAX REFUNDS AND OTHER PAYMENTS FOR CHILD SUPPORT DEBTS COLLECTED BY CHILD SUPPORT AGENCY

(1) The CSED will notify the ~~state auditor~~ Department of Revenue as provided for by 17-4-105, MCA, of any past due debt resulting from or relating to a child support obligation owing to or collected by the state under Title IV-D of the Social Security Act. The debt must have accrued through a written contract, court

judgment, or administrative order, or a distribution the recipient was not entitled to retain as described in 40-5-910, MCA, and shall be for a definite amount of money due and owing for support of a child, or for the repayment of support monies retained contrary to an assignment under 53-2-613, MCA, or for the costs or fees due under any contract, judgment or administrative order to or collected by the state under Title IV-D of the Social Security Act.

(2) remains the same.

(3) All cases which have a past due debt resulting from or relating to a child support obligation owing to or collected by the state under Title IV-D of the Social Security Act will be referred to the ~~state auditor~~ Department of Revenue for tax debt offset ~~except when there is a court order, administrative order, or written agreement of record which sets a payment schedule for the payment of the past due debt with which the taxpayer is in compliance and the order or agreement must also exclude tax offset, either expressly or implicitly.~~

AUTH: 17-4-105, MCA

IMP: 17-4-105, MCA

37.62.1503 NOTICE OF STATE TAX REFUNDS AND OTHER PAYMENTS OFFSET FOR CHILD SUPPORT DEBTS COLLECTED BY CHILD SUPPORT AGENCY

(1) After the ~~d~~Department of ~~r~~Revenue gives written notice of a pending offset as provided by 17-4-105(2), MCA, and the taxpayer desires to contest the proposed offset, the taxpayer must request a hearing in accord with 17-4-105(4), MCA, and ARM 46.30.604 42.10.506 and 42.10.507 following the day the notice was mailed to the taxpayer.

AUTH: 17-4-105, MCA

IMP: 17-4-105, MCA

37.62.1505 CHILD SUPPORT OFFSET OF JOINT RETURN (1) If the refund or other payment to be offset is a joint return, the spouse who does not owe the ~~child support obligation to be collected by the Title IV-D agency ("injured spouse")~~ may object pursuant to the procedures set forth in ~~ARM 42.16.107~~ 42.15.326 through ~~42.16.109~~ 42.15.329 to having his or her share of the refund applied against the child support obligation. Under those procedures, an adjustment will be made to the joint tax return reflecting that portion of the return by the Department of Revenue that is attributable to the taxpayer who owes the ~~child support arrearages~~ obligation and only that portion will be offset.

(2) remains the same.

AUTH: 17-4-105, MCA

IMP: 17-4-105, MCA

37.62.1701 NOTICE ON INTENT TO REPORT (1) The notice of intent to report a support debt to a consumer reporting agency required by 40-5-261, MCA, may be given by incorporating a statement of such intent in the notices generally

served on ~~obligers~~ obligors under 17-4-103, 40-5-208, 40-5-222, ~~40-5-223~~, 40-5-225, 40-5-232, 40-5-413, 40-5-702, MCA, and 45 CFR 303.72 as amended.

AUTH: 40-5-262, MCA

IMP: 40-5-261, MCA

37.62.1705 AMOUNTS TO BE REPORTED (1) The CSED will report to the consumer reporting agency only those support debts when:

(a) the amount of the debt retainable by the CSED for the reimbursement of ~~AFDC~~ assigned public assistance expenditures is ~~a sum of \$150.00 or greater~~ an amount equal to at least seven times the monthly current support; or

(b) the amount of the debt owing to an obligee is ~~the sum of \$500.00 or greater~~ an amount equal to at least seven times the monthly current support.

(2) remains the same.

AUTH: 40-5-262, MCA

IMP: 40-5-261, MCA

37.62.1707 CONTESTING ACCURACY OF REPORTED INFORMATION

(1) After service of notice specified in ~~ARM 46.30.504~~ 37.62.1701 which contains a statement of intent to report a support debt to a consumer reporting agency, the obligor may contest the accuracy of the intended report during a hearing conducted pursuant to the notice.

(2) Except as provided in (3) ~~of this rule~~, at any time after a reinvestigation conducted by support debt is reported to a consumer reporting agency, an obligor dissatisfied with the results of the reinvestigation may request an administrative hearing to contest the accuracy of the support debt. Except as provided in (3) no hearing shall be denied for lack of timely request.

(3) An obligor may not be granted a hearing to contest the accuracy of a support debt whenever the amount of the debt:

(a) remains the same.

(b) was at issue under a notice served upon the obligor under 40-5-222, 40-5-223, 40-5-225, 40-5-232, ~~and~~ 40-5-413, and 40-5-702, MCA, and the obligor either failed to timely request a hearing or failed to appear at a scheduled hearing.

AUTH: 40-5-262, MCA

IMP: 40-5-261, MCA

37.62.2103 AVAILABILITY OF REVIEW (1) For purposes of 40-5-272(4)(a), MCA, a substantial change in circumstances includes, but is not limited to:

(a) an increase or decrease of at least 30% in a parent's income for child support, as defined by the Montana child support guidelines, ~~ARM 37.62.106(1)~~ 37.62.105(1);

(b) through (e) remain the same.

(2) The CSED will deny a request for review of a support order if any of the following conditions exist:

(a) less than 36 months have elapsed from the date that the existing support order was entered, an administrative hearing was granted under 40-5-277, MCA, or an administrative order was issued which denied a modification because of the applicant's failure to meet one of the criteria described in 40-5-208(2)(b) or 40-5-272, MCA, and no substantial change of circumstances has occurred;

(b) through (g) remain the same.

AUTH: 40-5-202, MCA

IMP: 40-5-202, MCA

37.62.2119 MODIFICATION HEARING (1) through (4) remain the same.

(5) The order shall be effective the first day of the month following the issuance of the Notice of Proposed Modification, or as determined by a district court. If the modification result is a lowered child support obligation, all payments received during the pendency of the modification action shall be credited against the new obligation, and amounts exceeding the modified obligation shall be applied first to outstanding arrearages, fees, and fines. Any amount remaining after such credits shall be applied to future child support by reducing the amount of child support collected under the new order for no more than six months, or before the order terminates, whichever comes first. Parties may agree to an alternate schedule. No refunds shall be available from the CSED.

AUTH: 40-5-202, MCA

IMP: 40-5-202, 40-5-272, 40-5-273, MCA

4. The department proposes to repeal the following rules:

37.62.1107 EFFECT OF DELAY OR CONTINUANCE Found on page 37-13843 of the Administrative Rules of Montana.

AUTH: 40-5-405, MCA

IMP: 40-5-401, 40-5-402, 40-5-403, 40-5-404, 40-5-405, 40-5-411, 40-5-412, 40-5-413, 40-5-414, 40-5-415, 40-5-416, 40-5-417, 40-5-418, 40-5-421, 40-5-422, 40-5-423, 40-5-424, 40-5-431, 40-5-432, 40-5-433, 40-5-434, MCA

37.62.1119 UNCLAIMED COLLECTIONS Found on page 37-13855 of the Administrative Rules of Montana.

AUTH: 40-5-405, MCA

IMP: 40-5-401, 40-5-402, 40-5-403, 40-5-404, 40-5-405, 40-5-411, 40-5-412, 40-5-413, 40-5-414, 40-5-415, 40-5-416, 40-5-417, 40-5-418, 40-5-421, 40-5-422, 40-5-423, 40-5-424, 40-5-431, 40-5-432, 40-5-433, 40-5-434, MCA

37.62.1905 REQUEST FOR HEARING Found on page 37-14005 of the Administrative Rules of Montana.

AUTH: 40-5-202, MCA

IMP: 40-5-208, MCA

37.62.1907 AMOUNT OF MONETARY SANCTION Found on page 37-14007 of the Administrative Rules of Montana.

AUTH: 40-5-202, MCA

IMP: 40-5-208, MCA

5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes to amend ARM 37.62.501, 37.62.705, 37.62.945, 37.62.1101, 37.62.1103, 37.62.1115, 37.62.1117, 37.62.1301, 37.62.1317, 37.62.1501, 37.62.1503, 37.62.1505, 37.62.1701, 37.62.1705, 37.62.1707, 37.62.2103, and 37.62.2119; and repeal ARM 37.62.1107, 37.62.1119, 37.62.1905, and 37.62.1907. These rules were reviewed as a part of the department's periodic review of Chapter 62. The department subsequently determined that several existing rules contain obsolete references to statutes, rules, and technology (such as references to tape recordation), document references, and procedures. Except as described in greater detail below, the proposed rule amendments are necessary for the department to meet its statutory responsibility to state clear and specific administrative rule authority through which the department administers its child support enforcement services.

ARM 37.62.1115 and 37.62.1117

The department proposes amending ARM 37.62.1115 and 37.62.1117 regarding hardship relief, after the department received feedback and analyzed its procedures. The amendments are necessary because it is a responsibility of the department, where possible, to simplify procedures for both caseworkers and obligated parents.

ARM 37.62.1705 and 37.62.1707

The department also proposes amendments to ARM 37.62.1705 and 37.62.1707, which are necessary to be consistent with the holding of the Montana Supreme Court in its decision of *Kenck v. State*, 373 Mont. 168, 315 P.3d 957 (2013) regarding credit reporting and the distinction between acknowledged child support arrearages and bad debt owed to the CSED.

ARM 37.62.2103 and 37.62.2119

The department proposes amending ARM 37.62.2103 and 37.62.2119 regarding child support order modification procedures. The department finds through its experiences in modification hearings and judicial review of its administrative proceedings, that flexibility in these administrative rules is necessary to accommodate child support modification directives from a district court, which may differ from the results currently described in the rules. These rule amendments, if

adopted, give the necessary deference, and flexibility, to a district court's authority to rule in these matters.

ARM 37.62.705

The department proposes amending ARM 37.62.705, which is the department's fee schedule rule for child support. The rule requires amendment to eliminate most fees because the department originally adopted an extensive fee schedule to address the payment of various costs related to child support enforcement matters, many of which have never been utilized. The resulting amendments will simplify the schedule. Further, the fee department proposes amending the fee for nonpublic assistance application to a single flat fee instead of the sliding-scale fee. The department contends the flat fee is more equitable to all and is less cumbersome to administer than the current fee schedule calculation methodology.

ARM 37.62.1107

The department proposes to repeal ARM 37.62.1107. The necessity for the rule's repeal lies in that the rule conflicts with 40-5-414(6), MCA. The purpose of the rule was to allow additional time for the ALJ to issue a decision if a continuance was requested and was based on a prior version of 40-5-414, MCA, which required a hearing decision within 45 days of the date the notice was served. The statute was amended to provide for a decision within 60 days "...after a hearing is held, any post-hearing briefs are received, and all evidence has been provided..." unless good cause is shown. The statutory change cured the problem by requiring an ALJ decision within 60 days after hearing and obviates the need for the rule.

ARM 37.62.1119

The department proposes to repeal ARM 37.62.1119, concerning unclaimed collections, which is necessary because the rule reflects outdated technology and processes. This rule was adopted to implement statutory changes in 40-4-204(5) and 40-6-116(8), MCA, to handle the influx of income withholding funds before the CSED received an application for Title IV-D services. When the statutory provisions were amended out of the law as being unworkable, the rule became moot and its repeal necessary.

ARM 37.62.1905

The department proposes to repeal ARM 37.62.1905. The rule conflicts with 40-5-821, MCA, which requires a hearing before any penalty can be assessed, as a show cause procedure. The rule currently also requires the obligated parent to request a hearing, which is not necessary, because a hearing is set as a part of the show cause. Thus, the rule proposes a remedy that is unnecessary and redundant.

ARM 37.62.1907

The department proposes to repeal ARM 37.62.1907, regarding sanctions for lack of medical insurance support, which is necessary as the sanctions of \$25 per day are provided in 40-5-821, MCA, and the rule provides a conflicting amount. The rule's conflict with existing law necessitates its repeal.

FISCAL IMPACT

The only proposed rule amendments with anticipated fiscal impact are the proposed changes to the fee schedule in ARM 37.62.705. The proposed change collapses the graduated application fee schedule into a single rate for all applicants. It is expected that this would result in an extremely modest increase in program income.

Based on program history, the increase would affect approximately 470 applicants, and would increase income approximately \$6,600.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., December 23, 2016.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. 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 that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works 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.

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

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Caroline Warne
Caroline Warne, Attorney
Rule Reviewer

/s/ Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State November 14, 2016.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

| | | |
|--|---|-----------------------------|
| In the matter of the adoption of New |) | NOTICE OF PUBLIC HEARING ON |
| Rules I through V, the amendment of |) | PROPOSED ADOPTION, |
| ARM 42.12.105, 42.12.106, |) | AMENDMENT, TRANSFER AND |
| 42.12.133, 42.12.209, 42.12.302, |) | AMENDMENT, AND REPEAL |
| 42.12.401, 42.13.111, 42.13.405, |) | |
| 42.13.601, and 42.13.802, the |) | |
| transfer and amendment of ARM |) | |
| 42.12.134, 42.12.135, 42.12.136, |) | |
| 42.12.137, and 42.13.138, and the |) | |
| repeal of ARM 42.12.122, 42.12.126, |) | |
| 42.12.139, 42.12.213, 42.12.312, |) | |
| 42.12.314, 42.13.301, 42.13.304, |) | |
| 42.13.305, 42.13.602, and 42.13.805 |) | |
| pertaining to the premises suitability |) | |
| requirements and conditions for |) | |
| operating all types of alcoholic |) | |
| beverage licenses |) | |

TO: All Concerned Persons

1. On December 15, 2016, at 1 p.m., the Department of Revenue will hold a public hearing in the Liquor Warehouse Conference Room, located at 2517 Airport Road, Helena, Montana, to consider the proposed adoption, amendment, transfer and amendment, and repeal of the above-stated rules.

2. The Department of Revenue 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 p.m. on December 5, 2016, to advise us of the nature of the accommodation you need. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY. The department conducted a thorough evaluation of its rules related to the suitability and condition requirements for operating the different types of alcoholic beverage licenses located in ARM Title 42, chapters 12 and 13, and determined that it was reasonably necessary to update the rules to provide better guidance to prospective and current licensees by eliminating redundant and outdated information; adding more detailed information where needed; and reorganizing the rules in a manner that places the subject matters more closely together by license type for ease of locating.

The proposed rulemaking actions in this notice include the placement of the suitability requirements for all license types together in ARM Title 42, chapter 12,

and the placement of the condition requirements for all license types together in ARM Title 42, chapter 13. In all, the department proposes adopting five new rules, amending ten rules, amending and transferring five additional rules, and repealing eleven rules.

Numerous actions being proposed in this notice are interrelated. For example, the five proposed new rules consist of information currently found in ARM 42.12.122, a general "suitability of premises" rule, but the new rules will provide this information separately, by license type, and with more detail. The proposed actions also include amending and transferring five rules currently located in ARM Title 42, chapters 12 and 13, to achieve a similar result for rules covering the "conditions for operating" the different license types. Additional proposed actions cover changes to other rules impacted by the relocation of the "premises suitability" and "conditions for operating" language. Among the other actions included in this notice are the amendment of four and repeal of two definition rules.

In addition to reorganizing the information in ARM Title 42, chapters 12 and 13, there are new provisions being proposed in some of the rules. Therefore, while this general statement of reasonable necessity covers the basis for the following proposed rule actions, it is supplemented where necessary to explain any provisions being included in a rule that were not previously located elsewhere in an existing rule.

With regard to any premises suitability requirements that were not previously in rule, the department is not requiring licensees to come into immediate compliance. Rather, current licensees would be required to comply when there is a change in location, alteration, or transfer of ownership interest in an existing license requiring the vetting of a new party pursuant to 16-4-401, MCA.

4. The rules proposed to be adopted provide as follows:

NEW RULE I ON-PREMISES CONSUMPTION BEER AND ALL-BEVERAGE LICENSE - PREMISES SUITABILITY REQUIREMENTS (1) The department shall determine the suitability of the premises where an on-premises consumption beer or all-beverage retailer proposes to operate a license when a party applies to obtain a license, transfer ownership interest in an existing license requiring the vetting of a new party pursuant to 16-4-401, MCA, change the location where a license will be operated, or make alterations to a premises with a floor plan that the department approved.

(2) The premises of an on-premises consumption beer or all-beverage retailer may be considered suitable only if:

(a) the applicant or licensee has possessory interest in the premises and the land upon which the premises are located;

(b) the applicant or licensee has adequate control over the premises;

(c) a single alcoholic beverage license of any kind will be operated at the premises;

(d) the premises are identified by a unique address;

(e) the premises are located in one building or a specific portion of one building, except that a patio/deck may extend the premises beyond the interior portion of the building. The interior portion of the premises must be a continuous

area that is not broken by any area in which the applicant or licensee does not have adequate control, such as another business or a common area shared with other building tenants. Subject to the exception in 16-3-311(2), MCA, if the premises are located in a portion of a building, the premises must be separated by permanent floor-to-ceiling walls from any other business, including any other business operated by the licensee. The only access from the premises to another business may be through a single lockable door, no more than six feet wide, in the permanent floor-to-ceiling wall. An additional lockable door in the permanent floor-to-ceiling wall may be allowed only upon department approval;

(f) building, health, and fire code approval is obtained;

(g) the premises are located on regular police beats and can be properly policed by local authorities, which includes the premises being located on property to which law enforcement has unrestricted access;

(h) the premises are not located where a local government ordinance prohibits the sale of alcoholic beverages;

(i) the premises are either solely dedicated to the on-premises consumption of alcoholic beverages or are within a business directly related to the on-premises consumption of alcoholic beverages;

(j) the type of business is readily determinable due to indoor and outdoor signage and the premises' general layout and atmosphere;

(k) alcoholic beverages are advertised and displayed as being available for purchase;

(l) there are no signs, posters, or advertisements displayed on the exterior portion of the premises that identify an alcoholic beverage manufacturer, importer, wholesaler, or distributor in any manner. This prohibition extends to buildings adjacent to the premises only if the retailer has possessory interest in the building. This prohibition does not apply to temporary advertisements allowed under 16-3-244, MCA;

(m) the floor plan accurately states the dimensions of the premises, includes the entity name, alcoholic beverage license number, physical address, and date and identifies any service area, seating required under (o), stationary drink preparation area, storage area, patio/deck, perimeter barrier, permanent floor-to-ceiling wall required between the premises and another business, off-premises sales area, and separation barrier required between the on-premises and off-premises sales areas;

(n) the interior premises include at least one stationary drink preparation area. The premises may have more than one drink preparation area, including drink preparation areas on the patio/deck and moveable drink preparation areas, subject to department approval;

(o) the interior premises include a service area containing not less than twelve seats, exclusive of any seats at gambling machines;

(p) there is interior access to any interior portion of the premises;

(q) all storage areas are located in the interior portion of the premises;

(r) alcoholic beverages will not be sold through a drive-up window;

(s) except as provided for in (t), the physical layout and equipment utilized prevent the self-service of alcoholic beverages. This includes a prohibition against the service of alcoholic beverages through self-service devices and vending machines. Reach-in coolers and open shelving are prohibited unless they are

located in a drink preparation area and the department determines that sufficient physical safeguards are in place to prevent the self-service of alcoholic beverages; and

(t) any off-premises sales area is contiguous with the on-premises sales area and there is a separation barrier between the off-premises sales area and the on-premises sales area. The off-premises sales area may contain reach-in coolers and open shelving. It must include a cash register or other equipment for conducting sales transactions.

(3) The premises may have a patio/deck. A patio/deck may be considered suitable only if:

(a) building, health, and fire code approval is obtained;

(b) subject to the exception in (c), the patio/deck is contiguous with and immediately accessible from the interior premises;

(c) any path connecting the interior premises and the patio/deck is under the possessory interest of the licensee, is clearly marked, and the department determines that sufficient physical safeguards are in place to ensure proper service and consumption of alcoholic beverages; and

(d) with the exception of a patio/deck at a golf course, a perimeter barrier clearly marks where the service and consumption of alcoholic beverages are allowed.

(4) The premises must meet and maintain compliance with all suitability standards in place at the time the premises are inspected. The department may, at any time, verify that the premises remain in compliance with all suitability standards in place at the time the suitability of the premises was last determined. Upon determining that the premises do not meet all applicable suitability standards, the department may deny an application or take administrative action against a licensee, including license revocation.

(5) The privileges granted under a license extend only to the premises depicted in the floor plan approved by the department. The licensee shall follow the process in ARM 42.13.106 for a premises alteration.

AUTH: 16-1-303, MCA

IMP: 16-3-244, 16-3-309, 16-3-311, 16-4-402, 16-4-405, MCA

REASON: In addition to the proposed actions included in the general statement of reasonable necessity at the beginning of this notice, which covers the proposed adoption of a new rule to provide the premises suitability requirements for on-premises consumption beer and all-beverage licensees in a single location, the department proposes including the following new provisions in New Rule I.

A premises may encompass an interior portion of a building as well as an exterior patio/deck. To ensure the licensee has sufficient control over the entire premises, (2)(a) proposes to require the licensee to have possessory interest in the premises and the land upon which the premises are located.

The proposed requirement for adequate control over the premises in (2)(b) ensures the licensee can effectively manage the sale, service, and consumption of alcoholic beverages to prevent self-service, overconsumption, and consumption by underage persons. For example, a licensee would not have adequate control over a

common area shared with other building tenants because the licensee would not have exclusive authority to govern the conduct in these areas. Accordingly, such areas cannot be part of the premises.

Subsection (2)(d) proposes to require the premises to be identified by a unique address. This requirement was formally included in the definition of "premises" in ARM 42.13.111, which is also proposed to be amended in this notice. A unique address is required to ensure the proposed location does not share its premises with another alcoholic beverage establishment and that required floor-to-ceiling walls exist between the alcoholic beverage business and any other business. These measures work to ensure that the licensee will have adequate control over the premises.

Subsection (2)(e) proposes to require the interior portion of the premises to be a continuous area and provides examples of situations that would not meet this requirement. Such examples demonstrate insufficient control of the area to ensure the responsible possession and consumption of alcoholic beverages to protect public safety. Subsection (2)(e) also requires floor-to-ceiling walls between the premises and another business. This requirement stems from 16-3-311, MCA, and the statutory exception for compliance with this requirement is also set out in this rule. Subsection (2)(e) further proposes to allow the premises to have additional doors between the premises and another business to allow the licensee the flexibility to have multiple access points to the premises. Approval by the department is needed to confirm the licensee will retain adequate control over the premises.

Subsection (2)(g) proposes to require unrestricted access to property where the premises are located. This requirement enables law enforcement to effectively ensure public safety without a locked gate or other barrier preventing access.

Section 16-3-244, MCA, specifically prohibits signage from brewers, beer importers, and beer wholesalers on the exterior portion of the premises and adjacent buildings. That statutory language, however, is unclear as to whether the licensee would need to have possessory interest in the adjacent building for the prohibition to apply. Because the licensee cannot exert control over a building in which it does not have possessory interest, the department is proposing to clarify the need for possessory interest in (2)(l). Additionally, the department is proposing to extend this advertising prohibition to all manufacturers, importers, distributors, and wholesalers to ensure retailer independence from other alcoholic beverage tiers and to reduce public confusion as to the type of business being conducted at the premises.

Subsection (2)(m) proposes to require that certain areas be labeled on the floor plan. The instructions on applications have long required the floor plan to be labeled. The department is proposing to add this as a suitability requirement to ensure an accurate floor plan is on file with the department prior to licensing. An accurate floor plan is necessary to enable evaluation of premises suitability and alteration requests.

Subsection (2)(n) proposes to require at least one interior drink preparation area to ensure the premises are easily recognizable as a place that offers alcoholic beverages and to ensure the floor plan accurately identifies the primary location from which alcoholic beverages are available. The department proposes to allow additional drink preparation areas that are movable or located on a patio/deck to provide licensees the ability to serve patrons in multiple locations on the premises.

The proposed requirement for interior access to any interior portion of the premises in (2)(p) ensures patrons have access to all sales areas without leaving the premises. Where interior access does not exist, a separate license is required.

Subsection (2)(q) proposes to require any area designated for the storage of alcoholic beverages to be located on the interior portion of the premises to reduce unauthorized access and protect public safety.

Subsection (2)(s) proposes to require reach-in coolers and open shelving to be located in the drink preparation area to ensure the licensee has direct involvement in the service of alcoholic beverages to prevent self-service, overconsumption, and consumption by underage persons. The department proposes to allow such equipment in the off-premises sales area where necessary safeguards are in place to prevent the on-premises consumption of alcoholic beverages.

The proposed requirement of a separation barrier in (2)(t) is to ensure there is a clear physical distinction between the on-premises sales area and the off-premises sales area. This is necessary so that patrons and the licensee can identify the different areas, which operate under different rules and requirements. This separation helps ensure the licensee has control over the consumption of alcoholic beverages on the premises to prevent self-service, overconsumption, and consumption by underage persons.

The inclusion of the proposed requirement for equipment to conduct sales transactions in (2)(t) will enable the licensee to record sales in that area to ensure compliance with a proposed provision, also in the proposed set of rules in this notice, requiring that 95 percent of the sales in the off-premises sales area come from the sale of alcoholic beverages.

Under existing rule, a licensee is only required to obtain approval from a fire official for the inclusion of a patio/deck, but (3)(a) proposes to also require approval from building and health officials. All three approvals are necessary to ensure the proposed patio/deck is safe for public use.

Section (4) proposes to provide information about the department's regulatory authority. Although the department's oversight function is not new, the reference is proposed to be included here for transparency.

NEW RULE II RESTAURANT BEER AND WINE LICENSE - PREMISES SUITABILITY REQUIREMENTS (1) The department shall determine the suitability of the premises where a restaurant beer and wine retailer proposes to operate a license when a party applies to obtain a license, transfer ownership interest in an existing license requiring the vetting of a new party pursuant to 16-4-401, MCA, change the location where a license will be operated, or make alterations to a premises with a floor plan that the department approved.

(2) The premises of a restaurant beer and wine retailer may be considered suitable only if:

- (a) the applicant or licensee has possessory interest in the premises and the land upon which the premises are located;
- (b) the applicant or licensee has adequate control over the premises;
- (c) a single alcoholic beverage license of any kind will be operated at the premises;

- (d) the premises are identified by a unique address;
- (e) the premises are located in one building or a specific portion of one building, except that a patio/deck may extend the premises beyond the interior portion of the building. The interior portion of the premises must be a continuous area that is not broken by any area in which the applicant or licensee does not have adequate control, such as another business or a common area shared with other building tenants. Subject to the exception in 16-3-311(2), MCA, if the premises are located in a portion of a building, the premises must be separated by permanent floor-to-ceiling walls from any other business, including any other business operated by the licensee. The only access from the premises to another business may be through a single lockable door, no more than six feet wide, in the permanent floor-to-ceiling wall. An additional lockable door in the permanent floor-to-ceiling wall may be allowed only upon department approval;
- (f) building, health, and fire code approval is obtained;
- (g) the premises are located on regular police beats and can be properly policed by local authorities, which includes the premises being located on property to which law enforcement has unrestricted access;
- (h) the premises are not located where a local government ordinance prohibits the sale of alcoholic beverages;
- (i) the type of business is readily determinable due to indoor and outdoor signage and the premises' general layout and atmosphere;
- (j) alcoholic beverages are advertised and displayed as being available for purchase;
- (k) there are no signs, posters, or advertisements displayed on the exterior portion of the premises that identify an alcoholic beverage manufacturer, importer, wholesaler, or distributor in any manner. This prohibition extends to buildings adjacent to the premises only if the retailer has possessory interest in the building. This prohibition does not apply to temporary advertisements allowed under 16-3-244, MCA;
- (l) the floor plan accurately states the dimensions of the premises, includes the entity name, alcoholic beverage license number, physical address, and date and identifies any service area, service bar, dining room, kitchen, storage area, patio/deck, perimeter barrier, and permanent floor-to-ceiling wall required between the premises and another business;
- (m) there is seating for patrons totaling not more than the seating capacity for which the premises are licensed;
- (n) there is an interior service bar. The premises may have more than one service bar, including service bars on the patio/deck, subject to department approval;
- (o) there is interior access to any interior portion of the premises;
- (p) all storage areas are located in the interior portion of the premises;
- (q) the physical layout and equipment utilized prevent the self-service of alcoholic beverages. This includes a prohibition against the service of alcoholic beverages through self-service devices and vending machines. Reach-in coolers and open shelving are prohibited unless they are located in the service bar area and the department determines that sufficient physical safeguards are in place to prevent the self-service of alcoholic beverages; and

(r) the sale of alcoholic beverages will not occur through a drive-up window.

(3) The premises may have a patio/deck. A patio/deck may be considered suitable only if:

(a) building, health, and fire code approval is obtained;

(b) subject to the exception in (c), the patio/deck is contiguous with and immediately accessible from the interior premises;

(c) any path connecting the interior premises and the patio/deck is under the possessory interest of the licensee, is clearly marked, and the department determines that sufficient physical safeguards are in place to ensure proper service and consumption of alcoholic beverages; and

(d) a perimeter barrier clearly marks where the service and consumption of alcoholic beverages are allowed.

(4) The premises must meet and maintain compliance with all suitability standards in place at the time the premises are inspected. The department may, at any time, verify that the premises remain in compliance with all suitability standards in place at the time the suitability of the premises was last determined. Upon determining that the premises do not meet all applicable suitability standards, the department may deny an application or take administrative action against a licensee, including license revocation.

(5) The privileges granted under a license extend only to the premises depicted in the floor plan approved by the department. The licensee shall follow the process in ARM 42.13.106 for a premises alteration.

AUTH: 16-1-303, MCA

IMP: 16-3-244, 16-3-309, 16-3-311, 16-4-402, 16-4-405, 16-4-421, MCA

REASON: In addition to the proposed actions included in the general statement of reasonable necessity at the beginning of this notice, which covers the proposed adoption of a new rule to provide the premises suitability requirements for a restaurant beer and wine licensee in a single location, the department proposes including the following new provisions in New Rule II.

A premises may encompass an interior portion of a building as well as an exterior patio/deck. To ensure the licensee has sufficient control over the entire premises, (2)(a) proposes to require the licensee to have possessory interest in the premises and the land upon which the premises are located.

The proposed requirement for a licensee to have adequate control over the premises in (2)(b) ensures the licensee can effectively manage the consumption of alcoholic beverages to prevent self-service, overconsumption, and consumption by underage persons. For example, a licensee would not have adequate control over a common area shared with other building tenants because the licensee would not have exclusive authority to govern the conduct in these areas. Accordingly, such areas cannot be part of the premises.

Subsection (2)(d) proposes to require the premises to be identified by a unique address. This requirement was previously included in the definition of "premises" in ARM 42.13.111, which is also proposed to be amended in this notice. A unique address is required to ensure the proposed location does not share its premises with another alcoholic beverage establishment and that required floor-to-

ceiling walls exist between the alcoholic beverage business and any other business. These measures work to ensure that the licensee will have adequate control over the premises.

Subsection (2)(e) proposes to require the interior portion of the premises to be a continuous area and provides examples of situations that would not meet this requirement. Such examples demonstrate insufficient control of the area to ensure the responsible possession and consumption of alcoholic beverages to protect public safety. Subsection (2)(e) also requires floor-to-ceiling walls between the premises and another business. This requirement stems from 16-3-311, MCA, and the statutory exception for compliance with this requirement is also memorialized in this rule. Subsection (2)(e) further proposes to allow the premises to have additional doors between the premises and another business to allow the licensee the flexibility to have multiple access points to the premises. Approval by the department is needed to confirm the licensee will retain adequate control over the premises.

Subsection (2)(g) proposes to require unrestricted access to property where the premises are located. This requirement enables law enforcement to effectively ensure public safety without a locked gate or other barrier preventing their access.

Section 16-3-244, MCA, specifically prohibits signage from brewers, beer importers, and beer wholesalers on the exterior portion of the premises and adjacent buildings. That statutory language, however, is unclear as to whether the licensee would need to have possessory interest in the adjacent building for the prohibition to apply. Because the licensee cannot exert control over a building in which it does not have possessory interest, the department is proposing to clarify the need for possessory interest in (2)(k). Additionally, the department is proposing to extend this advertising prohibition to all manufacturers, importers, distributors, and wholesalers to ensure retailer independence from other alcoholic beverage tiers and to reduce public confusion as to the type of business being conducted at the premises.

Subsection (2)(l) proposes to require that certain areas be labeled on the floor plan. The instructions on applications have long required the floor plan to be labeled. The department is proposing to add this as a suitability requirement to ensure an accurate floor plan is on file with the department prior to licensing. An accurate floor plan is necessary to enable evaluation of premises suitability and alteration requests.

Subsection (2)(n) proposes to allow more than one service bar on the premises to allow the licensee to store and prepare alcoholic beverages in multiple locations. Approval by the department is required to ensure adequate safeguards are in place to prevent self-service by patrons. The department proposes to no longer prohibit patrons from sitting at the service bar because no public harm exists. A patron is still required to order food items regardless if they are sitting at a table, booth, eating counter, or across from the service bar.

The proposed requirement for interior access to any interior portion of the premises in (2)(o) ensures patrons have access to all sales areas without leaving the premises. Where interior access does not exist, a separate license is required.

Subsection (2)(p) proposes to require any area designated for the storage of alcoholic beverages to be located on the interior portion of the premises to reduce unauthorized access and protect public safety.

Under existing rule, a licensee is only required to obtain approval from a fire

official for the inclusion of a patio/deck, but (3)(a) proposes to also require approval from building and health officials. All three approvals are necessary to ensure the proposed patio/deck is safe for public use.

Section (4) proposes to provide information about the department's regulatory authority. Although the department's oversight function is not new, the reference is proposed to be included here for transparency.

NEW RULE III OFF-PREMISES BEER AND TABLE WINE LICENSE - PREMISES SUITABILITY REQUIREMENTS (1) The department shall determine the suitability of the premises where an off-premises beer and table wine retailer proposes to operate a license when a party applies to obtain a license, transfer ownership interest in an existing license requiring the vetting of a new party pursuant to 16-4-401, MCA, change the location where a license will be operated, or make alterations to a premises with a floor plan that the department approved.

(2) The premises of an off-premises beer and table wine retailer may be considered suitable only if:

(a) the applicant or licensee has possessory interest in the premises and the land upon which the premises are located;

(b) the applicant or licensee has adequate control over the premises;

(c) a single alcoholic beverage license of any kind will be operated at the premises;

(d) the premises are identified by a unique address;

(e) the premises are located in one building or a specific portion of one building. The interior portion of the premises must be a continuous area that is not broken by any area in which the applicant or licensee does not have adequate control, such as another business or a common area shared with other building tenants. If the premises are located in a portion of a building, the premises must be separated by permanent floor-to-ceiling walls from any other business, including any other business operated by the licensee. The only access from the premises to another business may be through a single lockable door, no more than six feet wide, in the permanent floor-to-ceiling wall. An additional, lockable door or a doorway larger than six feet wide in the permanent floor-to-ceiling wall may be allowed only upon department approval;

(f) building, health, and fire code approval is obtained;

(g) the premises are located on regular police beats and can be properly policed by local authorities, which includes the premises being located on property to which law enforcement has unrestricted access;

(h) the premises are not located where a local government ordinance prohibits the sale of alcoholic beverages;

(i) the premises are in a stand-alone beer and/or table wine business, a grocery store, or a drugstore licensed as a pharmacy;

(j) the type of business is readily determinable due to indoor and outdoor signage and the premises' general layout and atmosphere;

(k) alcoholic beverages are advertised and displayed as being available for purchase;

(l) there are no signs, posters, or advertisements displayed on the exterior portion of the premises that identify an alcoholic beverage manufacturer, importer,

wholesaler, or distributor in any manner. This prohibition extends to buildings adjacent to the premises only if the retailer has possessory interest in the building. This prohibition does not apply to temporary advertisements allowed under 16-3-244, MCA;

(m) the floor plan accurately states the dimensions of the premises, includes the entity name, alcoholic beverage license number, physical address, and date and identifies any storage area and permanent floor-to-ceiling wall required between the premises and another business;

(n) there is interior access to any interior portion of the premises;

(o) all storage areas are located in the interior portion of the premises; and

(p) the sale of alcoholic beverages will not occur through a drive-up window.

(3) The premises must meet and maintain compliance with all suitability standards in place at the time the premises are inspected. The department may, at any time, verify that the premises remain in compliance with all suitability standards in place at the time the suitability of the premises was last determined. Upon determining that the premises do not meet all applicable suitability standards, the department may deny an application or take administrative action against a licensee, including license revocation.

(4) The privileges granted under a license extend only to the premises depicted in the floor plan approved by the department. The licensee shall follow the process in ARM 42.13.106 for a premises alteration.

AUTH: 16-1-303, MCA

IMP: 16-3-244, 16-3-309, 16-4-115, 16-4-402, 16-4-405, MCA

REASON: In addition to the proposed actions included in the general statement of reasonable necessity at the beginning of this notice, which covers the proposed adoption of a new rule to provide the premises suitability requirements for an off-premises beer and table wine licensee in a single location, the department proposes including the following new provisions in New Rule III.

To ensure the licensee has sufficient control over the entire premises, (2)(a) proposes to require the licensee to have possessory interest in the premises and the land upon which the premises are located.

The proposed requirement for adequate control over the premises in (2)(b) ensures the licensee can effectively manage the sale of alcoholic beverages to prevent sales to intoxicated or underage persons. For example, a licensee would not have adequate control over a common area shared with other building tenants because the licensee would not have exclusive authority to govern the conduct in these areas. Accordingly, such areas cannot be part of the premises.

Subsection (2)(d) proposes to require the premises to be identified by a unique address. This requirement was previously included in the definition of "premises" in ARM 42.13.111, which is also proposed to be amended in this notice. A unique address is required to ensure the proposed location does not share its premises with another alcoholic beverage establishment and that required floor-to-ceiling walls exist between the alcoholic beverage business and any other business. These measures work to ensure that the licensee will have adequate control over the premises.

Subsection (2)(e) proposes to require the interior portion of the premises to be a continuous area and provides examples of situations that would not meet this requirement. Such examples demonstrate insufficient control of the area to protect public safety. Subsection (2)(e) also requires floor-to-ceiling walls between the premises and another business. This requirement stems from 16-3-311, MCA, and the statutory exception for compliance with this requirement is also set out in this rule. Subsection (2)(e) further proposes to allow for a doorway larger than six feet wide between the premises and another business to allow greater flow between businesses. This suitability requirement is not allowed for on-premises licensees as the larger entry point diminishes an on-premises licensee's ability to control alcoholic beverages from being brought on the premises and minimizes the public's ability to know where alcoholic beverages may be consumed on the premises. Approval by the department is needed to confirm the licensee will retain adequate control over the premises. Subsection (2)(e) also proposes to allow the premises to have additional doors between the premises and another business to allow the licensee the flexibility to have multiple access points to the premises.

Subsection (2)(g) proposes to require unrestricted access to property where the premises are located. This requirement enables law enforcement to effectively ensure public safety without a locked gate or other barrier preventing access.

Section 16-3-244, MCA, specifically prohibits signage from brewers, beer importers, and beer wholesalers on the exterior portion of the premises and adjacent buildings. That statutory language, however, is unclear as to whether the licensee would need to have possessory interest in the adjacent building for the prohibition to apply. Because the licensee cannot exert control over a building in which it does not have possessory interest, the department is proposing to clarify the need for possessory interest in (2)(l). Additionally, the department is proposing to extend this advertising prohibition to all manufacturers, importers, distributors, and wholesalers to ensure retailer independence from other alcoholic beverage tiers and to reduce public confusion as to the type of business being conducted at the premises.

Subsection (2)(m) proposes to require that certain areas be labeled on the floor plan. The instructions on applications have long required the floor plan to be labeled. The department is proposing to add this as a suitability requirement to ensure an accurate floor plan is on file with the department prior to licensing. An accurate floor plan is necessary to enable evaluation of premises suitability and alteration requests.

The proposed requirement for interior access to any interior portion of the premises in (2)(n) ensures patrons have access to all sales areas without leaving the premises. Where interior access does not exist, a separate license is required.

Subsection (2)(o) proposes to require any area designated for the storage of alcoholic beverages to be located on the interior portion of the premises to reduce unauthorized access and protect public safety.

Section (3) proposes to provide information about the department's regulatory authority. Although the department's oversight function is not new, the reference is proposed to be included here for transparency.

NEW RULE IV BEER WHOLESALER AND TABLE WINE DISTRIBUTOR - PREMISES SUITABILITY REQUIREMENTS (1) The department shall determine

the suitability of the premises of the principal place of business and any subwarehouse where a beer wholesaler and table wine distributor propose to operate a license when a party applies to obtain a license, transfer ownership interest in an existing license requiring the vetting of a new party pursuant to 16-4-401, MCA, change the location where a license will be operated, or make alterations to a premises with a floor plan that the department approved.

(2) The premises of a beer wholesaler and table wine distributor may be considered suitable only if:

(a) the applicant or licensee has possessory interest in the premises and the land upon which the premises are located;

(b) the applicant or licensee has adequate control over the premises;

(c) a single alcoholic beverage license of any kind will be operated at the premises;

(d) the premises are identified by a unique address;

(e) building, health, and fire code approval is obtained;

(f) the premises are located in one building or a specific portion of one building. The interior portion of the premises must be a continuous area that is not broken by any area in which the applicant or licensee does not have adequate control, such as another business or a common area shared with other building tenants. If the premises are located in a portion of a building, the premises must be separated by permanent floor-to-ceiling walls from any other business, including any other business operated by the licensee. The only access from the premises to another business may be through a single lockable door, no more than six feet wide, in the permanent floor-to-ceiling wall. An additional lockable door in the permanent floor-to-ceiling wall may be allowed only upon department approval;

(g) the floor plan accurately states the dimensions of the premises, includes the entity name, alcoholic beverage license number, physical address, and date and identifies any permanent floor-to-ceiling wall required between the premises and another business;

(h) the premises include sufficient space for the storage and distribution of beer and/or table wine in large quantities;

(i) there is interior access to any interior portion of the premises; and

(j) all storage areas are located in the interior portion of the premises.

(3) The premises may include more than one building for storage and distribution purposes only if the property on which the buildings are located is contiguous and the licensee has possessory interest in the property on which the buildings are located. To seek approval, the licensee shall submit a form provided by the department. All buildings on the premises are subject to suitability requirements in (2).

(4) The premises must meet and maintain compliance with all suitability standards in place at the time the premises are inspected. The department may, at any time, verify that the premises remain in compliance with all suitability standards in place at the time the suitability of the premises was last determined. Upon determining that the premises do not meet all applicable suitability standards, the department may deny an application or take administrative action against a licensee, including license revocation.

(5) The privileges granted under a license extend only to the premises

depicted in the floor plan approved by the department. The licensee shall follow the process in ARM 42.13.106 for a premises alteration.

AUTH: 16-1-303, MCA

IMP: 16-4-103, 16-4-108, 16-4-402, MCA

REASON: In addition to the proposed actions included in the general statement of reasonable necessity at the beginning of this notice, which covers the proposed adoption of a new rule to provide the premises suitability requirements for a beer wholesaler and table wine distributor in a single location, the department proposes including the following new provisions in New Rule IV.

To ensure the licensee has sufficient control over the entire premises, (2)(a) proposes to require the licensee to have possessory interest in the premises and the land upon which the premises are located.

The proposed requirement for adequate control over the premises in (2)(b) ensures the licensee can effectively manage the receiving, storage, and distribution of alcoholic beverages. For example, a licensee would not have adequate control over a common area shared with other building tenants because the licensee would not have exclusive authority to govern the conduct in these areas. Accordingly, such areas cannot be part of the premises.

Subsection (2)(d) proposes to require the premises to be identified by a unique address. This requirement was previously included in the definition of "premises" in ARM 42.13.111, which is also proposed to be amended in this notice. A unique address is required to ensure the proposed location does not share its premises with another alcoholic beverage establishment and that required floor-to-ceiling walls exist between the alcoholic beverage business and any other business. These measures work to ensure that the licensee will have adequate control over the premises.

Subsection (2)(f) proposes to require the interior portion of the premises to be a continuous area and provides examples of situations that would not meet this requirement. Such examples demonstrate insufficient control of the area to protect public safety. Subsection (2)(f) also requires floor-to-ceiling walls between the premises and another business. Subsection (2)(f) further proposes to allow the premises to have additional doors between the premises and another business to allow the licensee the flexibility to have multiple access points to the premises. Approval by the department is needed to confirm the licensee will retain adequate control over the premises.

Subsection (2)(g) proposes to require that certain areas be labeled on the floor plan. The instructions on applications have long required the floor plan to be labeled. The department is proposing to add this as a suitability requirement to ensure an accurate floor plan is on file with the department prior to licensing. An accurate floor plan is necessary to enable evaluation of premises suitability and alteration requests.

The proposed requirement for interior access to any interior portion of the premises in (2)(i) ensures access to all areas without leaving the premises. Where interior access does not exist, a separate license is required.

Subsection (2)(j) proposes to require any area designated for the storage of

alcoholic beverages to be located on the interior portion of the premises to reduce unauthorized access and protect public safety.

Section (3) proposes to allow wholesalers and distributors to utilize additional buildings for storage where certain conditions are met. Although this was previously allowed for certain manufacturers, the additional storage opportunity is being extended to wholesalers and distributors to accommodate the needs of growing businesses.

Section (4) proposes to provide information about the department's regulatory authority. Although the department's oversight function is not new, the reference is proposed to be included here for transparency.

NEW RULE V WINERY, BREWERY, AND DISTILLERY - PREMISES SUITABILITY REQUIREMENTS (1) The department shall determine the suitability of the premises where an alcoholic beverage manufacturer proposes to operate a license when a party applies to obtain a license, transfer ownership interest in an existing license requiring the vetting of a new party pursuant to 16-4-401, MCA, change the location where a license will be operated, or make alterations to a premises with a floor plan that the department approved.

(2) The premises of a manufacturer may be considered suitable only if:

(a) the applicant or licensee has possessory interest in the premises and the land upon which the premises are located;

(b) the applicant or licensee has adequate control over the premises;

(c) a single alcoholic beverage license of any kind will be operated on the premises, except as authorized under an approved alternating proprietor arrangement;

(d) the premises are identified by a unique address;

(e) building, health, and fire code approval is obtained;

(f) the premises are located in one building or a specific portion of one building, except that a patio/deck may extend the premises beyond the interior portion of the building. The interior portion of the premises must be a continuous area that is not broken by any area in which the applicant or licensee does not have adequate control, such as another business or a common area shared with other building tenants. If the premises are located in a portion of a building, the premises must be separated by permanent floor-to-ceiling walls from any other business, including any other business operated by the licensee. The only access from the premises to another business may be through a single lockable door, no more than six feet wide, in the permanent floor-to-ceiling wall. An additional lockable door in the permanent floor-to-ceiling wall may be allowed only upon department approval;

(g) the floor plan accurately states the dimensions of the premises, includes the entity name, alcoholic beverage license number, physical address, and date and identifies any manufacturing area, storage area, sample room, drink preparation area, patio/deck, perimeter barrier, permanent floor-to-ceiling wall required between the premises and another business, off-premises sales area, and separation barriers required between the on-premises and off-premises sales areas;

(h) there is interior access to any interior portion of the premises;

(i) all storage areas are located in the interior portion of the premises;

(j) access by unauthorized persons to manufacturing areas is restricted; and

(k) it is readily determinable that a manufacturer operates at the premises due to outdoor signage and the existence of the equipment necessary to undertake the activities for which the premises are licensed.

(3) The premises may include more than one building for manufacturing purposes only if the property on which the buildings are located is contiguous and the licensee has possessory interest in the property on which the buildings are located. To seek approval, the licensee shall submit a form provided by the department and include verification that the Alcohol and Tobacco Tax and Trade Bureau approved the licensee's registration to operate any additional building under the manufacturer's existing federal permit or notice. All buildings on the premises are subject to the suitability requirements in (2).

(4) A domestic brewery may operate a warehouse on property that is not contiguous to property on which the manufacturing premises are located only if the warehouse is used exclusively for storage. To seek approval, the licensee shall submit a form provided by the department. A licensee may seek approval for more than one warehouse. Each warehouse must have a separate storage depot license. All warehouses are subject to the suitability requirements in (2) and must be equipped with refrigeration and cooling apparatus.

(5) A domestic distillery may operate a warehouse on property that is not contiguous to property on which the manufacturing premises are located only if the warehouse is used exclusively for storage. To seek approval, the licensee shall submit a form provided by the department and include verification that the Alcohol and Tobacco Tax and Trade Bureau approved the licensee's registration to operate the warehouse. A licensee may seek approval for more than one warehouse. Each warehouse must have a separate domestic distillery storage warehouse license. All warehouses are subject to the suitability requirements in (2).

(6) In addition to all other requirements, a manufacturer's premises with a sample room shall be considered suitable only if:

- (a) there is a single contiguous sample room;
- (b) the sample room is located in the interior portion of the premises;
- (c) the sample room is not located in a storage warehouse;
- (d) the sample room contains a drink preparation area. The premises may have more than one drink preparation area, including drink preparation areas on the patio/deck, subject to department approval; and

- (e) the physical layout and equipment utilized prevent the self-service of alcoholic beverages. This includes a prohibition against the service of alcoholic beverages through self-service devices and vending machines. Reach-in coolers and open shelving are prohibited unless they are located in a drink preparation area and the department determines that sufficient physical safeguards are in place to prevent the self-service of alcoholic beverages.

(7) In addition to all other requirements, a manufacturer's premises with an off-premises sales area shall be considered suitable only if there is a separation barrier between the off-premises sales area and a sample room where the areas are contiguous. The off-premises sales area may contain reach-in coolers and open shelving. It must include a cash register or other equipment for conducting sales transactions.

(8) A manufacturing premises with a sample room may have a patio/deck.

The patio/deck will be considered suitable only if:

(a) building, health, and fire code approval is obtained;

(b) the patio/deck is contiguous with and immediately accessible from the sample room, except where the department approves a path connecting the sample room and the patio/deck. The use of a path may only be approved if the licensee holds possessory interest in the path, the path is clearly marked, and the department determines that sufficient physical safeguards are in place to ensure proper service and consumption of alcoholic beverages;

(c) a perimeter barrier clearly marks where the service and consumption of alcoholic beverages is allowed; and

(d) the physical layout and equipment prevent the self-service of alcoholic beverages. This includes a prohibition against the service of alcoholic beverages through self-service devices and vending machines. Reach-in coolers and open shelving are prohibited unless they are located in a drink preparation area and the department determines that sufficient physical safeguards are in place to prevent the self-service of alcoholic beverages.

(9) The premises must meet and maintain compliance with all suitability standards in place at the time the premises are inspected. The department may, at any time, verify that the premises remain in compliance with all suitability standards in place at the time the suitability of the premises was last determined. Upon determining that the premises do not meet all applicable suitability standards, the department may deny an application or take administrative action against a licensee, including license revocation.

(10) The privileges granted under a license extend only to the premises depicted in the floor plan approved by the department. The licensee shall follow the process in ARM 42.13.106 for a premises alteration.

AUTH: 16-1-303, MCA

IMP: 16-4-102, 16-4-402, MCA

REASON: In addition to the proposed actions included in the general statement of reasonable necessity at the beginning of this notice, which covers the proposed adoption of a new rule to provide the premises suitability requirements for a winery, brewery, and distillery in a single location, the department proposes including the following new provisions in New Rule V.

To ensure the licensee has sufficient control over the entire premises, (2)(a) proposes to require the licensee to have possessory interest in the premises and the land upon which the premises are located.

The proposed requirement for adequate control over the premises in (2)(b) ensures the licensee can effectively manage the manufacturing operations and consumption of alcoholic beverages to prevent self-service, overconsumption, and consumption by underage persons. For example, a licensee would not have adequate control over a common area shared with other building tenants because the licensee would not have exclusive authority to govern the conduct in these areas. Accordingly, such areas cannot be part of the premises.

Subsection (2)(c) proposes to restrict the operation of multiple alcoholic beverages licenses at the premises other than under an approved alternating

proprietor arrangement. Alternating proprietor arrangements are allowed in ARM 42.13.1002. These arrangements allow a manufacturer to utilize the premises and equipment of another manufacturer to produce and/or package alcoholic beverages. The exception provided in this rule enables the alternating proprietor arrangements to occur without a violation of the single license requirement.

Subsection (2)(d) proposes to require the premises to be identified by a unique address. This requirement was previously included in the definition of "premises" in ARM 42.13.111, which is also proposed to be amended in this notice. A unique address is required to ensure the proposed location does not share its premises with another alcoholic beverage establishment and that required floor-to-ceiling walls exist between the alcoholic beverage business and any other business. These measures work to ensure that the licensee will have adequate control over the premises.

Subsection (2)(f) proposes to require the interior portion of the premises to be a continuous area and provides examples of situations that would not meet this requirement. Such examples demonstrate insufficient control of the area to protect public safety. Subsection (2)(f) also requires floor-to-ceiling walls between the premises and another business. Subsection (2)(f) further proposes to allow the premises to have additional doors between the premises and another business to allow the licensee the flexibility to have multiple access points to the premises. Approval by the department is needed to confirm the licensee will retain adequate control over the premises.

Subsection (2)(g) proposes to require that certain areas be labeled on the floor plan. The instructions on applications have long required the floor plan to be labeled. The department is proposing to add this as a suitability requirement to ensure an accurate floor plan is on file with the department prior to licensing. An accurate floor plan is necessary to enable evaluation of premises suitability and alteration requests.

The proposed requirement for interior access to any interior portion of the premises in (2)(h) ensures access to all areas without leaving the premises. Where interior access does not exist, a separate license is required.

Subsection (2)(i) proposes to require any area designated for the storage of alcoholic beverages to be located on the interior portion of the premises to reduce unauthorized access and protect public safety.

Section (6) proposes the suitability requirements for a manufacturer's sample room. These sample rooms were previously addressed in ARM 42.13.405, 42.13.601, and 42.13.805, which are proposed to be amended or repealed in this same rulemaking notice. Although not new, the department proposes to provide better guidance by incorporating these requirements in a single rule. Subsection (6)(a) proposes to require a single contiguous sample room to protect patrons' safety by ensuring the sample room is not crossing manufacturing and storage areas which should be restricted. Subsection (6)(b) proposes to require the sample room to be on the interior portion of the premises so the public can easily determine that the business offers alcoholic beverages and to ensure the floor plan accurately describes the primary location where alcoholic beverages are available in the sample room. Subsection (6)(c) proposes to prohibit the sample room from being in storage warehouses because these buildings are specifically licensed for storage

purposes only. Subsection (6)(d) proposes to allow the licensee to have multiple drink preparation areas, including multiple drink preparation areas on the patio/deck, to allow the licensee to serve patrons from multiple areas so long as proper controls are in place.

The proposed requirement of a separation barrier in (7) is to ensure there is a clear physical distinction between the sample room and a contiguous off-premises sales area. This is necessary so that patrons and the licensee can identify the different areas, which operate under different rules and requirements. This separation helps ensure the licensee has control over the consumption of alcoholic beverages on the premises to prevent self-service, overconsumption, and consumption by underage persons.

Under existing rule, a licensee is only required to obtain approval from a fire official for the inclusion of a patio/deck, but (8)(a) proposes to also require approval from building and health officials. All three approvals are necessary to ensure the proposed patio/deck is safe for public use.

Section (9) proposes to provide information about the department's regulatory authority. Although the department's oversight function is not new, the reference is included here for transparency.

5. The rules proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

42.12.105 ELECTRONIC SUBMISSION OF DOCUMENTS AND ELECTRONIC SIGNATURES (1) through (4) remain the same.

AUTH: 16-1-303, MCA
IMP: 16-4-402, 45-7-202, MCA

REASON: The department proposes amending ARM 42.12.105 to add a missing implementing statute to the rule. This is a housekeeping measure only and unrelated to the general amendments in this proposal notice.

42.12.106 DEFINITIONS The following definitions apply to this chapter:

(1) "Adjacent to," with regard to alcoholic beverage advertising limitations for premises suitability, means:

(a) the premises share a common internal or external wall with the building at issue; or

(b) there is an absence of another building between the premises and the building at issue; and

(c) the distance between the nearest exterior wall of the premises and the building at issue is equal to or less than 100 feet.

(1) remains the same, but is renumbered (2).

(3) "Alteration" means a structural change or modification to the premises other than a cosmetic change. Examples include adding a patio/deck or removing a half wall.

(2) remains the same, but is renumbered (4).

~~(3) "Bar preparation area" means a bar area where alcoholic beverages can~~

~~be purchased and consumed. The area must have sufficient seating and must include supplies to prepare, consume, and deliver alcoholic beverages.~~

~~(4) "Bona fide grocery store" means a retail establishment where a variety of articles of staple foodstuffs, including meats, vegetables, fruits, bakery items, dairy products, and household supplies, are sold for consumption off-premises.~~

~~(5) "Bona fide sale" means a transaction that completely transfers the license property to a qualified purchaser for consideration.~~

~~(6) "Business operated under the license" means the privilege of keeping alcoholic beverages for sale.~~

~~(6) "Building" means an enclosed structure with external walls and a roof. Separate structures or structures connected by skyways are not considered one building for licensing purposes.~~

~~(7) "Business directly related to the on-premises consumption of alcoholic beverages" means a business that is readily associated with on-site alcoholic beverage consumption, such as a hotel, bowling alley, casino, or restaurant. It does not include alcoholic beverage manufacturers or off-premises alcoholic beverage businesses.~~

~~(7) through (10) remain the same, but are renumbered (8) through (11).~~

~~(12) "Contiguous" means touching or sharing a common border.~~

~~(13) "Cross collateralization" means collateral for one loan also serving as collateral for another loan.~~

~~(14) "Drink preparation area" means the bar area on the premises where alcoholic beverages are stored and prepared for on-premises consumption and from which alcoholic beverages may be sold for off-premises consumption.~~

~~(11) and (12) remain the same, but are renumbered (15) and (16).~~

~~(17) "Floor plan" means a diagram with measurements of the premises as seen from above.~~

~~(18) "Grocery store" means a self-service retail establishment where a variety of perishable and nonperishable food items and household goods are sold for use off the premises.~~

~~(13) remains the same, but is renumbered (19).~~

~~(20) "Interior access" means entry that does not impede customer foot traffic from accessing any interior portion of the premises. Interior access is not found where a customer would be required to leave the interior portion of the premises.~~

~~(14) through (16) remain the same, but are renumbered (21) through (23).~~

~~(24) "Manufacturing area" means the portion of a manufacturing premises that is not designated as a sample room or off-premises sales area.~~

~~(17) remains the same, but is renumbered (25).~~

~~(26) "Off-premises sales area" means an area on the premises of an on-premises consumption licensee or a manufacturer where alcoholic beverages are available for purchase in original packaging for off-premises consumption.~~

~~(18)~~(27) "Ownership interest" means the involvement in the business operated under the license by someone who owns some or all of the assets of the business, shares any portion of the profits, or any portion of the losses or liabilities of the business. Someone with an ownership interest in a liquor license shares in the financial risks of the business and is entitled to the profits or suffers the losses. Ownership interest includes the right to control the location or ownership of a

license. Examples of ownership interests would include the authority to participate in such business decisions as the sale of the license, relocation of the license, or change or creation of any financial arrangements for loan repayment or funding sources, or any responsibilities listed in ARM 42.12.132 to be held by the licensee. Participation in business decisions does not include providing advice. A right of first refusal is not an ownership interest.

(19) remains the same, but is renumbered (28).

~~(20)~~(29) "Patio/Deck" means an outdoor area portion of the premises where the preparation, service, and consumption of alcoholic beverages is permitted that is part of the licensed premises, specifically designated on a floor plan, with a perimeter barrier and immediately adjacent to, and accessible from, the indoor portion of the licensed premises.

~~(21)~~(30) "Perimeter barrier" means a barrier enclosing the perimeter of the patio/deck portion of a licensed premises, which. The barrier shall be constructed in a manner that impedes foot traffic and clearly defines the boundary of the licensed exterior portion of the premises in a way that. The barrier shall be at least three feet high at all points and may have a single six-foot-wide entrance permitting public access from an unlicensed area to the patio/deck. Upon the department's determination that the barrier accomplishes its intended purpose, the barrier may:

(a) clearly marks for patrons, licensees, licensees' employees, investigators, local law enforcement, or other interested parties, where consumption of alcohol is allowed be constructed of materials such as lattice or wrought iron that do not form a solid structure;

~~(b) impedes access to the service areas by underage persons or others who may attempt to enter the premises without the licensee's knowledge~~ have a portion of it be water; and

~~(c) consists of a fence or wall at least three feet high, or an alternative barrier that accomplishes the same purposes and is approved by the department. A perimeter barrier may be with or without entrances from the parking lot, sidewalk, or other areas beyond the patio/deck regardless of whether those areas beyond the licensed premises are land or water. In the case of a patio/deck which abuts a river, lake, or other body of water, the edge of the water may serve as a portion of the perimeter barrier, subject to department approval~~ have additional entrances permitting public access to the patio/deck; and

(d) be less than three feet in height.

~~(22) "Prepared food business" means a restaurant, except the food need not be prepared on-site.~~

~~(23) "Primarily meals with table service" means a restaurant where the business records show that the gross sales of food is greater than the sum of any other activity conducted on the premises.~~

(31) "Permanent floor-to-ceiling wall" means a continuous structure spanning from floor to ceiling that remains in a fixed position and serves as a solid physical barrier. The wall may be constructed of brick, glass, stone, wood, and other materials as approved by the department. The wall may not be constructed of materials such as lattice or wrought iron that do not form a solid physical barrier.

(32) "Premises" means the area identified in the floor plan approved by the

department on which the activities authorized under the license may be conducted.

~~(24) "Restaurant," as it applies to an all-beverages license or a retail on-premises beer or beer and wine license (but not a restaurant beer and wine license), means a public eating establishment allowing for seated service for a minimum of 12 persons at tables or booths where food is prepared, sold, and served on-site.~~

(25) and (26) remain the same, but are renumbered (33) and (34).

~~(27)(35) "Sample room" means a specific the area of a manufacturer's premises where the service, sale, and on-premises consumption of alcoholic beverages are permitted designated on a floor plan where samples of product produced on site may be provided to the public; and the floor plan that accompanied the application for a brewery, distillery, or winery, was approved by, and is on file with, the department.~~

(36) "Self-service of alcoholic beverages" means allowing persons other than the licensee or its employees to have access to alcoholic beverages prior to the licensee or its employees providing the alcoholic beverage to the person.

(37) "Separation barrier" means a barricade that limits entry from the on-premises sales area to the off-premises sales area through an entrance no wider than six feet. An additional entrance in the separation barrier may be allowed only upon department approval. The separation barrier shall span from floor to ceiling and remain in a fixed position unless alternative construction that accomplishes the same purpose is approved by the department. The barrier may be constructed of materials such as lattice or wrought iron that do not form a solid physical barrier.

(38) "Service area" means the area on the premises where the service, sale, and on-premises consumption of alcoholic beverages are permitted. The service area includes any patio/deck and drink preparation area.

(39) "Service bar" means an area on a restaurant beer and wine licensee's premises where alcoholic beverages are stored and prepared for on-premises consumption.

(28) and (29) remain the same, but are renumbered (40) and (41).

(42) "Storage area" means any portion of the premises that is accessible only by the licensee or its employees and where alcoholic beverages are stored in original packaging.

(30) through (32) remain the same, but are renumbered (43) through (45).

AUTH: 16-1-303, MCA

IMP: 16-1-302, 16-4-105, 16-4-205, 16-4-207, 16-4-301, 16-4-401, 16-4-402, 16-4-404, 16-4-413, 16-4-420, 16-4-423, MCA

REASON: The department proposes amending ARM 42.12.106 to define new terms and to strike terms that are no longer used in ARM Title 42, chapter 12.

The department is proposing to define when buildings will be considered to be "adjacent to" one another for purposes of the alcoholic beverage advertising limitations in the proposed premises suitability rules. Subsection (1)(a) addresses buildings with a shared wall, while (1)(b) and (1)(c) are used together to define when buildings that do not share a common wall will be considered adjacent. The use of this defined term in the advertisement limitations is needed to ensure retailer independence from other alcoholic beverage tiers and to reduce public confusion as

to the type of business being conducted at the premises.

The department also proposes to amend the definition of when a business is considered to be directly related to the on-premises consumption of alcoholic beverages for purposes of the proposed premises suitability rules. A retail license is required to be operated in a business solely dedicated to the on-premises consumption of alcoholic beverages or within a business directly related to the on-premises consumption of alcoholic beverages. As previously defined, a directly related business did not allow a retail license to be operated on the same premises as a manufacturing or off-premises retail license. Although this specific language is being added, no new requirements are being imposed.

The department proposes to add a definition of the term "interior access" as it is a requirement the department proposes to have between different interior portions of a licensed premises. The proposed definition provides guidance to licensees on what the department considers interior access.

The department proposes to amend the definition of "ownership interest" by removing content pertaining to managers from ARM 42.12.132. The department is in the process of amending ARM 42.12.132 in a separate notice, and this information needs to be stricken to accommodate those proposed rule amendments.

The department proposes to amend the definition of "perimeter barrier" to incorporate a size limitation on the entrance to ensure that entrances are not so prevalent that no barrier is actually in place to define the boundary. This will help ensure the licensee can adequately control the service and consumption of alcoholic beverages to prevent self-service, overconsumption, and service to underage persons.

The department proposes to specifically state that a "permanent floor-to-ceiling wall" must be a solid physical structure and provides examples of acceptable construction materials. This is not a new requirement, as the department has long interpreted 16-3-311, MCA, based upon the plain meaning of a floor-to-ceiling wall.

The self-service of alcoholic beverages is prohibited in the on-premises sales area of a retailer. Therefore, the proposed definition of "self-service" ensures the licensee has adequate control of the premises to prevent overconsumption and consumption by underage persons.

The department proposes to require a separation barrier as defined to ensure there is a clear physical distinction between the on-premises sales area and the off-premises sales area. This is necessary so that patrons and the licensee can identify the different areas, which operate under different rules and requirements. This separation helps ensure the licensee has control over the consumption of alcoholic beverages on the premises to prevent self-service, overconsumption, and consumption by underage persons. The proposed definition of "separation barrier" provides examples of what the barrier may be constructed of to enhance applicants' and licensees' understanding of the term.

The department proposes to add a definition of the term "storage area" as it is a portion of the premises the department proposes to have the licensee identify on the floor plan. The storage area requires limited access to prevent the self-service of alcoholic beverages by patrons.

Furthermore, the department reviewed the current implementing statutes as cited for the rule and proposes striking those that serve no purpose or no longer

apply.

42.12.133 CONCESSION AGREEMENTS (1) remains the same.

(2) In addition to the general suitability rule requirements in ~~ARM 42.12.122 [NEW RULE I]~~, and other rules specific to the license type, the premises for any license operated under a concession agreement can only be considered suitable for the retail sale of alcoholic beverages if the existence of a concession agreement and the names of the parties to the concession agreement are plainly disclosed to the public both inside and outside of the licensed premises by signage as follows:

(a) through (6) remain the same.

AUTH: 16-1-303, MCA

IMP: 16-3-305, 16-3-311, 16-4-401, 16-4-402, MCA

REASON: The department proposes amending ARM 42.12.133 to remove the reference to ARM 42.12.122, which is being proposed to be repealed in this same rulemaking notice, and replace it with New Rule I, associated with premises suitability requirements that are proposed to be adopted in this same rulemaking notice.

42.12.209 TRANSFER OF A LICENSE TO ANOTHER PERSON (1) through (6) remain the same.

(7) Prior to the department granting written approval:

(a) a certificate, stock, or other evidence of the proposed ownership interest may not be registered in the licensee's records; and

(b) earnest money may be paid to the license seller, not to exceed five percent of the license purchase price, but any additional funds or other consideration for the liquor license may not be exchanged unless:

(i) through (10) remain the same.

AUTH: 16-1-303, MCA

IMP: 16-4-401, 16-4-402, MCA

REASON: The department proposes amending ARM 42.12.209 to provide the industry with the maximum amount of earnest money an intended purchaser is allowed to pay an intended seller of an alcoholic beverage license without it being held in escrow. The proposed maximum on the earnest money allows the seller to collect a reasonable amount of funds to help ensure that potential buyers are serious and intend to follow through with their agreement to a purchase transaction.

42.12.302 DEFINITIONS The following terms ~~will be used in definitions~~ apply to this subchapter:

~~(1) "Association" is defined in ARM 42.2.304.~~

~~(2) "Civic or community enterprise" means an activity organized for the public at large.~~

(3) and (4) remain the same, but are renumbered (1) and (2).

~~(5) "Contiguous" is defined in ARM 42.2.304.~~

(6) remains the same, but is renumbered (3).

(4) "Fortified wine" means wine that contains more than 16 percent, but not more than 24 percent, of alcohol by volume. Fortified wine constitutes liquor for distribution purposes.

~~(7) "Manufacture" includes distillation, rectification, bottling, and processing, as defined under the provisions of the laws of the United States.~~

(8) remains the same, but is renumbered (5).

~~(9) "Recreational or sporting activity" refers to those facilities that support the recreational and sporting activities commonly understood as resort activity and activity upon which a resort is based. This includes but is not limited to hiking, skiing, boating, swimming, horseback riding and golfing. This does not include such secondary activity as shopping, movie-going, dining, and sight-seeing.~~

(4)(6) "Resort area" means a location or site in Montana developed for where a recreational development, either proposed or existing, is located. The primary purpose of the resort area must be to provide providing a suitable location and the necessary facilities where the general public may engage in recreational or sporting activity. Recreational activity includes hiking, skiing, boating, swimming, horseback riding, and golfing. It does not include such activities as shopping, movie-going, dining, and sight-seeing. The resort development may not qualify as a resort area until it has been approved as such by the department.

~~(11) "Special event" is defined in ARM 42.12.106.~~

(12) remains the same, but is renumbered (7).

AUTH: 16-1-201, 16-1-303, MCA

IMP: 16-1-201, 16-4-201, 16-4-202, 16-4-301, MCA

REASON: The department proposes amending ARM 42.12.302 to remove terms that are no longer used in ARM Title 42, chapter 12, subchapter 3. This includes the terms "association," "civic or community enterprise," "manufacture," and "special event."

The department also proposes amending and transferring the definition of "contiguous" to ARM 42.12.106, as this term will be applicable to all of chapter 12, not just this subchapter, and proposes adding a definition for "fortified wine" to provide clarity regarding its distribution.

The department further proposes striking "recreational or sporting activity" as an independently defined term and amending the definition of "resort area" to provide examples of recreational activities there instead, to provide the public and licensees better guidance without the need to refer to multiple definitions.

42.12.401 DEFINITIONS The following terms will be used in definitions apply to this chapter. subchapter:

(1) The following terms apply to all lottery processes:

(a) "Available license" means a newly created license which can be issued by the department or an existing license that can be transferred between quota areas because of:

(i)(a) a population increase verified by the most recent census population figures; or

~~(ii)(b)~~ a lapse or revocation of an existing license.

~~(b)~~ "Conditional approval letter" is defined in ARM 42.12.106.

~~(c)~~ "Continuously open to the public" means open during designated business hours on a weekly basis with no interruption in those business hours. Documented exceptions not causing unreasonable closure that would be considered are:

~~(i)~~ acts of nature, such as a flood, earthquake, tornado, or blizzard;

~~(ii)~~ other acts beyond the owner's control; or

~~(iii)~~ a remodeling project of no greater than a one-month duration.

~~(d)(2)~~ "Existing beer/wine/all beverages license" means either an on-premises or off-premises consumption retail license that is either currently being used at the location in question, or has been approved for nonuse status, or is a license for which a sale has occurred or is pending but not approved by the department.

~~(e)~~ through ~~(h)~~ remain the same, but are renumbered (3) through (6).

~~(2)~~ The following terms specifically apply to restaurant beer and wine licenses:

~~(a)~~ "Evening dinner meal" means individually priced meals served at least four days a week for at least two hours a day between the hours of 5 p.m. and 11 p.m.

~~(b)(7)~~ "Preference" means a priority provided to a restaurant beer and wine lottery applicant based upon eligibility.

~~(c)~~ "Restaurant" as it refers to a restaurant beer and wine license, means a public eating place:

~~(i)~~ where individually priced meals are prepared and served for on-premises consumption;

~~(ii)~~ where at least 65 percent of the restaurant's annual gross income from the operation is from the sale of food (including nonalcoholic beverages) and not from the sale of alcoholic beverages;

~~(iii)~~ that has a dining room, a kitchen, and the number and kinds of employees necessary for the preparation, cooking, and serving of meals in order to satisfy the department that the space is intended for use as a full-service restaurant;

~~(iv)~~ that serves an evening dinner meal at least four days a week for at least two hours a day between the hours of 5 p.m. and 11 p.m. This provision does not apply to a restaurant for which a restaurant beer and wine license is in effect as of April 9, 2009, or to subsequent renewals of that license;

~~(v)~~ that offers individual sales of beer and wine by the drink;

~~(vi)~~ that serves beer and wine only to a patron who orders food;

~~(vii)~~ where beer and wine purchases will be stated on the food bill;

~~(viii)~~ that has a service bar as defined in ARM 42.12.401, at which the consumption of alcoholic beverages by patrons or any other person is not permitted;

~~(ix)~~ that provides table service of alcoholic beverages from the service bar;

and

~~(x)~~ that has sufficient seating to accommodate the number of patrons indicated by the restaurant beer and wine licensing fees indicated in 16-4-420, MCA.

~~(d)~~ "Restaurant beer and wine license" means a license which must be used in conjunction with a restaurant where beer and wine can only be served to patrons

~~who order food or who are waiting to be seated.~~

~~(e) "Service bar" means an area where alcoholic beverages are stored and prepared for table service delivery to patrons for on-premises consumption. Consumption of alcoholic beverages by patrons or any other person is not permitted at the service bar. The table service area, including the eating counter, must be noticeably separated from, and not attached or connected to, the service bar.~~

~~(f) "Table service" means service of alcoholic beverages to a table, booth, or eating counter by a licensee or licensee's employees.~~

AUTH: 16-1-303, MCA

IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-420, 16-4-502, MCA

REASON: The department proposes amending ARM 42.12.401 to update the introductory statement to make it clear that the definitions in the rule apply to the subchapter only, and not the entire chapter of rules in ARM Title 42, chapter 12. Additionally, the department intends to change the title of ARM Title 42, chapter 12, subchapter 4, from "Restaurant Beer and Wine License Lottery Process" to "Alcoholic Beverage License Lottery" as the subchapter addresses more than just restaurant beer and wine licenses.

The department proposes striking the definition of "conditional approval" as the term is already defined in ARM 42.12.106, which applies to the entire chapter. The department also proposes removing the definition "service bar" from this subchapter rule and adding it to ARM 42.12.106, as proposed to be amended in this same rulemaking notice.

The department also proposes striking the definitions for "continuously open to the public," "irrevocable letter of credit," and "table service" because these terms are not currently used in ARM Title 42, chapter 12 and, therefore, defining them here is unnecessary.

The department further proposes striking the definitions for "evening dinner meal" and "restaurant" and relocating the relevant information within newly numbered ARM 42.13.1103, pertaining to the conditions of operating a restaurant beer and wine license, in an effort to make it more convenient for the industry and public to locate information in a single location rather than needing to refer to multiple rules.

The relocation of these definitions or parts of definitions is part of the proposed general reorganization of the licensee suitability and condition rules in ARM Title 42, chapters 12 and 13, as set forth in the general statement of reasonable necessity at the beginning of this notice.

42.13.111 DEFINITIONS The following definitions apply to this subchapter:

~~(1) "Alcohol beverage service training" means any server training program conducted by the department or the department designee, or a qualified server training program that has been preapproved in writing by the department.~~

~~(2) remains the same, but is renumbered (1).~~

~~(3)~~(2) "Building" means an enclosed structure with external walls and a roof. ~~A series of structures linked together, such as a commercial mall, Separate structures contained on a city block or structures connected by skyways,~~ Separate structures are not

considered one building for licensing purposes.

(3) "Contiguous" means touching or sharing a common border.

(4) through (9) remain the same.

(10) "Drink preparation area" means the bar area on the premises where alcoholic beverages are stored and prepared for on-premises consumption and from which alcoholic beverages may be sold for off-premises consumption.

(11) "Flavors and nonbeverage ingredients containing alcohol" means any intermediate product containing alcohol that is used in the production of beer.

(12) "Floor plan" means a diagram with measurements of the premises as seen from above.

(13) "Fortified wine" means wine that contains more than 16 percent, but not more than 24 percent, of alcohol by volume. Fortified wine constitutes liquor for distribution purposes.

(10) remains the same, but is renumbered (14).

(15) "Grocery store" means a self-service retail establishment where a variety of perishable and nonperishable food items and household goods are sold for use off the premises.

~~(14)~~(16) "Industry member" is any person engaged in business as a manufacturer, importer, or wholesaler of distilled spirits, wine, or malt alcoholic beverages.

(12) remains the same, but is renumbered (17).

~~(13)~~(18) "Mitigating circumstances" means a justification or excuse for a violation of the code, but which, in fairness, may be considered as that the department considers extenuating enough to reduce warrant a reduction of the penalty imposed for the purpose of ARM 42.13.101 that would otherwise be proposed.

(19) "Off-premises sales area" means an area on the premises of an on-premises consumption licensee or manufacturer where alcoholic beverages are available for purchase in original packaging for off-premises consumption.

(20) "Original packaging" means the sealed container in which a manufacturer packages its product for retail sale. It includes bottles, cans, kegs, and growlers, but does not include lines or piping carrying product from a manufacturer's premises to a retailer's premises.

~~(14)~~(21) "Patio/deck" means an outdoor area portion of the premises where the preparation, service, and consumption of alcoholic beverages is permitted that is part of the licensed premises, specifically designated on a floor plan, with a perimeter barrier and immediately adjacent to, and accessible from, the indoor portion of the licensed premises.

~~(15)~~(22) "Perimeter barrier" means a barrier enclosing the perimeter of the patio/deck portion of a licensed premises, which. The barrier shall be constructed in a manner that impedes foot traffic and clearly defines the boundary of the licensed exterior portion of the premises in a way that. The barrier shall be at least three feet high at all points and may have a single six-foot-wide entrance permitting public access from an unlicensed area to the patio/deck. Upon the department's determination that the barrier accomplishes its intended purpose, the barrier may:

(a) ~~clearly marks for patrons, licensees, licensees' employees, investigators,~~

~~local law enforcement, and the general public where consumption of alcohol is allowed be constructed of materials such as lattice or wrought iron that do not form a solid structure;~~

~~(b) impedes access to the service areas by underage persons or others who may attempt to enter the premises without the licensee's knowledge have a portion of it be water; and~~

~~(c) consists of a fence or wall at least three feet high, or an alternative barrier that accomplishes the same purposes and is approved by the department. A perimeter barrier may be with or without entrances from the parking lot, sidewalk, or other areas beyond the patio/deck regardless of whether those areas beyond the licensed premises are land or water. In the case of a patio/deck which abuts a river, lake, or other body of water, the edge of the water may serve as a portion of the perimeter barrier, subject to department approval have additional entrances permitting public access to the patio/deck; and~~

~~(d) be less than three feet in height.~~

~~(16) and (17) remain the same, but are renumbered (23) and (24).~~

~~(18)(25) "Premises" means one building or a specific portion or portions of one building as described on the area in the floor plan, identified by a unique address and approved by the department on which the activities authorized under the license may be conducted. The premises shall contain all service areas used by the licensee and the licensee's patrons and those service areas in which the licensee operates outside of and attached to the licensed building and to which patrons are permitted free access from the building. Premises includes a patio/deck.~~

~~(26) "Prepared-food business," as it applies to an on-premises beer license with a wine amendment, means a public eating establishment where the food is not made on-site.~~

~~(19) remains the same, but is renumbered (27).~~

~~(20) "Proof of training" means a printed copy of a training certificate, wallet card, or online verification of completion of training received from the training provider.~~

~~(21) "Reprimand" means a written warning issued to a licensee.~~

~~(28) "Restaurant," as it applies to an on-premises beer license with a wine amendment, means a public eating establishment where food is made on-site.~~

~~(22) remains the same, but is renumbered (29).~~

~~(30) "Sample room" means the area of a manufacturer's premises where the service, sale, and on-premises consumption of alcoholic beverages are permitted.~~

~~(23) remains the same, but is renumbered (31).~~

~~(32) "Self-service of alcoholic beverages" means allowing persons other than the licensee or its employees to have access to alcoholic beverages prior to the licensee or its employees providing the alcoholic beverage to the person.~~

~~(24)(33) "Service area" means the area on the premises where the service, sale, and on-premises consumption of alcoholic beverages are permitted. The service area includes any patio/deck and drink preparation area in which the preparation, sale, service or consumption of alcoholic beverages occurs, except as provided in 16-3-105, MCA.~~

~~(34) "Service bar" means an area on a restaurant beer and wine licensee's premises where alcoholic beverages are stored and prepared for on-premises~~

consumption.

(35) "Stand-alone beer and/or table wine business" means a business in which 95 percent of the business's annual gross income comes from the sale of beer, table wine, or both.

~~(25) "Training providers" means a company or organization that has a responsible alcohol sales and service training program.~~

AUTH: 16-1-303, MCA

IMP: ~~16-3-302~~ 16-1-302, MCA

REASON: The department proposes amending ARM 42.13.111 to update the terms defined in the rule to correspond with the current content of the rules covered in this subchapter. The terms proposed to be stricken are no longer necessary to define in this subchapter. The terms proposed to be added were either previously located in rule content being relocated into this subchapter as a result of the updates currently proposed in this same rulemaking notice or not previously defined by rule and should be.

The department proposes to add the definition for "flavors and nonbeverage ingredients containing alcohol" because the department proposes repealing ARM 42.13.602 and placing the single definition from that rule into this one, to keep all definitions of terms used in chapter 13 within a single rule.

The department proposes to add the definition for "fortified wine" and to clarify that it is considered to be liquor for distribution purposes, so licensees are aware they need to purchase fortified wine through agency liquor stores.

The department proposes clarifying the definition of "original packaging" to inform manufacturers that lines and piping to a retailer's establishment are not considered original packaging. A manufacturer and retailer located next to each other are required to have different ownership and the delivery of the alcoholic beverages to the retailer should be made in the manner of kegs, cans, bottles, and growlers, no different than if the product was delivered across town or across the state to another retailer.

The department proposes striking the term "reprimand" because ARM 42.13.101 sufficiently addresses when a reprimand may be issued and how the department shall consider it in the progress penalty schedule.

The department further proposes correcting an implementing citation error. The correct statute is 16-1-302, MCA, not 16-3-302, MCA, as currently listed in the rule.

42.13.405 WINERY - ~~SAMPLES~~ CONDITIONS FOR OPERATING

(1) ~~Product samples may only be provided in the sample room as shown on the floor plan, which has been submitted and approved by the department~~ In addition to all other alcoholic beverage licensing requirements, a winery shall:

(a) refrain from providing alcoholic beverages on the premises until the department approves a sample room;

(b) not possess any interest in real or personal property owned, occupied, or used by an alcoholic beverage retailer in the conduct of the retailer's business;

(c) store alcoholic beverages only on the premises;

(d) store on the premises only the alcoholic beverages for which the premises are licensed or those authorized under an approved alternating proprietor arrangement;

(e) sell and deliver its products for off-premises sales only in original packaging;

(f) prevent the self-service of alcoholic beverages on the premises, except in an off-premises sales area;

(g) prevent the consumption or possession of alcoholic beverages on the premises by persons who are under 21 years of age or actually, apparently, or obviously intoxicated;

(h) prevent the sale of alcoholic beverages for on-premises or off-premises consumption between 2 a.m. and 8 a.m.;

(i) prevent the consumption or possession of alcoholic beverages on the premises between 2 a.m. and 8 a.m. by removing all alcoholic beverages other than those purchased in original packaging for off-premises consumption from individuals' possession by 2 a.m.;

(j) prevent the on-premises consumption of alcoholic beverages not sold or provided at the premises and those sold in original packaging for off-premises consumption;

(k) for any alcoholic beverage purchased on the premises, prevent the consumption of alcoholic beverages on any property in which the licensee has possessory interest and that is contiguous or used in connection with the licensee's business, including any patio, deck, sitting area, smoking area, playground, or parking lot that is not part of the premises;

(l) maintain records documenting its business operations including, but not limited to the sale, production, storage, and processing of alcoholic beverages on the premises; and

(m) electronically file all required alcoholic beverage tax returns and pay any taxes owed as provided in law.

(2) A license to operate a winery located in Montana is not a retail licensee license.

(3) A sample room may include a deck or patio, as long as the deck or patio is immediately adjacent to the winery sample room and can only be accessed from the winery. The deck or patio must be enclosed in such a manner as to restrict its access and view from the general public on the street or sidewalk.

(3) A winery may sell alcoholic beverages on its premises to a consumer for off-premises consumption only as follows:

(a) the sale may not be conducted through a drive-up window;

(b) all alcoholic beverages must be in original packaging; and

(c) alcoholic beverages may only be sold from a drink preparation area in an approved sample room or an approved off-premises sales area.

AUTH: 16-1-303, MCA

IMP: ~~16-4-204~~ 16-3-301, 16-3-304, 16-3-305, 16-3-406, 16-3-411, 16-4-107,
MCA

REASON: The department proposes amending ARM 42.13.405 to provide

clear guidance to wineries on the conditions for operating in Montana. In addition to the proposed actions included in the general statement of reasonable necessity at the beginning of this notice, the department proposes including the following new provisions in this rule.

New (1)(a) proposes to specify that alcoholic beverages may not be provided on the premises until the department approves a sample room. This ensures all premises suitability requirements have been met to protect public health and safety.

New (1)(b) proposes to prohibit a winery from having any interest in real or personal property owned, occupied, or used by an alcoholic beverage retailer. This prohibition is consistent with federal tied-house regulations, as provided in the Code of Federal Regulations, Title 27, part 6.

New (1)(d) proposes to limit the alcoholic beverages a licensee may have on its premises to those for which the premises are licensed and those approved under an alternating proprietor arrangement. Alternating proprietor arrangements allow a manufacturer to utilize the premises of another manufacturer to produce alcoholic beverages. The proposed rule amendment prevents the licensee from receiving a violation when a manufacturer of a different alcoholic beverage type uses the premises under an approved alternating proprietor arrangement.

New (1)(e) proposes to clarify how alcoholic beverages shall be packaged for sale and delivery. The department proposes to define original packaging as a sealed container in which manufacturers package products for retail sale, such as bottles, cans, kegs, and growlers. Utilizing this defined term in this conditions rule prohibits such things as a manufacturer delivering product to a retailer by such unapproved means as pipes or hoses.

New (1)(g) proposes to require the licensee to prohibit underage and intoxicated persons from possessing alcoholic beverages on the premises to protect public safety.

New (1)(h) and (1)(i) propose to specify the times during which the sale, consumption, and possession of alcoholic beverages are prohibited. The three types of alcoholic beverage manufacturers have varying hours for the consumption, possession, and sale of alcoholic beverages. Prohibiting the consumption, possession, and sale of alcoholic beverages during these hours is needed to be consistent with 16-3-304, MCA, which requires establishments to be closed each day between 2 a.m. and 8 a.m.

New (1)(j) proposes to prohibit a licensee from allowing the on-premises consumption of alcoholic beverages that were purchased for off-premises consumption or that were brought onto the premises by the patron. This requirement helps ensure the licensee has control over the alcoholic beverages that are consumed on the premises to prevent overconsumption and consumption by underage persons.

New (1)(k) proposes to prohibit a licensee from allowing patrons to consume alcoholic beverages on any contiguous property controlled by the licensee that is not part of the premises. The department proposes this requirement because the privileges that come with a license only apply to the premises approved by the department. If the licensee expands its premises without department approval, the licensee has exceeded its license privileges.

New (1)(l) proposes to clarify what documents must be maintained to enable

the department to verify the licensee is complying with the law.

New (1)(m) proposes to require the licensee to electronically file any alcoholic beverage tax returns and pay the applicable tax owed. The department is requiring this to promote the use of the department's safe and efficient online system, which is already used by the majority of wineries. This will enable the department to more efficiently receive and process these returns and payments.

The department proposes to strike the requirement in (3) that a patio/deck have a barrier restricting the public's view from a sidewalk because there is no public harm caused by the absence of this barrier.

New (3)(c) proposes to provide clarification on where alcoholic beverages may be sold from on the premises. To protect public safety, the consumption of alcoholic beverages is prohibited in certain areas, such as those areas dedicated to manufacturing or storage.

The department further proposes including references to additional statutes that this rule implements and proposes updating the rule title to reflect the content of the rule as amended.

42.13.601 SMALL BREWERY RESTRICTIONS - CONDITIONS FOR OPERATING ~~(1) Product samples may only be provided in the sample room as shown on the floor plan which has been submitted and approved by the department.~~

(1) In addition to all other alcoholic beverage licensing requirements, a brewery shall:

(a) not possess any interest in real or personal property owned, occupied, or used by an alcoholic beverage retailer in the conduct of the retailer's business;

(b) store alcoholic beverages only on the premises;

(c) store on the premises only the alcoholic beverages for which the premises are licensed or those authorized under an approved alternating proprietor arrangement;

(d) sell and deliver its product for off-premises sales only in original packaging;

(e) prevent the self-service of alcoholic beverages on the premises, except in an off-premises sales area;

(f) prevent the consumption or possession of alcoholic beverages on the premises by persons who are under 21 years of age or actually, apparently, or obviously intoxicated;

(g) prevent the on-premises consumption of alcoholic beverages not sold or provided at the premises and those sold in original packaging for off-premises consumption;

(h) for any alcoholic beverage purchased on the premises, prevent the consumption of alcoholic beverages on any property in which the licensee has possessory interest and that is contiguous or used in connection with the licensee's business, including any patio, deck, sitting area, smoking area, playground, or parking lot that is not part of the premises;

(i) maintain records documenting its business operations including, but not limited to, the sale, production, storage, and processing of alcoholic beverages on the premises; and

(j) electronically file all required alcoholic beverage tax returns and pay any taxes owed as provided in law.

~~(2) A small license to operate a brewery is not a retail license beer licensee as defined in 16-4-105, MCA.~~

~~(3) A sample room may include a deck or patio, as long as the deck or patio is immediately adjacent to the brewery sample room and can only be accessed from the sample room. The deck or patio must be enclosed in such a manner as to restrict its access and view from the general public on the street or sidewalk.~~

(3) A brewery may sell alcoholic beverages on its premises to a consumer for off-premises consumption only as follows:

(a) the sale may not be conducted through a drive-up window;

(b) all alcoholic beverages must be in original packaging;

(c) alcoholic beverages may only be sold from a drink preparation area in an approved sample room or an approved off-premises sales area; and

(d) the sale of alcoholic beverages is prohibited between 2 a.m. and 8 a.m.

~~(4) Product samples for on-premises consumption may not be sold, offered for sale, or given away before 10 a.m. or after 8 p.m.~~

(4) In addition to all other requirements, a small brewery with an annual nationwide production of not less than 100 barrels or more than 10,000 barrels that operates a sample room shall:

(a) refrain from providing alcoholic beverages on the premises until the department approves a sample room;

(b) provide with or without charge no more than 48 ounces of alcoholic beverages to any individual for on-premises consumption during a business day;

(c) prevent the sale of alcoholic beverages for on-premises consumption between 8 p.m. and 10 a.m.; and

(d) prevent the consumption or possession of alcoholic beverages on the premises between 9 p.m. and 10 a.m. by removing all alcoholic beverages other than those purchased in original packaging for off-premises consumption from individuals' possession by 9 p.m.

~~(5) On-premises consumption and possession shall not be permitted before 10 a.m. or after 9 p.m. The brewery shall be responsible for removing all product samples from patrons' possession in order to comply with this provision.~~

(5) In addition to all other requirements, a brewery with an annual nationwide production of more than 10,000 but less than 60,000 barrels shall:

(a) refrain from providing alcoholic beverages on the premises until the department approves a sample room;

(b) only provide samples without charge on its premises between 8 a.m. and 2 a.m.;

(c) prevent the sale of alcoholic beverages for off-premises consumption between 2 a.m. and 8 a.m.; and

(d) prevent the consumption or possession of alcoholic beverages on the premises between 2 a.m. and 8 a.m. by removing all alcoholic beverages other than those purchased in original packaging for off-premises consumption from individuals' possession by 2 a.m.

~~(6) A small brewery may sell growlers. A growler is any refillable, resealable container that a brewer fills on the brewery premises for off-premises consumption.~~

AUTH: 16-1-303, MCA

IMP: 16-3-211, 16-3-213, 16-3-214, 16-3-242, 16-3-301, 16-3-304, 16-3-305,
MCA

REASON: The department proposes amending ARM 42.13.601 to provide clear guidance to brewers on the conditions for operating in Montana. In addition to the proposed actions included in the general statement of reasonable necessity at the beginning of this notice, the department proposes including the following new provisions in this rule.

New (1)(a) proposes to prohibit a brewery from having any interest in real or personal property owned, occupied, or used by an alcoholic beverage retailer. This prohibition is consistent with federal tied-house regulations, as provided in the Code of Federal Regulations, Title 27, part 6.

New (1)(c) proposes to limit the alcoholic beverages a licensee may have on its premises to those for which the premises are licensed and those approved under an alternating proprietor arrangement. Alternating proprietor arrangements allow a manufacturer to utilize the premises of another manufacturer to produce alcoholic beverages. The proposed rule amendment prevents the licensee from receiving a violation when a manufacturer of a different alcoholic beverage type uses the premises under an approved alternating proprietor arrangement.

New (1)(d) proposes to clarify how alcoholic beverages shall be packaged for sale and delivery. The department proposes to define original packaging as a sealed container in which manufacturers package products for retail sale, such as bottles, cans, kegs, and growlers. Utilizing this defined term in this conditions rule prohibits such things as a manufacturer delivering product to a retailer by such unapproved means as pipes or hoses.

New (1)(f) proposes to require the licensee to prohibit underage and intoxicated persons from possessing alcoholic beverages on the premises to protect public safety.

New (1)(g) proposes to prohibit a licensee from allowing the on-premises consumption of alcoholic beverages that were purchased for off-premises consumption or that were brought onto the premises by the patron. This requirement helps ensure the licensee has control over the alcoholic beverages that are consumed on the premises to prevent overconsumption and consumption by underage persons.

New (1)(h) proposes to prohibit a licensee from allowing patrons to consume alcoholic beverages on any contiguous property controlled by the licensee that is not part of the premises. The department proposes this requirement because the privileges that come with a license only apply to the premises approved by the department. If the licensee expands its premises without department approval, the licensee has exceeded its license privileges.

New (1)(i) proposes to clarify what documents must be maintained to enable the department to verify the licensee is complying with the law.

New (1)(j) proposes to require the licensee to electronically file any alcoholic beverage tax returns and pay the applicable tax owed. The department is requiring this to promote the use of the department's safe and efficient online system, which is

already used by the majority of breweries. This will enable the department to more efficiently receive and process these returns and payments.

New (3)(c) proposes to provide clarification on where alcoholic beverages may be sold from on the premises for off-premises consumption. To protect public safety, the sale of alcoholic beverages is prohibited in certain areas, such as those areas dedicated to manufacturing or storage.

New (4)(a) and new (5)(a) propose to specify that alcoholic beverages may not be provided on the premises until a sample room has been approved by the department. This ensures all premises suitability requirements have been met to protect public health and safety.

New (4)(d) and new (5)(d) propose to clarify that only those alcoholic beverages that were provided for on-premises consumption must be removed by the time specified. Those alcoholic beverages purchased for off-premises consumption are not required to be removed by the licensee, because after hours possession of alcoholic beverages that were purchased for off-premises consumption does not violate statute.

The department also proposes including references to additional statutes that this rule implements and updating the rule title to reflect the content of the rule as amended.

42.13.802 DOMESTIC DISTILLERIES DISTILLERY - CONDITIONS FOR OPERATING ~~(1) The department may issue a domestic distillery license to a person holding a federal basic permit for a distilled spirits plant.~~

(1) In addition to all other alcoholic beverage licensing requirements, a distillery shall:

(a) not sell, deliver, or provide any alcoholic beverages until the licensee has obtained a certificate of label approval or an exemption from label approval from the Alcohol and Tobacco Tax and Trade Bureau and product approval from the department;

(b) not possess any interest in real or personal property owned, occupied, or used by an alcoholic beverage retailer in the conduct of the retailer's business;

(c) store alcoholic beverages only on the premises;

(d) store on the premises only the alcoholic beverages for which the premises are licensed or those authorized under an approved alternating proprietor arrangement;

(e) sell and deliver its product in Montana only in original packaging and to the department; and

(f) maintain records documenting its business operations including, but not limited to, the sale, production, storage, and processing of alcoholic beverages on the premises.

~~(2) All domestic distilleries must meet the premises suitability requirements in ARM 42.12.122 and 42.12.139. A domestic distillery's premises may include more than one building if the land on which the buildings are located is contiguous and the licensee has complete control over and possessory interest in the property.~~

~~(2) A license to operate a distillery is not a retail license.~~

~~(3) Upon approval by the department, a domestic distillery licensee may own, lease, maintain, and operate a non-contiguous warehouse for the sole purpose of~~

storing liquor. To seek approval, the licensee shall submit a form provided by the department and include:

- ~~(a) verification that the Alcohol and Tobacco Tax and Trade Bureau approved the licensee's registration to operate the warehouse;~~
- ~~(b) verification that local building, health, and fire officials approved the warehouse for its intended use; and~~
- ~~(c) proof of complete control over and possessory interest in the land and warehouse.~~

(3) In addition to all other requirements, a microdistillery shall:

(a) electronically file all required alcoholic beverage tax returns and pay any taxes owed as provided in law;

(b) only transfer alcoholic beverages from a manufacturing area or storage area to a sample room or off-premises sales area in original packaging;

(c) for any alcoholic beverage purchased on the premises, prevent the consumption of alcoholic beverages on any property in which the licensee has possessory interest and that is contiguous or used in connection with the licensee's business, including any patio, deck, sitting area, smoking area, playground, or parking lot that is not part of the premises;

(d) prevent the self-service of alcoholic beverages on the premises, except in an off-premises sales area;

(e) prevent the consumption or possession of alcoholic beverages on the premises by persons who are under 21 years of age or actually, apparently, or obviously intoxicated;

(f) prevent the on-premises consumption of alcoholic beverages not sold or provided at the premises and those sold in original packaging for off-premises consumption;

(g) only provide alcoholic beverages to consumers at a microdistillery for on-premises or off-premises consumption that have been produced at the microdistillery. For purposes of this requirement only, an alcoholic beverage is considered to have been produced at a microdistillery only if:

(i) on a quarterly basis, at least 90 percent of the liquor provided at the microdistillery for on-premises or off-premises consumption was distilled at the microdistillery; and

(ii) all liquor provided at the microdistillery for on-premises and off-premises consumption contains alcohol that was distilled at the microdistillery;

(h) notify the department of the percentage of alcohol distilled at the microdistillery for each liquor product prior to providing the product to consumers at the microdistillery for on-premises or off-premises consumption. The microdistillery shall notify the department of any changes to the percentages on file with the department prior to providing the changed product to consumers.

~~(4) A domestic distillery licensee shall maintain records documenting its business operations including, but not limited to, the production, storage, and processing of liquor on the premises.~~

(4) In addition to all other requirements, a microdistillery that operates a sample room shall:

(a) refrain from providing alcoholic beverages to consumers for on-premises consumption until a sample room is approved by the department;

(b) prevent the consumption or possession of alcoholic beverages outside of an approved sample room and any approved patio/deck;

(c) prevent the consumption or possession of alcoholic beverages on the premises between 8 p.m. and 10 a.m. by removing all alcoholic beverages other than those purchased in original packaging for off-premises consumption from individuals' possession by 8 p.m.; and

(d) regardless of the liquor product's alcohol content, provide no more than a combined total of 2 ounces of liquor products approved for labeling or exempt from labeling for on-premises consumption to any individual during a business day.

~~(5) A domestic distillery may qualify as a microdistillery to sell liquor it produces at the microdistillery's sample room for on- or off-premises consumption if it distills 25,000 gallons or less of liquor annually at the microdistillery and meets the requirements in ARM 42.13.805.~~

(5) In addition to all other requirements, a microdistillery that conducts off-premises sales shall:

(a) not sell alcoholic beverages through a drive-up window;

(b) sell alcoholic beverages only in original packaging;

(c) sell alcoholic beverages only from a drink preparation area in an approved sample room or an approved off-premises sales area;

(d) sell no more than 1.75 liters of liquor product approved for labeling or exempt from labeling in one day to an individual;

(e) sell alcoholic beverages for off-premises consumption only between 8 a.m. and 2 a.m.; and

(f) deliver alcoholic beverages only to the department or an agency liquor store; the delivery of alcoholic beverages to consumers off-site is prohibited.

AUTH: 16-1-303, 16-1-424, MCA

IMP: 16-1-404, 16-3-301, 16-3-304, 16-3-305, 16-4-311, 16-4-312, 16-4-501, MCA

REASON: The department proposes amending ARM 42.13.802 to provide clear guidance to distillers on the conditions for operating in Montana. In addition to the proposed actions included in the general statement of reasonable necessity at the beginning of this notice, the department proposes including the following new provisions in this rule.

The current language in (1) is proposed to be stricken as the requirement to have a federal basic permit is already addressed in 16-4-311, MCA.

New (1)(b) proposes to prohibit a distillery from having any interest in real or personal property owned, occupied, or used by an alcoholic beverage retailer. This prohibition is consistent with federal-tied house regulations, as provided in the Code of Federal Regulations, Title 27, part 6.

New (1)(d) proposes to limit the alcoholic beverages a licensee may have on its premises to those for which the premises are licensed and those approved under an alternating proprietor arrangement. Alternating proprietor arrangements allow a manufacturer to utilize the premises of another manufacturer to produce alcoholic beverages. The proposed rule amendment prevents the licensee from receiving a

violation when a manufacturer of a different alcoholic beverage type uses the premises under an approved alternating proprietor arrangement.

New (1)(e) proposes to require alcoholic beverages to be shipped to the department in original packaging because unless the distillery meets the requirement of a microdistillery, the licensee's only method of distribution in the state is through the department.

New (1)(f) proposes to clarify what documents must be maintained to enable the department to verify the licensee is complying with the law.

New (3)(b) proposes to require product transferred into the sample room or off-premises sales area to be packaged in original packaging, which the department also proposes to define in this same notice. The product is required to be in original packaging to be consistent with federal alcoholic beverage laws and to adequately account for the alcoholic beverage taxes due to the state when the product is sold.

New (3)(c) proposes to prohibit a licensee from allowing patrons to consume alcoholic beverages on any contiguous property controlled by the licensee that is not part of the premises. The department proposes this requirement because the privileges that come with a license only apply to the premises approved by the department. If the licensee expands its premises without department approval, the licensee has exceeded its license privileges.

New (3)(e) proposes to require the licensee to prohibit underage and intoxicated persons from possessing alcoholic beverages on the premises to protect public safety.

New (3)(f) proposes to prohibit a licensee from allowing the on-premises consumption of alcoholic beverages that were purchased for off-premises consumption or that were brought onto the premises by the patron. This requirement helps ensure the licensee has control over the alcoholic beverages that are consumed on the premises to prevent overconsumption and consumption by underage persons.

New (4)(a) proposes to specify that alcoholic beverages may not be provided on the premises until a sample room has been approved by the department. This ensures all premises suitability requirements have been met to protect public health and safety.

New (4)(b) proposes to provide clarification on where alcoholic beverages may be consumed on the premises. To protect public safety, the consumption of alcoholic beverages is prohibited in certain areas, such as those areas dedicated to manufacturing or storage.

New (4)(c) proposes to clarify that only those alcoholic beverages that were provided for on-premises consumption must be removed by the time specified. Those alcoholic beverages purchased for off-premises consumption are not required to be removed by the licensee, because after hours possession of alcoholic beverages that were purchased for off-premises consumption does not violate statute.

New (4)(d) proposes to clarify that, regardless of alcohol content, the distillery is only allowed to provide up to 2 ounces of liquor per person per day. This requirement is consistent with 16-4-312, MCA, and is necessary to prevent licensees from allowing additional ounces to be provided to patrons to account for differing levels of products' alcohol content.

New (5)(b) proposes to clarify how alcoholic beverages shall be packaged for off-premises consumption. The department proposes to define original packaging as a sealed container in which manufacturers package products for retail sale, such as bottles, cans, kegs, and growlers. Utilizing this defined term in this conditions rule prohibits such things as a manufacturer delivering product by such means as pipes or hoses.

New (5)(c) proposes to provide clarification on where alcoholic beverages may be sold from on the premises for off-premises consumption. To protect public safety, the sale of alcoholic beverages is prohibited in certain areas, such as those areas dedicated to manufacturing or storage.

New (5)(f) proposes to prohibit the delivery of alcoholic beverages to consumers to be consistent with statutory requirements. A distillery may only deliver alcoholic beverages to the state liquor warehouse pursuant to 16-3-101, MCA, or to an agency liquor store pursuant to 16-4-311, MCA.

The department also proposes including references to additional statutes that this rule implements and updating the rule title to reflect the content of the rule as amended.

6. The rules proposed to be transferred and amended provide as follows, new matter underlined, deleted matter interlined:

42.12.134 (42.13.1102) CONDITIONS AND QUALIFICATIONS SPECIFIC FOR AN ALL-BEVERAGES LICENSE - CONDITIONS FOR OPERATING (1) In addition to ~~the~~ all other alcoholic beverage licensing requirements in ~~ARM 42.12.122~~, an all-beverages licensee shall:

(a) ~~shall offer beer, wine, and distilled spirits by the drink~~ only purchase and possess on the premises liquor and fortified wine from an agency liquor store, beer from a beer wholesaler or brewery, and table wine from a table wine distributor or winery;

(b) ~~may sell alcoholic beverages for off-premises consumption only in original packaging, individual servings, or refillable beer growlers; and~~ store alcoholic beverages only on the premises;

(c) ~~shall prohibit offer liquor, beer, and wine for on-premises consumption;~~

(d) prevent the self-service of alcoholic beverages on the premises, except in an off-premises sales area;

(e) prevent the sale of alcoholic beverages for on-premises or off-premises consumption between 2 a.m. and 8 a.m.;

(f) prevent the consumption or possession of alcoholic beverages on the premises between ~~the hours of~~ 2 a.m. and 8 a.m., by removing all alcoholic beverages other than those purchased in original packaging or growlers for off-premises consumption from individuals' possession by 2 a.m.;

(g) prevent the consumption or possession of alcoholic beverages on the premises by persons who are under 21 years of age or actually, apparently, or obviously intoxicated;

(h) prevent the on-premises consumption of alcoholic beverages not sold or provided at the premises and those sold in original packaging or growlers for off-premises consumption; and

(i) prevent the consumption of alcoholic beverages on any property in which the licensee has possessory interest and that is contiguous or used in connection with the licensee's business, including any patio, deck, sitting area, smoking area, playground, or parking lot that is not part of the premises.

(2) An all-beverages licensee may sell alcoholic beverages for off-premises consumption only as follows:

(a) alcoholic beverages must be sold in original packaging or individual servings, except that the retailer may fill and sell growlers with beer and table wine;

(b) the sale of alcoholic beverages must occur on the premises; the delivery of alcoholic beverages to the consumer off-site is prohibited;

(c) alcoholic beverages may only be sold from a drink preparation area or an off-premises sales area; and

(d) the sale of alcoholic beverages within the off-premises sales area must equal at least 95 percent of the gross revenue of all sales in that area.

AUTH: 16-1-303, MCA

IMP: 16-3-301, 16-3-303, 16-3-304, 16-3-305, 16-3-311, 16-4-405, 16-6-303, MCA

REASON: The department proposes transferring and amending ARM 42.12.134 to provide additional guidance to alcoholic beverage licensees on the conditions required for operating in Montana. In addition to the proposed actions included in the general statement of reasonable necessity at the beginning of this notice, the department proposes including the following new provisions in this rule.

Newly numbered (1)(f) proposes to clarify that only those alcoholic beverages that were provided for on-premises consumption must be removed by the time specified. Those alcoholic beverages purchased for off-premises consumption are not required to be removed by the licensee, because after hours possession of alcoholic beverages that were purchased for off-premises consumption does not violate statute.

New (1)(g) proposes to require that the licensee prohibit the consumption or possession of alcoholic beverages on the premises by persons under the legal drinking age and persons who are actually, apparently, or obviously intoxicated, to protect public safety.

New (1)(h) proposes to prohibit a licensee from allowing the on-premises consumption of alcoholic beverages that were purchased for off-premises consumption or that were brought onto the premises by the patron. This requirement helps ensure the licensee has control over the alcoholic beverages that are consumed on the premises to prevent overconsumption and consumption by underage persons.

New (1)(i) proposes to prohibit a licensee from allowing patrons to consume alcoholic beverages on any contiguous property controlled by the licensee that is not part of the premises. The department proposes this requirement because the privileges that come with a license only apply to the premises approved by the department. If the licensee expands its premises without department approval, the licensee has exceeded its license privileges and has violated the conditions of its license.

New (2)(a) proposes to provide the ability for a licensee to sell wine growlers for off-premises consumption. This practice is proposed to mirror what already exists for

beer products.

New (2)(b) proposes to prohibit the off-premises delivery of alcoholic beverages to a consumer. The licensee's ability to sell alcoholic beverages only extends to the premises or what is allowed under a catering endorsement. The off-premises delivery of alcoholic beverages exceeds those allowable privileges.

New (2)(c) proposes to provide clarification on where alcoholic beverages may be sold from on the premises for off-premises consumption. To protect public safety, the sale of alcoholic beverages is prohibited in certain areas, such as those areas dedicated to storage.

New (2)(d) proposes to require that 95 percent of the gross revenue in an off-premises sales area be derived from the sale of alcoholic beverages. This is to ensure that the all-beverage license is not used as an off-premises license. Off-premises licenses are appropriate where a licensee wants to sell more than alcoholic beverages for off-premises consumption.

The department also proposes updating the implementing statutes for the rule, updating the rule title to more clearly identify the rule content, and transferring the rule to ARM Title 42, chapter 13 as part of the overall reorganization of the rules in chapters 12 and 13 as set forth in the general statement of reasonable necessity at the beginning of this notice.

42.12.135 (42.13.1103) CONDITIONS AND QUALIFICATIONS
SPECIFIC FOR A RESTAURANT BEER AND WINE LICENSE - CONDITIONS FOR
OPERATING (1) In addition to the all other alcoholic beverage licensing

requirements in ARM 42.12.122, a restaurant beer and wine licensee shall:

(a) shall operate at premises clearly recognizable as a restaurant, as defined in ARM 42.12.401; and only purchase and possess on the premises fortified wine from an agency liquor store, beer from a beer wholesaler or brewery, and table wine from a table wine distributor or winery;

(b) store alcoholic beverages only on the premises;

(c) offer beer and wine for on-premises consumption;

(d) serve beer and wine only to patrons who order food;

(e) state alcoholic beverage sales on the food bill;

(f) obtain at least 65 percent of its annual gross income from the sale of food, excluding the sale of nonalcoholic beverages;

(g) prevent the self-service of alcoholic beverages on the premises;

(h) prevent the sale of alcoholic beverages between 11 p.m. and 11 a.m.;

(i) prevent the consumption or possession of alcoholic beverages on the premises between 11 p.m. and 11 a.m. by removing all alcoholic beverages from individuals' possession by 11 p.m.;

(j) prevent the consumption or possession of alcoholic beverages on the premises by persons who are under 21 years of age or actually, apparently, or obviously intoxicated;

(k) prevent the consumption of alcoholic beverages that were not purchased at the premises; and

(b)(l) must not provide alcoholic beverages to any person prohibit the sale of beer and wine for off-premises consumption.

(2) The term restaurant, as defined in ARM 42.12.401, does not include a

~~coffee or beverage shop, bakery, kiosk, or a fast-food restaurant that, excluding any carry-out business, serves a majority of its food and drink in disposable containers not reused in the same restaurant. The disposable containers provision of the preceding sentence does not apply to a restaurant beer and wine license in use at a particular location by the same licensee In addition to the requirements in (1), any restaurant for which a restaurant beer and wine license was not in effect as of April 9, 2009, shall:~~

(a) serve an evening dinner meal at least four days a week for at least two hours a day between 5 p.m. and 11 p.m.; and

(b) sell the majority of its food and drinks, excluding any carry-out business, in nondisposable containers.

AUTH: 16-1-303, MCA

IMP: 16-3-301, 16-3-305, 16-3-311, 16-4-405, 16-4-420, MCA

REASON: The department proposes transferring and amending ARM 42.12.135 to provide clear guidance to restaurant beer and wine licensees on the conditions for operating in Montana. In addition to the proposed actions included in the general statement of reasonable necessity at the beginning of this notice, the department proposes including the following new provisions in this rule.

As amended, (1)(a) proposes to allow licensees to purchase fortified wine from an agency liquor store. There is nothing in the Montana Alcoholic Beverage Code that limits a restaurant beer and wine licensee to selling "table wine" rather than "wine." Therefore, the department proposes to use the definition of wine in 16-1-106, MCA, which provides that wine can contain up to 24 percent alcohol by volume. Based on this percentage, the licensee is able to purchase and sell table wine and fortified wine. Fortified wine is proposed to be defined as being wine containing more than 16 percent but not more than 24 percent alcohol by volume.

New (1)(f) proposes to exclude nonalcoholic beverages for purposes of meeting the 65 percent annual gross income requirement from food. Food is not commonly understood to include liquids; therefore, nonalcoholic beverages shall not be included in the calculation.

New (1)(j) proposes to require that the licensee prohibit the consumption or possession of alcoholic beverages on the premises by persons under the legal drinking age and persons who are actually, apparently, or obviously intoxicated, to protect public safety.

New (1)(k) proposes to prohibit a licensee from allowing the consumption of alcoholic beverages that were brought onto the premises by the patron. This requirement helps ensure the licensee has control over the alcoholic beverages that are consumed on the premises to prevent overconsumption and consumption by underage persons.

The department also proposes updating the implementing statutes for the rule, updating the rule title to more clearly identify the rule content, and transferring the rule to ARM Title 42, chapter 13 as part of the overall reorganization of the rules in chapters 12 and 13 as set forth in the general statement of reasonable necessity at the beginning of this notice.

42.12.136 (42.13.1104) CONDITIONS AND QUALIFICATIONS SPECIFIC FOR A BEER LICENSE AND A BEER LICENSE WITH WINE AMENDMENT FOR ON-PREMISES CONSUMPTION BEER LICENSE - CONDITIONS FOR OPERATING

(1) In addition to the all other alcoholic beverage licensing requirements in ARM 42.12.122, an on-premises consumption beer licensee shall:

(a) must meet the standards for premises operated as either a restaurant or a prepared food business when operated in conjunction with a wine amendment only purchase and possess on the premises beer from a beer wholesaler or brewery;

(b) store alcoholic beverages only on the premises;

(b)(c) shall offer beer and/or wine by the drink for on-premises consumption;

(c) may sell alcoholic beverages for off-premises consumption only in original packaging, individual servings, or refillable beer growlers; and

(d) prevent the self-service of alcoholic beverages on the premises, except in an off-premises sales area;

(e) prevent the sale of alcoholic beverages for on-premises or off-premises consumption between 2 a.m. and 8 a.m.;

(d)(f) shall prohibit on-premises prevent the consumption or possession of alcoholic beverages on the premises between the hours of 2 a.m. and 8 a.m., by removing all alcoholic beverages other than those purchased in original packaging or growlers for off-premises consumption from individuals' possession by 2 a.m.;

(g) prevent the consumption or possession of alcoholic beverages on the premises by persons who are under 21 years of age or actually, apparently, or obviously intoxicated;

(h) prevent the on-premises consumption of alcoholic beverages not sold or provided at the premises and those sold in original packaging or growlers for off-premises consumption; and

(i) prevent the consumption of alcoholic beverages on any property in which the licensee has possessory interest and that is contiguous or used in connection with the licensee's business, including any patio, deck, sitting area, smoking area, playground, or parking lot that is not part of the premises.

(2) In addition to the requirements in (1), an on-premises consumption beer licensee with a wine amendment shall:

(a) only purchase and possess on the premises fortified wine from an agency liquor store and table wine from a table wine distributor or winery;

(b) offer wine for on-premises consumption; and

(c) operate a restaurant or prepared-food business on the premises.

(3) An on-premises consumption beer licensee and an on-premises consumption beer licensee with a wine amendment may sell alcoholic beverages for off-premises consumption only as follows:

(a) alcoholic beverages must be sold in original packaging or individual servings, except that the retailer may fill and sell growlers with beer and table wine;

(b) the sale of alcoholic beverages must occur on the premises; the delivery of alcoholic beverages to the consumer off-site is prohibited;

(c) alcoholic beverages may only be sold from a drink preparation area or an off-premises sales area; and

(d) the sale of alcoholic beverages within the off-premises sales area must equal at least 95 percent of the gross revenue of all sales in that area.

AUTH: 16-1-303, MCA

IMP: 16-3-301, 16-3-303, 16-3-304, 16-3-305, 16-3-311, 16-3-411, 16-4-104, 16-4-105, 16-4-405, MCA

REASON: The department proposes transferring and amending ARM 42.12.136 to provide clear guidance to on-premises beer licensees and on-premises beer licensees with a wine amendment on the conditions for operating in Montana. In addition to the proposed actions included in the general statement of reasonable necessity at the beginning of this notice, the department proposes including the following new provisions in this rule.

Newly numbered (1)(f) proposes to clarify that only those alcoholic beverages that were provided for on-premises consumption must be removed by the time specified. Those alcoholic beverages purchased for off-premises consumption are not required to be removed by the licensee. Possessing alcoholic beverages between the hours of 2 a.m. and 8 a.m. that were purchased for off-premises consumption does not violate statute.

New (1)(g) proposes to require that the licensee prohibit the consumption or possession of alcoholic beverages on the premises by persons under the legal drinking age and persons who are actually, apparently, or obviously intoxicated, to protect public safety.

New (1)(h) proposes to prohibit a licensee from allowing the on-premises consumption of alcoholic beverages that were purchased for off-premises consumption or that were brought onto the premises by the patron. This requirement helps ensure the licensee has control over the alcoholic beverages that are consumed on the premises to prevent overconsumption and consumption by underage persons.

New (1)(i) proposes to prohibit a licensee from allowing patrons to consume alcoholic beverages on any contiguous property controlled by the licensee that is not part of the premises. The department proposes this requirement because the privileges that come with a license only apply to the premises approved by the department. If the licensee expands its premises without department approval, the licensee has exceeded its license privileges and has violated the conditions of its license.

New (2)(a) proposes to allow licensees to purchase fortified wine from an agency liquor store. There is nothing in the Montana Alcoholic Beverage Code that limits an on-premises consumption beer licensee with a wine amendment to selling "table wine" rather than "wine." Therefore, the department proposes to use the definition of wine in 16-1-106, MCA, which provides that wine can contain up to 24 percent alcohol by volume. Based on this percentage, the licensee is able to purchase and sell table wine and fortified wine. Fortified wine is proposed to be defined as being wine containing more than 16 percent but not more than 24 percent alcohol by volume.

New (3)(a) proposes to provide the ability for a licensee to sell wine growers for off-premises consumption. This practice is proposed to mirror what already exists for beer products.

New (3)(b) proposes to prohibit the off-premises delivery of alcoholic

beverages to a consumer. The licensee's ability to sell alcoholic beverages only extends to the premises or what is allowed under a catering endorsement. The off-premises delivery of alcoholic beverages exceeds those allowable privileges.

New (3)(c) proposes to provide clarification on where alcoholic beverages may be sold from on the premises for off-premises consumption. To protect public safety, the sale of alcoholic beverages is prohibited in certain areas, such as those areas dedicated to storage.

New (3)(d) proposes to require that 95 percent of the gross revenue in an off-premises sales area be derived from the sale of alcoholic beverages. This is to ensure that the all-beverage license is not used as an off-premises premises license. Off-premises licenses are appropriate where a licensee wants to sell more than alcoholic beverages for off-premises consumption.

The department also proposes updating the implementing statutes for the rule, updating the rule title to more clearly identify the rule content, and transferring the rule to ARM Title 42, chapter 13 as part of the overall reorganization of the rules in chapters 12 and 13 as set forth in the general statement of reasonable necessity at the beginning of this notice.

~~42.12.137 (42.13.1105) CONDITIONS AND QUALIFICATIONS SPECIFIC FOR AN OFF-PREMISES CONSUMPTION BEER LICENSE AND/OR AND TABLE WINE LICENSE - CONDITIONS FOR OPERATING~~ (1) In addition to the provisions stated in ARM 42.12.122, which pertain to every type of all other alcoholic beverage licensing requirements, license, with regard to a license for an off-premises consumption beer and table wine licensee, a party applying for either a new license, transfer of ownership of an existing license, transfer of location of an existing license, or approval of an alteration to a premises must shall:

(a) operate at a premises recognized as a bona fide grocery store as described in ARM 42.12.126, a drugstore licensed as a pharmacy, or a stand-alone beer and/or table wine business only purchase and possess on the premises beer from a beer wholesaler or brewery and table wine from a table wine distributor or winery;

(b) store beer and/or table wine only on the premises;

(b)(c) sell beer and/or table wine for off-premises consumption only in their original packages; and

(c) be physically separated from any business under separate ownership from the licensed area by permanent walls. This includes a separate on-premises alcohol beverage business. The walls must be floor-to-ceiling and shall not be moved without department approval of alterations to the premises pursuant to ARM 42.13.106. The premises can have inside access to each business conducted in the building through a doorway no larger than six feet wide with a door that can be closed and locked when not in use.

(d) operate as a stand-alone beer and/or table wine business, grocery store, or drugstore licensed as a pharmacy;

(e) prevent the sale of alcoholic beverages between 2 a.m. and 8 a.m.; and

(2) All beer and wine inventory must be stored on-site in an area identified on the floor plan.

(3) Beer and/or wine purchased from the off-premises licensee may not be

~~consumed anywhere on property owned or leased by the licensee that is part of, adjacent to, or used in connection with the licensed off-premises business. By example this includes a~~

~~(f) prevent the consumption of alcoholic beverages on the premises and any property in which the licensee has possessory interest and that is contiguous or used in connection with the licensee's business, including any patio, deck, sitting area, designated smoking areas area, sports or play area playground, or parking lots, lot and any other area that is adjacent to the licensed premises and is under the control of the licensee that is not part of the premises.~~

~~(2) In addition to the requirements in (1), an off-premises consumption beer and/or table wine licensee that operates in a grocery store shall maintain groceries with a retail value of at least \$3,000 at all times. The inventory must include at least three different types of items in each of the following categories: meats, vegetables, fruits, baked goods, dairy, and household supplies. For example, three different types of items in the dairy category would be cheese, milk, and butter, but skim milk, chocolate milk, and whole milk would not be considered as three different types of items in the dairy category.~~

AUTH: 16-1-303, MCA

IMP: 16-3-301, 16-3-304, 16-3-305, 16-4-115, 16-4-402, 16-4-405, MCA

REASON: The department proposes transferring and amending ARM 42.12.137 to provide clear guidance to off-premises consumption licensees on the conditions for operating in Montana. In addition to the proposed actions included in the general statement of reasonable necessity at the beginning of this notice, the department proposes including the following new provisions in this rule.

Newly numbered (1)(c) proposes to clarify that table wine may be sold rather than wine for off-premises consumption. Off-premises consumption licensees are authorized to sell beer, table wine, or both under 16-4-115, MCA.

The department also proposes updating the implementing statutes for the rule, updating the rule title to more clearly identify the rule content, and transferring the rule to ARM Title 42, chapter 13 as part of the overall reorganization of the rules in chapters 12 and 13 as set forth in the general statement of reasonable necessity at the beginning of this notice.

~~42.12.138 (42.13.1202) CONDITIONS AND QUALIFICATIONS SPECIFIC FOR A BEER WHOLESALER AND/OR TABLE WINE DISTRIBUTOR LICENSE AND SUBWAREHOUSES - CONDITIONS FOR OPERATING (1) ~~In addition to the provisions stated in ARM 42.12.122, which pertain to every type of all other alcoholic beverage license licensing requirements, with regard to a beer wholesaler, and table wine distributor, and/or a subwarehouse license, a party applying for either a new license, transfer of ownership of an existing alcoholic beverages license, transfer of location of an existing license, or approval of an alteration to a premises must shall:~~~~

~~(a) maintain a fixed place of business, sufficient capital, and the facilities, storehouse, receiving house, or warehouse for the receiving of, storage, storing, and handling, and moving of beer, table wine, and sacramental wine in large quantities~~

for distribution and sale ~~in original packages to other licensed wholesalers and distributors or licensed retailers;~~

(b) receive have sufficient space for the storage and distribution of beer, and/or table wine, in large quantities; and sacramental wine from an importer, brewery, winery, wholesaler, or distributor only if:

(i) the importer, brewery, winery, wholesaler, or distributor is licensed by or registered with the department;

(ii) all product labels have been approved by the department;

(iii) an agreement of distributorship agreement is in place between the manufacturer or importer and the wholesaler or distributor; and

(iv) an accommodation agreement is in place between the importer and manufacturer when the product is received from an importer;

(c) store beer, table wine, and sacramental wine only on the premises must be physically separated by permanent walls from any other business located in the same building of its principal place of business or the premises of its licensed subwarehouse;

(d) deliver alcoholic beverages using its own employees, trucks, and equipment;

(e) sell beer, table wine, and sacramental wine only in its original packaging;

(f) sell and deliver beer, table wine, and sacramental wine under its Montana license only to other licensed wholesalers or distributors, licensed alcoholic beverage retailers, catered events of a licensed alcoholic beverage retailer, agency liquor stores, and special events for a special permit holder. This does not in any way prohibit the licensee from operating in compliance with other state or federal law;

(g) prevent the consumption of alcoholic beverages on the premises of its principal place of business and the premises of any licensed subwarehouse;

(h) not possess any interest in real or personal property owned, occupied, or used by an alcoholic beverage retailer in the conduct of the retailer's business; and

(i) electronically file all required alcoholic beverage tax returns and pay any taxes owed as provided in law.

(2) A beer wholesaler and/or table wine distributor shall only sell product under a bona fide sale. It shall not sell product on consignment, under conditional sale, with the privilege of return, or in a sale involving acquisition of other products.

(3) A beer wholesaler and/or table wine distributor shall only exchange or accept product returned from an alcoholic beverage retailer, wholesaler, or distributor for ordinary and usual commercial reasons, such as defective product, a delivery error, and discontinued product or business. It shall not accept product returned based upon the product being overstocked, slow moving, or seasonal.

AUTH: 16-1-303, MCA

IMP: 16-3-212, 16-3-231, 16-3-232, 16-3-242, 16-3-301, 16-3-404, 16-3-406, 16-4-103, 16-4-106, 16-4-108, 16-4-402, 16-4-415, MCA

REASON: The department proposes transferring and amending ARM 42.12.138 to provide clear guidance to beer wholesalers and table wine distributors on the conditions for operating in Montana. In addition to the proposed actions

included in the general statement of reasonable necessity at the beginning of this notice, the department proposes including the following new provisions in this rule.

New (1)(b)(ii) proposes to require all product labels to be approved by the department prior to receipt by the wholesaler or distributor. This will help ensure the licensee does not begin to distribute products that have not gone through the department's review process by request of the manufacturer.

New (1)(h) proposes to prohibit a beer wholesaler and table wine distributor from having any interest in real or personal property owned, occupied, or used by an alcoholic beverage retailer. This prohibition is consistent with federal tied-house regulations, as provided in the Code of Federal Regulations, Title 27, part 6.

New (1)(i) proposes to require the licensee to electronically file any alcoholic beverage tax returns and pay the applicable tax owed. The department is requiring this to promote the use of the department's safe and efficient online system, which is already used by the majority of distributors and wholesalers. This will enable the department to more efficiently receive and process these returns and payments.

The department also proposes amending the rule to include references to additional statutes that this rule implements and to update the rule title to reflect the content of the rule as amended.

The department further proposes transferring the rule, as amended, to ARM Title 42, chapter 13 as part of the overall reorganization of the rules in chapters 12 and 13 as set forth in the general statement of reasonable necessity at the beginning of this notice.

7. The department proposes to repeal the following rules:

42.12.122 SUITABILITY OF LICENSED PREMISES

AUTH: 16-1-303, MCA

IMP: 16-3-311, 16-4-402, 16-4-405, MCA

REASON: The department proposes repealing ARM 42.12.122 and incorporating the contents of the rule into New Rules I through V, by license type, as part of the reorganization of rules in ARM Title 42, chapters 12 and 13 as set forth in the general statement of reasonable necessity at the beginning of this notice.

Currently, ARM 42.12.122 contains suitability requirements for sheds, warehouses, or any other temporary or permanent enclosures that are used for storing alcoholic beverages. The department is not incorporating this specific language into New Rules I through V because those rules sufficiently address where alcoholic beverages may be stored.

42.12.126 OFF-PREMISES SALE OF BEER OR TABLE WINE

AUTH: 16-1-303, MCA

IMP: 16-4-115, MCA

REASON: The department proposes repealing ARM 42.12.126 and incorporating the relevant content into proposed New Rule III or newly numbered

ARM 42.13.1105, the licensee suitability and conditional requirement rules as part of the reorganization of rules in ARM Title 42, chapters 12 and 13 as set forth in the general statement of reasonable necessity at the beginning of this notice.

42.12.139 CONDITIONS AND QUALIFICATIONS SPECIFIC FOR A MANUFACTURER OF BEER, WINE, OR DISTILLED SPIRITS LICENSE

AUTH: 16-1-303, MCA

IMP: 16-3-213, 16-3-214, 16-3-411, 16-4-102, 16-4-311, 16-4-312, 16-4-402, MCA

REASON: The department proposes repealing ARM 42.12.139 and relocating the relevant content into ARM 42.13.405 for winery licenses, 42.13.601 for brewery licenses, and 42.13.802 for distillery licenses to house the condition requirements for operating the different license types together in ARM Title 42, chapter 13 as part of the reorganization of rules in ARM Title 42, chapters 12 and 13 as set forth in the general statement of reasonable necessity at the beginning of this notice.

42.12.213 DEFINITIONS

AUTH: 16-1-303, MCA

IMP: 16-4-401, 16-4-402, 16-4-404, 16-4-801, MCA

REASON: The department proposes repealing ARM 42.12.213 because the rule contains a single definition that the department proposes amending into ARM 42.12.106, where the majority of the definitions used in ARM Title 42, chapter 12 are located, as part of the reorganization of rules in ARM Title 42, chapters 12 and 13 as set forth in the general statement of reasonable necessity at the beginning of this notice.

42.12.312 LIQUOR MANUFACTURER'S LICENSE

AUTH: 16-1-303, MCA

IMP: 16-1-201, 16-4-312, 16-4-501, MCA

REASON: The department proposes repealing ARM 42.12.312 because the content of the rule, moral character of the applicant, is sufficiently covered in statute and therefore unnecessary to provide in rule.

42.12.314 RESTAURANT BEER AND WINE SERVICE OPERATIONS

AUTH: 16-1-303, MCA

IMP: 16-4-420, MCA

REASON: The department proposes repealing ARM 42.12.314 and amending the relevant content into newly numbered ARM 42.13.1103, so that the

similar content can be maintained together in one rule rather than multiple rules as part of the reorganization of rules in ARM Title 42, chapters 12 and 13 as set forth in the general statement of reasonable necessity at the beginning of this notice.

42.13.301 STORAGE OF ALCOHOLIC BEVERAGES

AUTH: 16-1-303, MCA

IMP: 16-1-302, 16-3-201, 16-3-301, 16-6-301, 16-6-303, MCA

REASON: The department proposes repealing ARM 42.13.301 and amending the relevant content into ARM 42.13.405, 42.13.601, 42.13.802, and newly numbered ARM 42.13.1102 through 42.13.1105 and ARM 42.13.1202, the licensee condition requirement rules, as part of the reorganization of rules in ARM Title 42, chapters 12 and 13 as set forth in the general statement of reasonable necessity at the beginning of this notice.

42.13.304 STORAGE RESULTING IN TREATMENT AS BEER
WHOLESALE OR TABLE WINE DISTRIBUTOR

AUTH: 16-1-303, MCA

IMP: 16-3-230, 16-4-103, 16-6-104, MCA

REASON: The department proposes repealing ARM 42.13.304 because some of the content is either readily available in statute or is a better fit elsewhere in rule and therefore being incorporated into proposed New Rule IV and/or newly numbered ARM 42.13.1202 as part of the reorganization of rules in ARM Title 42, chapters 12 and 13 as set forth in the general statement of reasonable necessity at the beginning of this notice.

42.13.305 EXCHANGE OR RETURN OF BEER OR TABLE WINE
PRODUCT

AUTH: 16-1-303, MCA

IMP: 16-3-201, MCA

REASON: The department proposes repealing ARM 42.13.305 and amending the relevant content into newly numbered ARM 42.13.1202, as part of the reorganization of rules in ARM Title 42, chapters 12 and 13 as set forth in the general statement of reasonable necessity at the beginning of this notice.

42.13.602 DEFINITIONS

AUTH: 16-1-303, MCA

IMP: 16-1-401, 16-1-404, 16-3-214, MCA

REASON: The department proposes repealing ARM 42.13.602 and placing the single definition from this rule into ARM 42.13.111, as proposed to be amended

in this same rulemaking notice, to keep all definitions of terms used in chapter 13 within a single rule.

42.13.805 MICRODISTILLERY SAMPLE ROOMS

AUTH: 16-1-303, MCA

IMP: 16-4-310, 16-4-312, MCA

REASON: The department proposes repealing ARM 42.13.805 and placing the relevant content into New Rule V and ARM 42.13.802, for the different license types, as part of the reorganization of rules in ARM Title 42, chapters 12 and 13 as set forth in the general statement of reasonable necessity at the beginning of this notice.

8. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than January 9, 2017.

9. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct this hearing.

10. The Department of Revenue 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 that includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding a particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 8 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

11. An electronic copy of this notice is available on the department's web site at revenue.mt.gov/rules. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

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

13. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption, amendment, transfer and amendment, and repeal of the above-referenced rules could directly impact some small businesses. The

department's small business impact (SBI) analysis and determination memo, titled "SBI determination 967," is available online at revenue.mt.gov/rules or upon request from the person in 8.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State November 14, 2016.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

| | | |
|---------------------------------------|---|-----------------------------|
| In the matter of the amendment of |) | NOTICE OF PUBLIC HEARING ON |
| ARM 42.12.132, 42.13.101, |) | PROPOSED AMENDMENT |
| 42.13.210, and 42.13.1003 pertaining |) | |
| to alcoholic beverage establishment |) | |
| location managers, compliance with |) | |
| laws and rules, the penalty schedule, |) | |
| consumer promotions, and contract |) | |
| manufacturing |) | |

TO: All Concerned Persons

1. On December 15, 2016, at 3 p.m., the Department of Revenue will hold a public hearing in the Liquor Warehouse Conference Room, located at 2517 Airport Road, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Revenue 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 p.m. on December 5, 2016, to advise us of the nature of the accommodation you need. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

3. The rules proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

42.12.132 MANAGEMENT AGREEMENTS LOCATION MANAGER

~~(1) Subject to the terms and conditions stated in this rule, an alcoholic beverages licensee may employ a manager as the licensee's agent to oversee the alcoholic beverages business conducted in the licensee's licensed premises. The manager or the person designated to represent the manager must possess a past and present status as a business person and citizen who demonstrates the likelihood of operating the licensed establishment on behalf of the licensee in compliance with all applicable laws of the state and local governments.~~

(1) All on-premises retailers, off-premises retailers, manufacturers, and distributors shall designate at least one location manager. If more than one person performs location manager duties, the licensee shall seek the department's approval for each. The licensee shall initially seek the department's approval of location managers on the license application. Following initial licensure, the licensee shall seek the department's approval of location manager as follows:

(a) if the location manager is not an owner vetted pursuant to 16-4-401, MCA, within 30 days of the employee commencing location manager duties, the licensee shall submit the location manager application, the employee's personal

history statement, two complete sets of the employee's fingerprint cards, and the fingerprint processing fee; or

(b) if the location manager is an owner vetted pursuant to 16-4-401, MCA, on or before the deadline to renew the license in the year the owner commences location manager duties, the licensee shall submit the location manager application but does not need to resubmit the owner's personal history statement, two complete sets of the owner's fingerprint cards, or the fingerprint processing fee.

~~(2) Within 30 days of employing the manager, the licensee must file with the department a signed original of the written management agreement, a personal history statement, and a complete set of fingerprints as required by ARM 42.12.101, that clearly disclose the following information:~~

~~(a) the manager's name, address, telephone number, mailing address, if different from street address, and one of the following:~~

~~(i) social security number for individuals; or~~

~~(ii) federal identification number for business;~~

~~(b) the amount of compensation; and~~

~~(c) the specific duties and responsibilities delegated to the manager by the licensee.~~

(2) The licensee shall confirm annually, on the license renewal form, who is performing location manager duties. At this time, the licensee shall also identify any location managers who ceased performing managerial duties during the past license year.

(3) A location manager is an employee who provides general oversight of the alcoholic beverage operations and ensures compliance with alcoholic beverage laws and regulations. The location manager designation is based upon the duties performed rather than the job title assigned. Location manager duties may include, but are not limited to, the following services related to the alcoholic beverage business operations:

(a) hiring, firing, training, or supervising employees;

(b) signing applications or agreements on behalf of the licensee;

(c) determining the hours of operation and employee work schedules;

(d) managing inventory;

(e) signing checks or overseeing bank deposits or financial reconciliations;

and

(f) ensuring payment of taxes or filing tax reports.

(4) A location manager's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen must demonstrate that the employee is likely to operate the establishment in compliance with all applicable laws of the state and local governments.

~~(3)~~(5) The department will review the agreement for compliance with the following standards: shall issue its determination of the location manager application within 15 days of receiving the results of the background investigation.

~~(a) the licensee must retain the possessory interest in the premises through ownership, lease, rent, or other agreement with the owner of the premises;~~

~~(b) while the agreement may delegate duties to the manager, the~~

(6) The licensee must shall:

(a) retain ultimate control, liability, responsibility, and accountability for

the retail alcoholic beverage operation. over the license and premises;

(b) maintain an active participation in the alcoholic beverage operation sufficient to ensure the proper and lawful conduct of the business; and

(c) except for an owner acting as a location manager, provide the location manager compensation as a fixed amount that is commensurate with the duties performed. Compensation shall not be based on a percentage of gross sales or net profits. The agreement may not assign or limit any of the rights or responsibilities of ownership. In particular, the agreement may not grant or assign to the manager:

~~(i) control of business hours, types of alcoholic beverage products sold, selling price, level of inventory maintained, and overall business atmosphere;~~

~~(ii) exclusive authority over business accounts and operation funds;~~

~~(iii) authority to remodel or otherwise make changes in the business operation requiring non-routine actions;~~

~~(iv) ultimate decision-making authority regarding the hiring, firing, advancement or promotion, or any other change of status of other employees;~~

~~(v) liability for all business expenses and losses, either directly or through an indemnification agreement with the licensee. The licensee may require the manager to do the ministerial act of paying the expenses, but this must be accomplished by using the licensee's funds; and~~

~~(vi) ownership of the inventory or the right to use or dispose of it at will.~~

~~(c) the licensee must maintain an active participation in the business operation sufficient to ensure the proper and lawful conduct of the business, and execute all reports required by governmental agencies that attest to the licensee's ownership and certify compliance with applicable statutes and regulations. The licensee may work in the establishment at any time;~~

~~(d) the agreement may not be assignable by the manager to a successor manager without the written consent of the licensee;~~

~~(e) the agreement may not place any restrictions on the licensee's right to transfer, mortgage, hypothecate, or alienate the license, or change the location of the operation;~~

~~(f) the agreement must be terminable upon the licensee transferring the license, selling the business, or otherwise ceasing business operations at the licensee's option;~~

~~(g) the agreement must provide for compensation either as a fixed amount, a percentage of gross sales, or a combination of fixed amount and percentage of gross sales;~~

~~(h) the compensation of the manager must be commensurate with the duties performed, cannot consist of net profits from the business, and cannot be less than the federal wage and hourly standards for an individual; and~~

~~(i) the management agreement must establish a principal agent, employer-employee, or other type of agency relationship, making the manager responsible to the licensee for the performance of assigned duties, while the licensee is responsible for the proper performance of the manager.~~

~~(4) Management agreements failing to meet any of the standards set forth in (1), (2), and (3) will be marked as rejected and returned to the licensee, together with a written explanation of the reasons for the rejection. If the deficiencies are not corrected within 30 days of the time set by the department, the tendered~~

management agreement will be deemed to be void.

~~(5)(7) A licensee's failure Failure to remain in compliance with the terms of the approved management agreement or failure to terminate operations under a void management agreement shall constitute a violation abide by the provisions of this rule and, including the failure to disclose the person performing location manager duties, may subject the licensee to administrative action, including revocation of the license.~~

AUTH: 16-1-303, MCA

IMP: 16-1-302, 16-4-414, MCA

REASON: The department proposes amending ARM 42.12.132 to streamline the approval process for managers and to clarify which employees of a licensed alcoholic beverage establishment are required to seek approval. The language proposed to be stricken is either excess detail being revised and incorporated elsewhere in the rule in a more concise manner, or requirements the department has determined to be no longer necessary and therefore eliminated from the rule altogether.

New (1) proposes to require the designation of a location manager at the time of licensure to establish an initial record of the individuals providing general oversight of the alcoholic beverage operations, so the department can vet those individuals to evaluate their suitability to operate the business in compliance with Montana's alcoholic beverage laws and rules.

After initial licensure, the department is proposing different requirements in (1)(a) and (1)(b), depending on whether the individual is a vetted owner. Subsection (1)(a) proposes to require individuals not previously vetted to seek approval within 30 days of commencing location manager duties because it is imperative the necessary background checks occur early in the employment process to evaluate the manager's suitability. Subsection (1)(b) proposes to require owners who were previously vetted to seek approval before the end of the current license period because these individuals had previously passed background evaluations during the licensure process. The department proposes to clarify in both of these subsections the documents and fees required to seek approval, to prevent the licensee from submitting unnecessary information.

New (2) proposes to require the licensee to confirm the location manager annually to ensure the department has an updated list on file of the individuals performing location manager duties at the premises.

New (3) proposes to give applicants and licensees a clear explanation of what are considered to be location manager duties. The inclusion of specific duties is proposed to assist applicants and licensees determine which employees are required to obtain approval from the department.

Proposed new (4) is a more concise version of the language that was previously in (1).

Newly numbered (5) proposes to inform licensees of the time frame for the department's response. This timeframe is proposed to be set at a level that will afford the department the time needed to obtain and review the background check.

Subsection (6)(a) is proposed to be reworded for better clarity and (6)(b)

proposes to require the licensee to have an active participation in the alcoholic beverage operations to ensure the business is operating in accordance with Montana's alcoholic beverage laws and regulations as the licensee is responsible for any violations that occur.

Subsection (6)(c) proposes to require the licensee to compensate the location manager in a fixed amount. The proposal prevents the licensee from compensating the location manager based on a percentage of gross sales or net profits to ensure an undisclosed ownership interest is not created. An exception for owners is proposed since an undisclosed ownership situation cannot arise with these individuals.

The proposed amendments to this rule eliminate the requirement for a licensee to submit management agreements to the department, to simplify the manager approval process for the licensee.

The department further proposes amending the rule title to better identify the content of the rule as amended.

42.13.101 COMPLIANCE WITH LAWS AND RULES (1) All licensees, their agents, and employees must conduct the licensed premises in compliance with the rules of other state and local agencies and abide by all:

(a) and (b) remain the same.

(c) ~~Indian liquor~~ alcoholic beverage laws applicable within the areas of Indian country, as defined by 18 USC 1151, provided a tribe having jurisdiction over such area of Indian country adopted an ordinance, certified by the Secretary of the Interior, and published in the Federal Register; and

(d) and (2) remain the same.

(3) ~~The department will impose~~ may use a range of progressive and proportional penalties for multiple any combination of violations of any laws, ordinances, and rules within any three-year period unless mitigating circumstances indicate the penalty should be reduced, or aggravating circumstances indicate the penalty should be increased. Violations and progressive penalties include, but are not limited to, those listed on the following chart. Any combination of four of the violations listed below occurring within a three-year period could result in a license revocation action. The progressive penalty schedule is not an exhaustive list of the grounds for administrative action. The schedule does not preclude the department's use of discretion to propose a penalty greater or less than those listed based upon aggravating or mitigating circumstances. For purposes of determining penalties under the progressive penalty schedule, the department uses a three-year lookback. Proposed penalties are assessed based upon the date the violation occurs. For violations that occur over time, such as an undisclosed ownership interest, the violation date shall be the date the department issues its notice of proposed department action. The department may seek license revocation based upon a combination of any four violations during a three-year period.

Progressive Penalty Schedule

| <u>Violation</u> | <u>1st Offense</u> | <u>2nd Offense</u> | <u>3rd Offense</u> | <u>4th Offense</u> |
|---|------------------------|------------------------|----------------------------------|------------------------|
| Sale to an Underage Person | \$250 | \$1,000 | \$1,500/20- day Suspension | Revocation |
| Sale to an Intoxicated Person | \$250 | \$1,000 | \$1,500/20- day Suspension | Revocation |
| Open after Hours | \$150 | \$600 | \$1,000/12- day Suspension | Revocation |
| Sale or <u>Consumption</u> after Hours | \$150 | \$600 | \$1,000/12- day Suspension | Revocation |
| Re- <u>pouring Refilli</u> <u>ng of Bottles</u> | \$250 | \$1,000 | \$1,500/20- day Suspension | Revocation |
| No Approval to <u>Alter Unappro</u> <u>ved Premises</u> <u>Alteration</u> | \$300 | \$600 | \$1,000/12- day Suspension | Revocation |
| No Management Agreement <u>U</u> <u>ndisclosed</u> <u>Location</u> <u>Manager</u> | \$150 | \$600 | \$1,000/12- day Suspension | Revocation |

| | | | | |
|--|--------------|--------------|---|-------------------|
| Improper use <u>Use of</u> Catering Endorsement | \$150 | \$600 | \$1,000/12- day Suspension | Revocation |
| Accept more <u>More than 7</u> Days credit <u>Credit</u> | \$250 | \$1,000 | \$1,500/20- day Suspension | Revocation |
| Extend more <u>More than 7</u> Days Credit | \$250 | \$1,000 | \$1,500/20- day Suspension | Revocation |
| <u>Exceed</u> <u>Sample</u> <u>Room Service</u> <u>Limits</u> | <u>\$150</u> | <u>\$600</u> | <u>\$1,000/12- day</u> <u>Suspension</u> | <u>Revocation</u> |

Undisclosed
Ownership
Interest \$1,500/
Revocation

Denial of
Inspection of
Premises or
Records \$1,500/
Revocation

Violation of
Responsible
Alcohol Sales
and Service
Act

Monetary
penalties for
these
violations
are stated in
(7).
Revocation
for fourth
violation.

Undisclosed
Ownership
Interest

Monetary
Penalty,
Suspension,
or
Revocation

| | |
|----------------------------------|---|
| Denial of Right to Inspect | Monetary Penalty, Suspension, or Revocation |
|----------------------------------|---|

| | |
|----------------------|-------|
| Unapproved Nonuse | Lapse |
|----------------------|-------|

(4) When a license has been revoked ~~or lapsed~~, the department ~~will~~ shall not accept an application from ~~any of the previous licensees~~ those owners vetted pursuant to 16-4-401, MCA, for one year from the date of ~~revocation~~ or lapse. After the one-year moratorium, an application will only be accepted if the applicant demonstrates to the department's satisfaction that sufficient steps were taken to prevent future violations or to operate a going establishment.

(5) A revoked ~~or lapsed~~ license ~~will affect~~ affects a license quota area ~~and the following may result as follows:~~

(a) remains the same.

(b) if the area is over quota, the revoked ~~or lapsed~~ license will cease to be available for issuance.

(6) A revoked ~~or lapsed~~ beer ~~or beer and wine~~ license issued within a city quota area before October 1997, if reinstated, will not allow any gaming or gambling activity on the licensed premises.

(7) ~~An employee's~~ The failure of an employee to possess a valid alcohol server training certificate constitutes a violation, the penalty for which is assessed against the licensee. Multiple untrained employees on a particular date ~~may~~ shall constitute a single violation; continued noncompliance ~~may~~ shall constitute an additional violation. Regardless of other violations within the three-year period, the civil penalties assessed for a violation of the Responsible Alcohol Sales and Service Act shall be \$50 for the first offense, \$200 for the second offense, and \$350 for the third offense. ~~A licensee shall receive a reprimand for the licensee's violation of the Responsible Alcohol Sales and Service Act only upon demonstration that:~~

~~(a) it is the licensee's first offense of the Responsible Alcohol Sales and Service Act under that license;~~

~~(b) all immediate supervisors of employees who sell or serve alcoholic beverages are trained; and~~

~~(c) the licensee's business practices substantially comply with the server training requirements such that the violation resulted from an oversight or mistake.~~

(8) A licensee shall receive a reprimand for the violation of selling to an underage person only if:

(a) remains the same.

(b) the person who made the sale possesses a valid alcohol server training certificate proof of training document; and

(c) remains the same.

(9) In the event a reprimand is issued:

(a) the incident shall not be considered to be a first offense for purposes of the progressive penalty schedule in ~~(3)~~ unless the licensee commits the same offense within one year; and

(b) the department ~~may~~ shall still assess the monetary penalty associated with the offense.

(10) Aggravating circumstances may result in the imposition of maximum monetary penalties, maximum suspension time or revocation, and will not bind the department to the progressive penalty ~~framework indicated in (3)~~ schedule.

(11) Aggravating circumstances include, but are not limited to:

(a) and (b) remain the same.

(c) a licensee's ~~ignoring warnings issued by a regulating authority about compliance problems~~ involvement in the violation;

(d) remains the same.

(e) providing alcoholic beverages to a person under 18 years of age;

~~(e)(f) a licensee's failure to timely respond to requests during the lack of cooperation by the licensee, licensee's employees, or licensee's agent in an investigation of a violation;~~ and

~~(f)(g) a violation's significant negative effect on~~ conducting business operations that have the potential to negatively impact or has negatively impacted the health and welfare of the community in which the licensee operates.

(12) remains the same.

AUTH: 16-1-303, 16-4-1009, MCA

IMP: 16-1-302, 16-3-301, 16-4-406, 16-4-1004, 16-4-1008, 16-6-314, MCA

REASON: The department proposes amending ARM 42.13.101 to provide better clarity to the alcoholic beverage industry and public on the process in which the department prescribes penalties when violations of the Montana Alcoholic Beverage Code occur.

The department proposes amending (3) to improve the readability of the content and to clarify how the department determines the violation date when using the three-year lookback to reduce confusion on how the department applies the progressive penalty schedule when violations of the Alcoholic Beverage Code occur.

The department also proposes amending the progressive penalty schedule to add a title, insert commas in the four-digit dollar amounts, and to rename some of the penalties. "Re-pouring" is proposed to be renamed "refilling of bottles," to create continuity with 16-3-308, MCA, and "no approval to alter" is proposed to be renamed "unapproved premises alteration" to better reflect the violation. Additionally, "no management agreement" is proposed to be renamed "undisclosed location manager" to coincide with the changes in ARM 42.12.132, as proposed in this same rulemaking notice, and "sale after hours" is proposed to be renamed "sale or consumption after hours" to incorporate in rule the current penalties used when a licensee allows alcohol to be consumed on the premises after the times allowed by statute.

The department further proposes adding the violation "exceed sample room service limits" to the progressive penalty schedule, specifically for manufacturers.

The proposed penalties for this violation are in line with the penalties for other violation types and this provides guidance to manufacturers on the penalties that will be used when the licensee provides more alcohol to an individual at a sample room per day than is allowed by statute. The department also proposes amending the penalties for "undisclosed ownership interest" and "denial of inspection of premises or records" (previously "denial of right to inspect") violations to provide the current penalty amounts imposed by the department because both of these violations could result in a monetary penalty and revocation of the license.

The additional fees proposed to be included in the schedule require, pursuant to 2-4-302(1)(c), MCA, an estimate of the cumulative amount of the proposed increase and the number of persons affected. The number of licensees that could be affected by the added "exceed sample room service limits" fee is estimated to be 110; and the number of licensees that could be affected for the addition of the "undisclosed ownership interest" and the "denial of inspection of premises or records" fees are estimated to be 3,350 each. Because these proposed fees are only assessed if and when a violation occurs, the department cannot reasonably determine the cumulative amount of any proposed increase.

Additionally, the department proposes striking "violation of responsible alcohol sales and service act" from the progressive penalty schedule in (3) because this violation is already provided for in (7).

The department proposes amending (4), (5), and (6) to include licenses that have been lapsed, to provide licensees and the public an explanation on how the department determines if the license will remain available, and when gaming privileges under the license are removed. The same processes are followed when a license has been revoked and when a license has lapsed.

The department also proposes amending (7) to strike language that only allows the department to issue a reprimand when certain criteria are met. The proposed amendment will allow the department to use discretion on whether a reprimand is warranted, to be consistent with other violations.

The department further proposes changing the reference to "alcohol server training certificate" in (8)(b) to "proof of training document" to reflect the current name of the document issued to individuals who successfully pass a Responsible Alcohol Sales and Service Act training program.

The department proposes amending (11) to provide additional examples of aggravating circumstances to demonstrate to licensees actions that could warrant increasing the penalty that would have otherwise been imposed under the progressive penalty schedule.

42.13.210 CONSUMER PROMOTIONS (1) through (3) remain the same.

(4) Conditions that must be met for all types of promotions include but are not limited to:

(a) and (b) remain the same.

(c) participants must be 21 years of age or older; and

(d) no purchase is necessary to participate in a sweepstakes or contest; ~~and~~

~~(e) all promotions must be approved by department personnel prior to the onset of the promotion.~~

AUTH: 16-1-303, MCA

IMP: 16-1-303, MCA

REASON: The department proposes amending ARM 42.13.210 to streamline the consumer promotion process by eliminating the requirement for an alcoholic beverage company to first seek department approval in (4)(e). The proposed amendment will allow alcoholic beverage companies to implement promotional activities sooner by eliminating the current wait time associated with the department's approval process.

42.13.1003 CONTRACT MANUFACTURING (1) through (9) remain the same.

(10) Except as provided in ~~(9)~~(11), a contract manufacturing arrangement may only be conducted in accordance with the provisions of this rule. Failure to abide by the provisions of this rule may subject the contract manufacturer and client to administrative action, including revocation of their manufacturing licenses.

(11) remains the same.

AUTH: 16-1-303, MCA

IMP: 16-1-401, 16-1-404, 16-1-406, 16-1-411, 16-3-213, 16-3-214, 16-4-310, 16-4-311, 16-4-312, 16-4-406, MCA

REASON: The department proposes amending ARM 42.13.1003 to correct an internal section reference numbering error that occurred when the rule was adopted in 2015. No other changes are proposed for the rule at this time.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than January 9, 2017.

5. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct this hearing.

6. The Department of Revenue 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 that includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding a particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

7. An electronic copy of this notice is available on the department's web site at revenue.mt.gov/rules. The department strives to make the electronic copy of this

notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

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

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules could directly impact some small businesses. The department's small business impact (SBI) analysis and determination memo, titled "SBI determination 968," is available online at revenue.mt.gov/rules or upon request from the person in 4.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State November 14, 2016.

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

| | | |
|-----------------------------------|---|--------------------|
| In the matter of the amendment of |) | NOTICE OF PROPOSED |
| ARM 44.12.204 pertaining to the |) | AMENDMENT |
| payment threshold--inflation |) | |
| adjustment for lobbyists |) | NO PUBLIC HEARING |
| |) | CONTEMPLATED |

TO: All Concerned Persons

1. On December 27, 2016, the Commissioner of Political Practices proposes to amend the above-stated rule.

2. The Commissioner of Political Practices will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Commissioner of Political Practices no later than 5:00 p.m. on December 23, 2016, to advise us of the nature of the accommodation that you need. Please contact Jaime MacNaughton, Commissioner of Political Practices, P.O. Box 202401, 1209 Eighth Avenue, Helena, Montana, 59620-2401; telephone (406) 444-2942; fax (406) 444-1643; or e-mail jmacnaughton@mt.gov.

3. The rule as proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

44.12.204 PAYMENT THRESHOLD--INFLATION ADJUSTMENT

(1) Pursuant to the operation specified in 5-7-112, MCA, the adjusted payment threshold for calendar years ~~2015 and 2016 is \$2,500~~ 2017 and 2018 is \$2,550.

AUTH: 5-7-111, MCA

IMP: 5-7-112, MCA

Reasonable Necessity: Section 5-7-112, MCA, requires the Commissioner of Political Practices, following the general election, to adjust the payment threshold amount for reporting of lobbying-related expenses based on application of an inflation factor specified in that statute. There is reasonable necessity for the amendment of the rule because 5-7-112, MCA, requires the Commissioner of Political Practices to publish the revised threshold as a rule.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Jaime MacNaughton, Commissioner of Political Practices, P.O. Box 202401, 1209 Eighth Avenue, Helena, Montana, 59620-2401; telephone (406) 444-2942; fax (406) 444-1643; or e-mail

jmacnaughton@mt.gov, and must be received no later than 5:00 p.m., December 23, 2016.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Jaime MacNaughton at the above address no later than 5:00 p.m., December 23, 2016.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 43 persons based on the 430 lobbyists who registered to lobby in 2015-2016.

7. The commissioner 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 that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works 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.

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

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Jaime MacNaughton
Jaime MacNaughton
Rule Reviewer
COPP General Counsel

/s/ Jonathan R. Motl
Jonathan R. Motl
Commissioner

Certified to the Secretary of State November 14, 2016.

BEFORE THE MONTANA LOTTERY COMMISSION
DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
2.63.204, 2.63.611, and 2.63.1201)
pertaining to general provisions,)
revocation or suspension of license,)
and prizes)

TO: All Concerned Persons

1. On September 23, 2016, the State Lottery Commission published MAR Notice No. 2-63-548 pertaining to the amendment of the above-stated rules at page 1591 of the 2016 Montana Administrative Register, Issue Number 18.

2. No comments were received.

3. The commission has amended ARM 2.63.204, 2.63.611, and 2.63.1201 exactly as proposed.

By: /s/ Wilbur Rehmann
Wilbur Rehmann, Chair
Montana Lottery Commission

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State November 14, 2016.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR

In the matter of the adoption of New) NOTICE OF ADOPTION AND
Rules I through XXXVII pertaining to) REPEAL
Credit for Reinsurance, and the)
repeal of ARM 6.6.3801 through)
6.6.3809 pertaining to Credit for)
Reinsurance, and ARM 6.6.3901)
through 6.6.3907 pertaining to Letters)
of Credit Used in Reduction of)
Liability for Reinsurance Ceded)

TO: All Concerned Persons

1. On September 23, 2016, the Commissioner of Securities and Insurance, Montana State Auditor (CSI), published MAR Notice No. 6-226 pertaining to the public hearing on the proposed adoption and repeal of the above-stated rules at page 1596 of the 2016 Montana Administrative Register, Issue Number 18.

2. The CSI has adopted New Rule I (6.6.3810), II (6.6.3811), III (6.6.3812), IV (6.6.3813), V (6.6.3814), VI (6.6.3821), VII (6.6.3822), VIII (6.6.3823), IX (6.6.3824), X (6.6.3825), XI (6.6.3826), XII (6.6.3827), XIII (6.6.3828), XIV (6.6.3829), XV (6.6.3830), XVI (6.6.3831), XVII (6.6.3832), XVIII (6.6.3841), XIX (6.6.3842), XX (6.6.3843), XXI (6.6.3844), XXII (6.6.3845), XXIII (6.6.3846), XXIV (6.6.3847), XXV (6.6.3848), XXVI (6.6.3849), XXVII (6.6.3850), XXVIII (6.6.3860), XXIX (6.6.3861), XXX (6.6.3862), XXXI (6.6.3863), XXXII (6.6.3864), XXXIII (6.6.3865), XXXIV (6.6.3866), XXXV (6.6.3867), XXXVI (6.6.3868), and XXXVII (6.6.3869) exactly as proposed.

3. The CSI has repealed ARM 6.6.3801 through 6.6.3809, and ARM 6.6.3901 through 6.6.3907 exactly as proposed.

4. On October 19, 2016, a public hearing was held on the proposed adoption and repeal of the above-stated rules. Two comments were received by the October 26, 2016, deadline. A summary of the comments received and the CSI's responses are as follows:

COMMENT No. 1: A comment was received from a reinsurance provider. It expressed knowledge of the process resulting in the model rules regarding credit for reinsurance provided by the National Association of Insurance Commissioners. The commenter stated appreciation for adoption of these rules in Montana, which it considers beneficial to the United States' "competitive position in the international insurance market."

RESPONSE No. 1: The CSI acknowledges receipt of the comment in support and appreciates all public participation in the rulemaking process.

COMMENT No. 2: A comment was received from the American Council of Life Insurers, an insurance company trade association. The commenter stated strong support for adoption of these model rules in Montana.

RESPONSE No. 2: The CSI acknowledges receipt of the comment in support and appreciates all public participation in the rulemaking process.

/s/ Michael A. Kakuk
Michael A. Kakuk
Rule Reviewer

/s/ Jesse Laslovich
Jesse Laslovich
Chief Counsel

Certified to the Secretary of State November 14, 2016.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I and the amendment of ARM 42.20.106 pertaining to golf course valuation) NOTICE OF ADOPTION
)
)
)

TO: All Concerned Persons

1. On August 19, 2016, the Department of Revenue published MAR Notice No. 42-2-959 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1433 of the 2016 Montana Administrative Register, Issue Number 16.

2. On September 13, 2016, a public hearing was held to consider the proposed adoption and amendment. Robert Story, Montana Taxpayers Association; Terry Nelson, Whitefish Lake Golf Course; Stephen Dunfee, Buffalo Hills Golf Course in Kalispell; Chris Nowlen and Fred Schiwal, Missoula Country Club; and Floyd Hoff and Thomas C. Morrison, Fox Ridge Golf Course in Helena, all appeared and testified at the hearing. Ron Hill, Lake Hills Golf Course in Billings, provided written comments to be read into the record at the hearing and also provided written comments following the hearing. Other members of the public attended the hearing but did not testify.

3. The department is not amending ARM 42.20.106.

4. Based upon the comments received and to correct the authorization and implementing statutes for the new rule, as presented at the hearing, the department adopts New Rule I (42.20.120) as proposed, but with the following changes, new matter underlined, deleted matter interlined:

NEW RULE I (42.20.120) GOLF COURSE VALUATION (1) remains as proposed.

(2) When using the income approach, the department will determine market value using a gross income multiplier (GIM), ~~as defined in ARM 42.20.106.~~ For the purposes of this rule, GIM means the ratio between the sales price of similar properties with respect to location, golf course classification, condition, length of time the golf course is open, and the gross income of the subject property. ~~Using~~

(3) ~~When using a GIM, market value is derived by multiplying the gross income (GI), as defined in ARM 42.20.106, by the GIM.~~ For the purposes of this rule, GI means the anticipated income from all operations of the real property before subtracting vacancy and operating expenses. Golf course gross income is from all sources including, but not limited to, green fees, cart path fees, cart rentals, lease income, pro shop income, and food and beverage income.

(4) Use of a GIM is preferred if:

(a) through (c) remain as proposed.

(3) and (4) remain as proposed, but are renumbered (5) and (6).

~~(5)(7)~~ The department will not reduce the estimated value of the property if the taxpayer fails to submit the information required by ~~(3)(5)~~.

(6) remains as proposed, but is renumbered (8).

~~(7)(9)~~ If the department uses the sales comparison approach in ~~(6)(8)~~, the department will look for golf course sales from the subject's market area. If sufficient, relevant information does not exist within the market area the department will seek golf course sales statewide. If sufficient, relevant information does not exist statewide, the department will seek golf course sales in surrounding states and/or regional areas.

(8) and (9) remain as proposed, but are renumbered (10) and (11).

AUTH: ~~15-1-101~~ 15-1-201, MCA

IMP: ~~15-8-306~~ 15-6-134, MCA

5. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT 1: Chris Nowlen, representing the Missoula Country Club, asked where the problem is with the current method of golf course valuation. Why is the department proposing to change the way it values golf courses?

Ron Hill, former owner and current mortgage holder on Lake Hills Golf Course in Billings, stated that to the effect the department's proposed rule is a good start in view of the Montana tax appeal board's ruling, the valuation method currently used by the department does not sufficiently capture all forms of depreciation. However, the determination of a gross income multiplier (GIM) needs to be clarified and better defined. He stated that in his opinion, GIM is not currently defined in ARM 42.20.106, as the department suggests it is. The proposed definition is a problem because the key word "similar," in reference to similar properties, needs to be more clearly defined and include seasons, climates, and agricultural considerations.

Mr. Hill further stated that all three valuation methods require similar or comparable properties. The challenge is that very few properties have utility similarities to a golf course, and very few golf courses are exactly alike. Also, the golf industry is in an economic decline and subject to seasonal and climate restraints. These challenges must be addressed in all three methods of value.

Robert Story, Executive Director of the Montana Taxpayers Association, commented that while they understand the department's need to standardize its methodology for valuing golf courses, they are concerned about a couple of the proposals. First, the department's use of a standard GIM has the potential to be problematic due to the unique nature and circumstance of every golf course in Montana. While the use of a GIM is an established approach to golf course valuation, the multiplier used is almost unique to each golf course. Use of a standard GIM will likely create many appeals because the owner is going to question where the department came up with the multiplier numbers. Buyers and sellers have different ideas of what multiplier should be used on a given golf course, and that is a major part of the negotiations in setting the price. The mixture of income a

particular golf course has will greatly affect the multiplier used. He commented that the department should have criteria in rule as to how it will determine the multiplier for golf courses depending on the services they provide.

Terry Nelson, representing Whitefish Lake Golf Course, asked how fairness in valuation can be accomplished through the use of a standard GIM, given the extensive diversity of golf course operations across the state. Whitefish, for example, has 36 holes. One golf course is owned by the City of Whitefish and one is locally owned by a golf association. The one owned by the City of Whitefish is not subject to property tax. How would the concessions that operate on the city property be treated tax-wise? The greens fees on each property are also widely divergent. To sort out all of the differences between these two types of properties, in the interest of fairness and equity, is a monumental task.

Mr. Nowlen also asked how the department will distinguish between a thriving golf course and a failing one through the income approach method. He reiterated the concern of others that no two golf courses are the same in terms of operations, deed restrictions, concessionaire income, etc., and asked how the department will treat outside income from concessionaires, tournament fees, and charitable donations in its proposed use of a standard GIM.

Mr. Nowlen also commented that deed restrictions to individual properties need to be carefully examined and taken into consideration when valuing a golf course property. For example, the Missoula Country Club has deed restrictions for all three of its parcels of land, including 11 undeveloped acres that cannot ever be developed according to the terms of the sale from the University of Montana.

RESPONSE 1: The department appreciates the time and comments from all who expressed an interest in this rulemaking action. The department proposed the new rule and definitions because the current methodology does not allow enough depreciation for economic obsolescence in addition to incorporating industry standards and the Uniform Standards of Appraisal Practice, which require all three valuation methods to be considered in determining market value.

The income approach to value is determined by multiplying the golf course's total gross income by a multiplier. The gross income multiplier (GIM) is determined from sales of golf courses with similar characteristics such as location, condition, classification, and length of time open during the year. The department understands that no two golf courses are exactly alike and therefore similarities as opposed to exact characteristics are considered when looking at sales. In mass appraisal, similar properties are grouped together and adjustments are made for specific differences. A golf course's market value considers economic decline and climate restraints, along with the uniqueness of a particular golf course, because these are reflected in the total gross income.

The GIM is multiplied by the golf course's total gross income; thus, the property value is dependent upon the property's gross income. For example, a GIM of 1.5 multiplied by a total gross income of \$1,000,000 results in a market value of \$1,500,000. A GIM of 1.5 multiplied by a total gross income of \$500,000 results in a market value of \$750,000.

The department agrees that more clarification is warranted and has determined that defining the term GIM within New Rule I, as it applies specifically to

golf course valuation, is more appropriate than adding a general definition of the term in ARM 42.20.106, which contains definitions for all rules in the subchapter. Therefore, the department has amended New Rule 1(2) to include a detailed definition of GIM that specifies location, classification, condition, and length of time open. Accordingly, ARM 42.20.106 is not being amended as proposed.

COMMENT 2: Thomas C. Morrison, representing Fox Ridge Country Club in Helena, commented that he supports the use of the income approach to value for commercial properties, as the revenue stream is of the most interest to potential investors. The sales comparison approach is unreliable due to the unique nature of golf course properties.

Mr. Morrison added that he understands why the department is focused upon gross income and multiple net income because those can be distorted by expense items such as salaries. Administrative costs are involved in running a golf course. Any buyer or seller using an income method would have to consider administrative costs. He stated that administrative costs should be subtracted before a determination of gross income. In the real world, if you are using the income method of valuation an investor wants to know, based on a predictable income stream, how long it will take to recover his investment. This concept is captured in the capitalization rate (cap rate). However, he commented that he has not seen cap rate mentioned in the language of the proposed rule. If the department is contemplating an income method of valuing golf courses, a cap rate notion should be built into the formulas.

Mr. Story stated his concern that requiring golf course owners to report their income will become a burden to the process. If a golf course does not comply, the department will develop its own income projections and the owner will not be able to appeal that determination.

Floyd Hoff, representing Fox Ridge Country Club in Helena, stated his concern with the income approach is that the department failed to foresee that the income from the bar and restaurant sales do not flow to the golf course itself. A separate entity provides that service and receives the income from it. That income is not part of the golf course income.

Stephen Dunfee, representing Buffalo Hills Golf Course in Kalispell, stated he has a concern that the presence of concessionaire income, which many golf courses have, makes the determination of actual gross revenue attributable to the golf course very difficult. Many golf courses have concessionaires where the golf course operates and then leases out the concessions, pro shop, bar, restaurant, driving range, etc. In addition, many golf courses experience pass-through or phantom income, such as tournament fees, which cannot be income attributed to the actual gross revenue of the golf course. If gross income and the GIM are used, there are many different income modifiers that will need to be considered.

Mr. Dunfee also commented that the trend lines in golf are very disturbing in the last several years with respect to gross and net income. A reflection of this decline in the golf industry is that the Buffalo Hills Golf Course is currently trying to secure a charitable donation through the Flathead Community Foundation. He asked if charitable donations would be considered gross income. If so, he stated that this would be unfair to both the donor and the property owner.

RESPONSE 2: The department agrees that the income stream is important to investors. Investors look at all forms of income, including contracts and leases. Although only concessionaire or bar and restaurant income that is actually realized by the golf course is included in the gross income, if concessionaire or bar and restaurant income does not flow to the golf course, it is not included in the gross income. When a golf course sells, all attributes of the golf course are considered in the sale price. An investor considers all sources of income and all expenses that are derived by the golf course operations before purchasing or investing in a property. The gross income multiplier (GIM) is based on the investor's purchases, is the preferred method in the industry, and is widely accepted and used by fee appraisers when conducting golf course appraisals for investors and lenders. The GIM allows the department to value the entire property with one multiplier. Because golf courses operate differently, their expenses vary. The GIM normalizes the expenses by removing those expenses that are unique to particular management practices. If the department were to use the direct cap rate method there could be different multipliers for each part of the golf course operation, which would not allow normalization of the expenses.

The use of the GIM requires golf course owners to submit income and expense information. The department currently requests commercial property owners to submit their income and expenses every other year as the department collects data for reappraisal. The data is then aggregated by commercial type. The department will consider an owner's specific property data if the owner provides that information. Charitable donations are considered gifts for income tax purposes and are not taxable. Therefore, charitable donations are not included in gross income.

The number of questions concerning the portion of golf course operations that should or should not be included in gross income (GI) warrants an expansion of the definition of the term. Therefore, the department has added a more detailed definition of GI to New Rule I that is specific to golf courses. The expanded definition makes it clear that vacancy and operating expenses are subtracted, and lists some of the primary sources of income such as green fees, cart rentals, cart path fees, and pro shop and food and beverage income. Accordingly, ARM 42.20.106 is not being amended as proposed.

COMMENT 3: Mr. Story commented that the use of the cost approach, as proposed in New Rule I(9), has been used frequently and successfully by the department in the past and that it is still the best method to value unique properties, such as golf courses, because you can figure out what it cost to put it together and then depreciate it out. He further commented that this would fit in with the set of rules regarding depreciation schedules that the department puts out each year. This would provide people with an idea where the department is going.

Fred Schiwal, representing the Missoula Country Club, commented that golf courses are diverse and questioned whether the gross income method of valuation would result in proper values for these diverse properties. Mr. Schiwal indicated that he believed the cost approach to valuation was a better way to determine the value of golf course properties. Mr. Schiwal stated he believes the cost approach looks at the amount of depreciated investment to determine the net assets of a given

property. Mr. Schiwal also stated that the use of a valuation method based on gross income equated to a sales tax, while the cost approach resulted in a true property tax. Under the terms of its inception about 100 years ago, the Missoula Country Club cannot ever sell. It has one use, as a golf course. If the department appraises the Missoula Country Club at \$3,500,000, that value might not ever be there. Under the cost approach, at least the capital investments, depreciation, and net assets can be more clearly defined and taken into consideration. The cost approach is a property tax.

Regarding the cost approach proposed in the new rule, Mr. Hill cited the example that a new 18-hole sprinkler system needed by many of the old golf courses costs more than the sale value of the golf course. Circumstances such as these need to be taken into consideration under this approach.

Mr. Morrison commented that the cost reproduction method is usually the least preferred of the three methodologies because it is generally the most speculative.

RESPONSE 3: All three approaches to value must be considered when arriving at market value. The cost, income, and sales comparison to value should reconcile when completing an appraisal. The most defensible values for commercial properties are the income or sales comparison approaches.

The cost approach to value compares the cost to develop a property and the value of an existing property or a similarly developed property; therefore, this approach is typically used when valuing new construction because the improvements represent the highest and best use of the site when no functional or external obsolescence exists. External obsolescence is the difference between the sale price and the cost to build. Therefore, the cost approach to value cannot be the only approach used. The income approach and the sales comparison approach take into account economic obsolescence by virtue of their approaches to value. Economic obsolescence is the concern that the department is addressing, because the current method of valuing golf courses does not allow for enough depreciation.

COMMENT 4: Mr. Story commented that the use of the sales comparison approach to the valuation of golf courses, as proposed, is problematic because the few golf courses that do sell in Montana may be in completely diverse markets and locations than the subject properties used for comparison. By proposing to look out of state for comparable sales, the department is expanding the pool of properties where there may be few similarities.

Regarding the sales comparison approach proposed in the new rule, Mr. Hill stated that the last part of (6) needs to agree with the last part of (7), stating, "If sufficient relevant information does not exist statewide, the department will seek golf course sales in surrounding states and/or regional areas."

Mr. Hill commented that arm's-length sales are by far the most accurate way to find real market value. Reaching out for sales comparisons is necessary.

RESPONSE 4: The department agrees with Mr. Story that golf course sales may be sales from more diverse markets and locations than the subject property, which is why the area to find comparable golf courses may likely be regional,

although expanding the sales area to find comparable sales is not uncommon in the industry. The sales comparison approach is based upon the principle of substitution, meaning a property's value tends to be set by the cost of acquiring an equally desirable substitute. For unique properties, investors may look locally and/or nationally for their investment, as needed. When an investor purchases a commercial property, they consider whether the income of that property supports the amount that they are willing to pay.

In response to Mr. Hill's comments, (7) is an extension of (6). These two paragraphs are not distinct concepts and therefore the language proposed by Mr. Hill does not need to be included in (6). Note, these two paragraphs were renumbered in the final version of the rule as adopted in this notice.

COMMENT 5: Mr. Story further commented that while the department's proposal to value the land according to similar tract land in the area does make sense, his concern is with the methodology that will be used for valuing the land prior to being developed into a golf course. He assumes the department will not get into tract land values to establish the base value because golf courses are hardly ever developed off of tract land, and most golf courses in Montana were agricultural or forest land prior to development.

RESPONSE 5: The department agrees that agricultural land sales are most applicable to valuing golf course land. Most golf courses are zoned as open space and the zoning limits the use of the land. To the extent possible, the department intends to use land of similar sized parcels when appraising golf course land.

COMMENT 6: Mr. Nowlen stated that when you start looking at revenue, a tax becomes a sales tax. The tax under consideration should be a property tax, and whether or not the department has reached a fair valuation.

Mr. Dunfee commented that the taxation of charitable donations, member dues, and capital assessments through consideration as actual gross income starts to seem like a sales tax.

Mr. Schiwal also stated that the income approach is a sales tax.

RESPONSE 6: The income approach to value converts the property's income into the property's value and the result is a tax on the property as opposed to a tax on the income. It is a commonly accepted method for property tax purposes. The new rule is directed at determining an accurate market value for golf courses. Implementing industry standards and changing the method on how the department arrives at market value will not convert the property's value into a sales tax. As with other commercial types, when using the income method to value, the department is only arriving at market value of the real property through the amount of money the property generates.

COMMENT 7: Mr. Dunfee asked for an explanation of how a private versus a municipal golf course, or golf courses with a mixture of both, would be treated under the proposed new rule adoption for valuation purposes.

Mr. Nowlen commented that he is also concerned with the treatment, for valuation purposes, of public versus private golf courses and how membership dues and capital assessments will be considered in the actual gross revenue. For example, the Missoula Country Club assesses its members when they want to do capital projects, which is an investment mechanism for a facility by an income-owning group made up of its members. How will this situation be addressed in the proposed adoption of a standard gross income multiplier?

Mr. Hill also commented that there is also a large dissimilarity with revenue between private and public golf courses leading to inconsistency and inequity. Private golf courses sell golf memberships and a specific social network year round. Public golf courses sell day-to-day golf passes dependent on daily weather and seasonal climate.

RESPONSE 7: The department will consider all three approaches to value regardless of whether it is a private or a public golf course. The amount of data available for each approach is imperative to the accuracy of the value determined by that approach. Sales are imperative to the sales comparison approach; golf course construction costs (less depreciation) are imperative to the cost approach; and total gross income is imperative to the income approach to value. Membership dues and capital assessments are considered in gross income. A standard gross income multiplier is the constant, while the amount of a particular golf course's gross income is the variable that together will result in the property's value. The golf course's gross income considers the differences between courses and, as such, the differences will be reflected in the property's market value.

COMMENT 8: Mr. Morrison expressed a concern that in trying to define fair market value through this new rule adoption, the result might be substitution of administrative rule for what has traditionally been adjudicated through the appeal and court systems, which is fair market value. A lot of those concepts are in this proposed rule, but it is so specific that suddenly you are biasing the determination of fair market value away from other factors that courts have determined were relevant. If the state tax appeal board is adjudicating fair market values, will that board say that this administrative rule trumps what normally is a traditional method of value?

Mr. Morrison further stated he believes that evidence of the listing price of a golf course that has no offers to buy is a relevant piece of information for the department to have when valuing the property. For example, a golf course that is listed for five million dollars with no offers should indicate to the department that the value of that golf course is not five million dollars but something less. In a similar vein, Mr. Morrison proposed that if in the last five years the owner of a golf course received an offer to buy at four million dollars, and turned down the offer, the department should also have the right to access that as relevant information to show that the golf course was worth at least four million dollars or the owner wouldn't have turned down the offer. He explained that these are just samples of information the department could access to come to some sort of notion as to value.

RESPONSE 8: The Montana Tax Appeal Board has ruled that the department is not allowing enough depreciation for golf courses. Therefore, the

department is implementing the industry standards in these rules in response to that ruling. The department agrees that more information will help in accurately establishing market value and that the list price of any property should be researched prior to arriving at fair market value. If the property is listed on the open market, the list price generally indicates the top range of market value.

COMMENT 9: Mr. Hill commented that the rules pertaining to the small business impact analysis in 2-4-111, MCA, need further consideration. Property taxes on golf courses are a significant expense unless you are a competing municipal golf course that has no property taxes. As an example, he stated that the Lake Hills Golf Course property taxes were \$21,270 for 2014 and \$33,904 for 2015. The one-year property tax difference was \$12,634. That kind of increase is not sustainable for any thin-margin business. The proposed rules need better clarification and definition with a small business impact analysis reconsidered per statute.

RESPONSE 9: The department's small business impact analysis was not intended to represent that property taxes are insignificant to golf course operations. Rather, the analysis asserted that the result of the rules is anticipated to have a small impact. For instance, the income approach to value requires golf course owners to submit yearly gross income. The department currently requests income and expense information. To continue to do so is not expected to have a significant impact in this instance.

COMMENT 10: Mr. Hill stated that he purchased Lake Hills Golf Course in November 2009, for \$1.5 million, invested \$1.2 million into the 53-year-old course, and then listed the course for sale two years later for what he had invested in it and received no offers. After two years on the market, he sold the golf course for \$1.6 million with similar tangible property value as the previous purchase. He stated his purchase and resale were both done willingly and at arm's-length by both parties on both sides. The department's appraised value of this property, at the time of his purchase, was nearly \$4 million.

Mr. Hill explained that he filed a request for review with the department, filed an appeal with the Yellowstone County Tax Appeal Board, and received a reduction by the board to the purchase price. However, four months after he sold the golf course for \$1.6 million, the department increased the appeal board's adjusted value of \$1.5 million to a new market value of more than \$4.1 million. The new appraised value was a \$2.6 million increase within four months of a \$1.6 million arm's-length sale. Mr. Hill commented that he asked the department how this could happen and the department informed him that the appeal board adjustment was removed with the start of the current reappraisal cycle. Mr. Hill stated that he did not receive a satisfactory explanation for this removal from the department when it referenced 15-7-111, MCA, and ARM 42.18.124(1)(c), because these references do not explain why appeal adjustments disappear with a new appraisal cycle. He commented that he would like specific supporting rationale for the department's statement that "all appeal adjustments are removed at the start of a new reappraisal cycle."

Additionally, Mr. Hill requested that the scope of the current reappraisal cycle be defined and better explained. He stated that he received a communication from the department in August of 2016 that said, "The most recent sale of Lake Hills Golf Course took place on August 29, 2014, which was just outside of the scope of the current reappraisal." Mr. Hill commented that it is unreasonable to have a \$1.6 million arm's-length sale and four months later have the department appraise it at just under \$4.2 million. It is also unreasonable for the new owner to not find out about the huge increase for another seven months.

Mr. Hill stated that he contends that along with gathering regional and national sales data, due to limited local data, it is important that deadlines for usable data be extended. It is not unreasonable to work on the sale of a golf course for a year or longer before the deal is closed. The closing or settlement date should not have a 90- or 180-day deadline. This stops a valuation that should be considered for years due to the rarity of sales and uniqueness of each golf course. Valuations do not stop and start on artificial deadlines.

Mr. Hill further requests consideration of the abolishment of any rule, retroactive to its inception, that requires any appeal adjustments to be removed at the start of a new reappraisal cycle and further requests a citation to that rule.

RESPONSE 10: The department refers Mr. Hill to 15-1-101(1)(d), MCA. This statute defines commercial property as business property that is used to produce an income. Golf courses fall under the statutory definition of commercial property. The legislature establishes property classifications and determined that golf courses are class four property. Class four property is codified at 15-6-134(1)(d)(ii), MCA. The department is required to reappraise class four property every two years in accordance with 15-7-111(1), MCA. Further, 15-7-111(3), MCA, states that the reappraisal of class four property ". . . is complete on December 31 of every second year of the reappraisal cycle." Appeal adjustments apply to the market value in a given cycle. The law does not provide for adjustments to transfer to subsequent reappraisal cycles. The department reappraised all golf courses as of January 1, 2014, for the 2015-2016 reappraisal cycle. Sales that occurred after the valuation date of January 1, 2014, are considered for the following cycle.

The department has responded to Mr. Hill directly regarding his property specific concerns and will correspond with him again accordingly.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State November 14, 2016.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

| | | |
|------------------------------------|---|-------------------------|
| In the matter of the amendment of |) | NOTICE OF AMENDMENT AND |
| ARM 42.23.108, 42.23.109, |) | REPEAL |
| 42.23.112, 42.23.113, 42.23.116, |) | |
| 42.23.212, 42.23.303, 42.23.312, |) | |
| 42.23.313, 42.23.403, 42.23.421, |) | |
| 42.23.424, 42.23.601, 42.23.702, |) | |
| 42.23.802, 42.23.803, 42.23.804, |) | |
| 42.23.805, 42.26.101, 42.26.202, |) | |
| 42.26.301, 42.26.302, 42.26.311, |) | |
| 42.26.313, and 42.26.505 and the |) | |
| repeal of ARM 42.23.117 pertaining |) | |
| to corporate income tax |) | |

TO: All Concerned Persons

1. On September 2, 2016, the Department of Revenue published MAR Notice No. 42-2-960 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1539 of the 2016 Montana Administrative Register, Issue Number 17.

2. On September 29, 2016, a public hearing was held to consider the proposed amendment and repeal. No members of the public appeared for the hearing. Written comments were received from Nikki E. Dobay, Council on State Taxation, Walter J. Kero, CPA, and Robert Story, Montana Taxpayers Association.

3. The department amends and repeals the above-stated rules as proposed.

4. The department has thoroughly considered the comments received. A summary of the comments received and the department's responses are as follows:

COMMENT 1: Walter J. Kero, CPA, of Kero Byington and Associates, commented that he has no issue with the concept of changing the titling of the corporation tax to that of an income tax and not a franchise tax. A franchise tax implies a license to do business and, if that were in fact the case, then such a tax could and should only be imposed for conducting business in a future period. The weakness of a license tax is that in the year of termination, for any reason, a corporation should not have to pay a tax to do business in the future. There is no way the tax systems in the U.S. would allow for such a condition. Therefore, he commented that he welcomes the end of the hypocrisy and the corporate tax now being called simply an income tax.

Mr. Kero further commented that the proposed amendments are more than housekeeping, and that he would term them a major change. If the Montana Codes still contain references to corporate license tax, they should be "house-cleaned" as well.

RESPONSE 1: The department appreciates Mr. Kero's comments. The 2013 Montana Legislature passed Senate Bill 361, changing all references of the "corporation license tax" to the "corporate income tax," and the department is updating its rules for consistency with this change in the statute.

COMMENT 2: Mr. Kero also commented that he hopes all of the amended return rules for corporations will mirror the rules for amendments to individual returns. Tax simplification would include the idea of one set of procedural rules for all taxpayers, such as the same penalty provisions, same carryback, and carryover rules (subject to statute). The more the rules are the same between taxpayer types, the better for tax administration and simplification.

RESPONSE 2: The rules adopted by the department reflect and support the statutes enacted by the Montana Legislature. Because there are differences in laws governing different tax types, for example, individual taxpayers, corporate taxpayers, etc., the applicable rules will reflect these differences.

COMMENT 3: Regarding the proposal to strike ARM 42.23.113(2), Mr. Kero asked if the legislature deleted the corporation as a research and development firm. If not, is it proper for the department to delete this section? Mr. Kero further suggested that the outdated language applying to tax periods prior to July 1987 in (2) should be updated, not removed.

RESPONSE 3: The Montana legislature has not repealed 15-1-101(1)(u), MCA, defining "Research and development firm." The language in ARM 42.23.113(2), that the department is striking, applies to a corporation that began operating in Montana prior to July 1, 1987, giving direction to its exemption from the corporate income tax for its first five years of operation, which at the latest would have ended in 1992. This language is outdated and no longer needed.

COMMENT 4: Regarding ARM 42.23.303(1), Mr. Kero asked what "other competent authority" means for the purposes of the rule and stated that it should be defined.

RESPONSE 4: In this context, competent authority refers to the organization with the legal authority or power to adjust or correct an entity's tax filing. For instance, if an entity incorporated in Canada had activity in Montana and received notice from the Canada Revenue Agency regarding its tax filings, there is a requirement for those changes to be reported to the state of Montana.

It may be helpful to review the Montana Supreme Court's decision in *Frontier Chevrolet v. Department of Revenue*, 2008 MT 191. In that case, the Montana Supreme Court concluded that the United States Tax Court and the Ninth Circuit Court of Appeals represented "competent authorities" for the purposes of 15-31-506, MCA.

The department respectfully disagrees that a rule is needed to define "other competent authority."

COMMENT 5: Robert Story, Executive Director of the Montana Taxpayers Association, commented that his organization agrees with the bulk of the proposed changes as they reflect the intent of the current statutes, but they do have a few concerns.

Regarding ARM 42.23.303(1)(b) and (2)(b), the proposed amendments allow the department to commence action at any time when an amended return is not filed. The rule is based on 15-31-544, MCA, which allows such action for failure to file a return as required. Is it the department's opinion that 15-31-544, MCA, also refers to amended returns? Is it necessary to amend the statute to address the issue of amended returns?

RESPONSE 5: The department appreciates Mr. Story's comments. The Montana First Judicial District Court ruled that 15-31-544, MCA, does apply to amended returns in its decision in *Northwest Farm Credit Services, ACA v. Montana Department of Revenue and State Tax Appeal Board* (Cause No. BDV-2006-884, June 23, 2007). The department does not believe it is necessary to amend the statute.

COMMENT 6: Nikki E. Dobay, Tax Counsel with the Council on State Taxation (COST), stated that COST urges the department to reconsider certain proposed changes to ARM 42.23.303, which address reporting requirements for corporate taxpayers following a change in federal tax.

Ms. Dobay commented that the department's proposed amendment of (1) is overly vague, requiring an amended return to be filed when an "official notice" has been received. More guidance should be provided as to what constitutes an "official notice." She stated that pursuant to COST's policy statement, a state should provide clear definition of what constitutes a "final determination," which is the trigger for the requirement to report a federal change. Therefore, COST recommends the department consider changing "official notice" to "final determination" and adding a definition of "final determination" to its proposed rules. To sufficiently apprise taxpayers of what constitutes a "final determination," they recommend the following definition as a best practice:

"A 'final determination' is deemed to occur when the latest of any of the following circumstances exist with respect to a federal taxable year:

(1) The taxpayer: (i) has a final income tax liability resulting from a federal audit including any requisite review by the congressional Joint Committee on taxation; (ii) has not filed a petition for redetermination or claim for refund for any portion of the audit; and (iii) has allowed the time to file such petition or claim to lapse.

(2) The taxpayer has signed all federal Forms 870, closing agreement(s), or other IRS forms(s) for the tax period consenting to the deficiency or consenting to any over-assessment that are final for all issues and no longer subject to appeal.

(3) A decision from the U.S. Tax Court, District Court, Court of Appeals, Court of Claims, or Supreme Court becomes final.

(4) The taxpayer has exhausted all rights to protest an assessment or claim a refund for all entities that are included in, or have income or factors that are reflected in, the taxpayer's returns that are filed with the state."

RESPONSE 6: The department appreciates Ms. Dobay's comments. The language used in ARM 42.23.303 is consistent with the language in 15-31-506, MCA. The department is not changing the terminology, as you propose, because it has the potential to change the language context and it is important that the department's rule language remain consistent with the language in statute.

COMMENT 7: Regarding ARM 42.23.303(2), Ms. Dobay commented that the timeframe provided to file an amended return should be 180 days instead of 90. State reporting requirements for federal tax changes is a complicated area and large multistate taxpayers may be required to report hundreds of changes to multiple states. To ease this substantial burden, COST considers 180 days a more reasonable reporting period. Cutting that time in half is likely to cause taxpayers to hurry through this process, potentially resulting in errors that will consume resources of both the state and the taxpayer and further delay proper reporting.

RESPONSE 7: The 90-day requirement is in statute and beyond the scope of the department's rulemaking authority to change. Please refer to 15-31-506, MCA.

COMMENT 8: Regarding ARM 42.23.303(2), Mr. Kero commented that any such rule should be the same between the department and taxpayers. In other words, the time available for payment of a tax due and the refund of an overpaid tax should be the same unless the taxpayer is beyond the original statute of limitations. Mr. Kero stated that he has seen situations where the statutes have been used against taxpayers with no remedy and the state gets different treatment. Mr. Kero further commented that we cannot have a tax system with two sets of rules, such as one for taxpayers and one for the state.

RESPONSE 8: The statute of limitations related to corporate income tax is different for assessing deficiencies and filing refund claims; however, these periods of limitation are set forth in statute and go beyond the department's rulemaking authority to change. Please refer to 15-31-509, MCA.

COMMENT 9: Ms. Dobay, Mr. Story, and Mr. Kero all commented on the proposed amendment of ARM 42.23.303(4).

Ms. Dobay stated that COST opposes the proposed amendment which provides that there is no de minimis standard for purposes of reporting changes and corrections to a corporation's federal tax or return. Requiring a taxpayer to prepare and file an amended Montana return where there is little or no change to the Montana return is an onerous burden to place on corporate taxpayers, likely with no resulting benefit to the state. She further commented that COST understands why the department may be fearful that this could become a slippery slope with taxpayers taking aggressive positions. However, they recommend amending the proposal to set an amount as being "de minimis" to address this concern.

Mr. Story also commented that they are concerned that the rule does not provide for a de minimis standard when reporting changes. It seems that there would be a practical standard that could be adopted to prevent the cost to both the taxpayer and the department in dealing with changes that are of such a small amount that they have almost no impact on taxes owed.

Mr. Kero stated that a de minimis standard is proposed to the reporting requirements for changes or corrections to corporations and asked if this also applies to individuals. He stated that he could not find a code or administrative rule or a comparable rule for individuals other than a reference at 15-30-2605, MCA, but it did not contain a de minimis provision.

RESPONSE 9: The Montana Code does not provide for a de minimis standard related to reporting requirements. The department believes all changes and corrections to federal taxable income are required to be reported under the current law.

In regards to Mr. Kero's inquiry about the reporting requirements for individual income tax, there is no de minimis standard that applies.

COMMENT 10: Regarding ARM 42.23.312, in which an inactive corporation is required to file one of two returns, either a CLR-4 (now CIT) form or an affidavit provided by the department, Mr. Kero commented that it would be best to utilize one form and if a CIT form is required, then the minimum tax of \$50 should be waived for an inactive corporation. If a CIT form with no tax due is a problem for administration, then the affidavit from the department should be changed into an actual tax form for the purpose of an inactive corporation filing and not having to pay \$50.

RESPONSE 10: The affidavit was made available to taxpayers as an alternative filing mechanism to filling out the longer Form CIT. It is the department's experience that taxpayers appreciate having the option of using either form. The minimum tax of \$50 does not apply to inactive corporations. ARM 42.23.312(1).

COMMENT 11: Mr. Kero commented that the provision in ARM 42.23.313 is fine for dissolutions, withdrawal, or cessation of business. However, there is no discussion or provision for insolvent, bankrupt, or just plain broke corporations. Corporations in this circumstance have no resources for filing any paperwork and just walking away from reporting. A provision should be in place to assist these taxpayers with compliance. The proposed rule changes cover mergers and consolidations, but should also include a provision for bankruptcies and insolvencies.

RESPONSE 11: The department respectfully disagrees and does not believe that ARM 42.23.313 is the proper place to address bankrupt and insolvent entities. ARM 42.23.313 provides guidance for corporations seeking to obtain a dissolution, withdrawal, or tax clearance certificate.

There are federal guidelines that must be followed regarding bankrupt corporations that go beyond the issues addressed in ARM 42.23.313.

COMMENT 12: Mr. Kero indicated that a reference to the tax benefit rule needs to be added to ARM 42.23.601(2).

RESPONSE 12: The department does not believe what is known as the "tax benefit rule" is applicable to ARM 42.23.601(2). The "tax benefit rule" provides that the amount of an expense recovered must be included in income in the year of the recovery to the extent the original expense resulted in a tax benefit. This concept does not apply to the language in the rule.

ARM 42.23.601(2) does not address changes to taxable income, but rather addresses the amount of refund claim available, if any, for a year in which the statute of limitations for refunds has run under 15-31-509, MCA.

COMMENT 13: Mr. Story commented that the change of the spelling of "forego" to "forgo" in ARM 42.23.802(4) does not look right to him, but is apparently an acceptable form of the word.

RESPONSE 13: The recommendation to make this change came from the Secretary of State's ARM Bureau, noting that as per the Gregg Reference Manual (11th edition), paragraph 719, on page 236, "forgo" means to relinquish, to let pass, and "forego" means to go before.

The Gregg Reference Manual is adopted by reference in ARM 1.2.519, which sets forth the basic formatting requirements for rulemaking. Therefore, the department considered the recommendation and agreed that given the context of the language in this section of the rule, "forgo" is the proper version of the word to use.

COMMENT 14: Regarding ARM 42.23.804(3), Mr. Story commented that this change precludes a parent corporation from succeeding to net operating loss carryover from the liquidation of a subsidiary (i.e., the tax fiction created under the check-the-box regime under U.S. Treasury Reg. 301.7701-3(g)(1)(iii)).

Section 15-31-119(8), MCA, precludes the survivor of a merger or consolidation from succeeding to net operating losses of a nonsurviving entity, but it does not preclude a parent corporation from succeeding to the net operation losses from a liquidating subsidiary. What authority does the department believe exists to apply the statute to the case of the liquidation of a subsidiary?

RESPONSE 14: For Montana purposes, a net operating loss for one member of a group cannot be carried back or carried over to offset the income of another member of the group, as specified in ARM 42.23.803(2). When a subsidiary is liquidated or converted to a disregarded entity, it loses its identity as an individual member of the group and is considered a branch or division of the corporate owner. It no longer has its own identifiable income or loss for years after the liquidation or conversion. Consequently, any net operating losses incurred prior to the date of liquidation or conversion cannot be carried forward.

COMMENT 15: Mr. Kero stated that he does not have any comments on the multi-state definition of terms found in ARM 42.26.202; however, he stated that it

would be extremely beneficial if all tax terms were used between all taxes and taxpayer types. Apportionment is an example of a definition that could be used and be applicable between individual, corporation, trust, partnership, and nonprofit taxpayers/tax reporters.

RESPONSE 15: The definitions provided for in ARM 42.26.202 apply to corporate taxpayers as well as pass-through entities and nonprofit taxpayers. The use of apportionment and allocation of income as it relates to multistate taxpayers does not apply to individual taxpayers, as the Montana statute does not provide for their use.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State November 14, 2016.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

| | | |
|---------------------------------------|---|---------------------|
| In the matter of the adoption of New |) | CORRECTED NOTICE OF |
| Rules I through III, the amendment of |) | ADOPTION |
| ARM 42.2.304, 42.2.503, 42.2.504, |) | |
| 42.2.505, 42.2.510, 42.2.511, |) | |
| 42.3.102, 42.3.103, 42.3.115, |) | |
| 42.14.204, 42.15.315, 42.15.316, |) | |
| 42.30.103, and 42.30.107, the |) | |
| transfer and amendment of ARM |) | |
| 42.3.105 and 42.3.107, and the |) | |
| repeal of ARM 42.2.306, 42.15.320, |) | |
| and 42.23.605 pertaining to the |) | |
| application of penalties and interest |) | |
| and reasonable cause; and also |) | |
| pertaining to the timeframe for |) | |
| appealing notices of assessment |) | |

TO: All Concerned Persons

1. On September 23, 2016, the Department of Revenue published MAR Notice No. 42-2-963 pertaining to the public hearing on the proposed adoption, amendment, transfer and amendment, and repeal of the above-stated rules at page 1668 of the 2016 Montana Administrative Register, Issue Number 18. On November 10, 2016, the department published a notice of adoption, amendment, transfer and amendment, and repeal of the rules at page 2073 of the 2016 Montana Administrative Register, Issue Number 21.

2. An authorizing statute for New Rule II (42.2.507) was incorrectly cited in the proposal notice. New Rule II (42.2.507), as amended in corrected form, reads as follows, deleted matter interlined, new matter underlined:

NEW RULE II (42.2.507) SUBSTANTIAL UNDERSTATEMENT PENALTY
(1) through (7) remain as adopted.

AUTH: ~~15-1-2620~~ 15-30-2620, 15-31-501, MCA
IMP: 15-1-216, MCA

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

Eugene Walborn acting for
Mike Kadas
Director of Revenue

Certified to the Secretary of State November 14, 2016.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

Water Policy Interim Committee (where the primary concern is the quality or quantity of water):

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: **Administrative Rules of Montana (ARM)** is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- | | |
|---------------|---|
| Known Subject | 1. Consult ARM Topical Index. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute | 2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2016. This table includes those rules adopted during the period April 1, 2016, through June 30, 2016, and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 2016, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2016 Montana Administrative Register.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

ADMINISTRATION, Department of, Title 2

| | |
|-----------|---|
| 2.5.201 | and other rules - Definitions - Changes Within the State Procurement Bureau and Central Stores Program, p. 612, 1160 |
| 2.5.701 | and other rules - State Surplus Property Program, p. 355, 719 |
| 2.21.4002 | and other rules - Equal Employment Opportunity - Nondiscrimination - Harassment Prevention, p. 617, 1838 |
| 2.55.502 | Individual Loss Sensitive Dividend Distribution Plan, p. 548 |
| 2.59.104 | Semiannual Assessment for Banks, p. 479, 878 |
| 2.59.104 | and other rules - Semiannual Assessment - Retention of Bank Records - Definitions - Change in Location - Application and Review Procedures - State, County, and Municipal Issues for Banks, p. 1744 |
| 2.59.301 | and other rules - Advertising - Standardized Forms and Procedures - Annual Reporting Form for Consumer Loan Licensees - Transition of Licenses to the NMLS, p. 1750 |
| 2.59.401 | and other rules - Model Bylaws and Statutory Reference for Credit Unions - Supervisory and Examination Fees - Limited Income Persons - Corporate Credit Unions, p. 1738 |
| 2.59.416 | and other rules - Credit Union Investments, p. 359, 720 |
| 2.59.701 | and other rule - Application Procedure - Standardized Forms and Procedures - Transition of Escrow Business Licensees to the NMLS, p. 1879 |
| 2.59.1201 | and other rule - Standardized Forms and Procedures - Transition of Sales Finance Company Licensees to the NMLS, p. 1883 |

- 2.59.1506 and other rules - Definitions - Standardized Forms and Procedures - Annual Reporting Form for Deferred Deposit Lending, p. 1886
- 2.59.1735 Determining the Amount of Surety Bond for a New Mortgage Broker or Mortgage Lender, p. 630, 1052
- 2.59.1738 and other rule - Definition of "Regularly Engage" - Renewal Fees for Mortgage Brokers, Lenders, Servicers, and Originators, p. 1287, 1845

(Public Employees' Retirement Board)

- 2.43.3501 Adoption by Reference of the State of Montana Public Employee Defined Contribution Plan Document, p. 784, 1161
- 2.43.3502 and other rule - Investment Policy Statement for the Defined Contribution Retirement Plan - Investment Policy Statement for the 457 Deferred Compensation Plan, p. 787, 1162

(Board of Examiners)

- 2.53.201 Model Procedural Rules, p. 627, 1006

(Montana Lottery Commission)

- 2.63.204 and other rules - General Provisions - Revocation or Suspension of License - Prizes, p. 1591

AGRICULTURE, Department of, Title 4

- New Rule Pesticide Certification and Training Fees, p. 551, 1163
- 4.16.201 and other rule - Growth Through Agriculture (GTA), p. 790, 1254, 1690

STATE AUDITOR, Office of, Title 6

(Commissioner of Securities and Insurance)

- New Rule Adoption of the NAIC Valuation Manual, p. 1494, 1846
- New Rule and other rules - Group Disability Income Opt Out, p. 1497, 2057
- New Rule and other rules - Annuity Mortality Tables – Determining Reserve Liabilities, p. 1890
- 6.6.201 and other rules - Life Insurance Buyer's Guide, p. 1754
- 6.6.1906 and other rules - Comprehensive Health Care Association and Plan, p. 2026
- 6.6.3702 and other rules - Reporting by Holding Company Systems, p. 246, 824
- 6.6.3801 and other rules - Credit for Reinsurance - Letters of Credit Used in Reduction of Liability for Reinsurance Ceded, p. 1596
- 6.6.4902 and other rules - Patient-Centered Medical Homes, p. 1895
- 6.10.703 Securities Restitution Fund, p. 256, 721

COMMERCE, Department of, Title 8

- New Rule Administration of the 2017 and 2018 Program Year Community Development Block Grant (CDBG) Program – Small-Scale Housing Development and Rehabilitation Application Guidelines, p. 1292, 1944

- New Rule Administration of the 2018 Biennium Federal Community Development Block Grant (CDBG) Program – Planning Grants, p. 554, 879, 1255
- New Rule Administration of the 2016 and 2017 Program Year Federal Community Development Block Grant (CDBG) Program – Public Facilities Projects, p. 633, 1007, 1256
- New Rule Administration of the 2016 and 2017 Program Year Federal Community Development Block Grant (CDBG) Program – Competitive Housing and Neighborhood Renewal Projects, p. 635
- New Rule Administration of the 2016 and 2017 Program Year Community Development Block Grant (CDBG) Program – Affordable Housing Development Projects, p. 932, 1386
- 8.111.602 and other rule - Low Income Housing Tax Credit Program, p. 795, 1053
- 8.119.101 Tourism Advisory Council, p. 1295, 1691
- (Coal Board)
- 8.101.203 and other rule - Applications for Montana Coal Board Grant Assistance, p. 935, 1257

EDUCATION, Title 10

(Office of Public Instruction)

- New Rule and other rule - Distribution of Oil and Gas Production Taxes, p. 558, 881
- 10.10.301 and other rules - School Finance, p. 363, 556, 880

(Board of Public Education)

- 10.53.101 and other rules - K-12 Science Content Standards, p. 1298, 1955
- 10.53.101 and other rules - K-12 Arts Content Standards, p. 938, 1387
- 10.54.7010 and other rules - K-12 Health and Physical Education Content Standards, p. 961, 1389
- 10.56.101 Student Assessment, p. 991, 1392
- 10.57.101 and other rules - Educator Licensure, p. 1775

FISH, WILDLIFE AND PARKS, Department of, Title 12

- 12.7.201 and other rules - Commercial Bait Seining, p. 259, 585
- 12.11.341 and other rule - Aquatic Invasive Species, p. 263, 882

(Fish and Wildlife Commission)

- 12.6.2215 Exotic Species Classification, p. 1501
- 12.11.206 and other rule - Temporary Client Days on the Beaverhead and Big Hole Rivers, p. 267, 1054

(State Parks and Recreation Board)

- New Rule and other rules - State Parks Public Use, p. 482, 825

ENVIRONMENTAL QUALITY, Department of, Title 17

- 17.36.101 and other rules - Subdivisions/On-Site Subsurface Wastewater Treatment - Application--Contents - Review Procedures--Applicable Rules - Re-review of Previously Approved Facilities: Procedures - Setbacks - Sewage Systems: Agreements and Easements - Existing Systems - Water Supply Systems: Operation and Maintenance, Ownership, Easements, and Agreements - Fee Schedules - Disposition of Fees, p. 2192, 722
- 17.50.523 Transportation, p. 4, 725
- 17.56.101 and other rules - Underground Storage Tanks Petroleum and Chemical Substances - Delegation to Local Governments, p. 1182, 1694
- 17.56.506 and other rules - Reporting of Confirmed Releases - Adoption by Reference - Release Categorization, p. 2029

(Board of Environmental Review)

- 17.8.102 and other rule - Incorporation by Reference--Publication Dates - Incorporation by Reference and Availability of Referenced Documents, p. 1109, 1848
- 17.8.610 and other rules - Major Open Burning Source Restrictions - Conditional Air Quality Open Burning Permits - Christmas Tree Waste Open Burning Permits - Commercial Film Production Open Burning Permits - Firefighter Training - Conditions for Issuance or Denial of Permit - General Requirements for Air Quality Operating Permit Content, p. 563, 1164
- 17.8.818 Averaging Period for the PM-2.5 Significant Monitoring Concentration, p. 801, 1439
- 17.30.1001 and other rules - Water Quality - Subdivisions/On-Site Subsurface Wastewater Treatment - Public Water and Sewage System Requirements - Solid Waste Management - Definitions - Adoption by Reference - Wastewater Treatment Systems: Technical Requirements - Plans for Public Water Supply or Public Sewage System - Plans for Public Water Supply or Wastewater System - Incorporation by Reference and Availability of Referenced Documents, p. 2188, 1008
- 17.38.104 and other rules - Public Water Supply Systems, p. 1900

TRANSPORTATION, Department of, Title 18

- 18.6.202 Outdoor Advertising Control, p. 381, 1440
- 18.8.512 Motor Carrier Services, p. 638, 1009
- 18.8.1502 and other rules - Motor Carrier Services Safety Requirements, p. 1113, 1456
- 18.9.101 and other rules - Motor Fuels Tax, p. 1317, 1849

CORRECTIONS, Department of, Title 20

- New Rule Inmate Worker Savings Subaccount, p. 1623
- New Rule Inmate Trust Accounts, p. 1628

JUSTICE, Department of, Title 23

- 23.16.101 and other rules - Social Card Games Played for Prizes of Minimal Value - Location Managers - Definitions - Transfer of Interest Among Licensees - Transfer of Interest to New Owners - Application for Operator License - Change in Managers, Officers, and Directors - Card Game Tournaments - Large-Stakes Card Game Tournaments - Video Gambling Machine Ticket Vouchers, p. 1914
- 23.16.119 and other rules - Temporary Gambling Authority - Participation in Gambling Operations - Sports Pool Design and Operation - Software Specifications for Video Poker Machines, p. 569, 886

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order by chapter following the department rules.

- New Rule and other rules - Workforce Development Activities for Montana HELP Act Participants, p. 105, 728, 1165
- New Rule and other rules - Reopening of Medical Benefits Automatically Closed in Certain Workers' Compensation Claims, p. 2073, 204, 586
- 24.8.201 and other rules - Human Rights Matters, p. 1504
- 24.11.204 and other rules - Unemployment Insurance Program, p. 1630, 2058
- 24.17.127 and other rules - Prevailing Wage Rates for Public Works Projects, p. 2035
- 24.26.206 Board of Personnel Appeals Computation of Time, p. 1518
- 24.29.1433 and other rules - Workers' Compensation Medical Service Fee Schedules, p. 641, 1055
- 24.29.1591 Utilization and Treatment Guidelines for Workers' Compensation Injuries, p. 1520
- 24.301.501 and other rules - Applicability of Statutes and Rules - Definitions - Commercial or Business Occupancy - Third Party Inspections - Reciprocity - Requirements for Data Plate - Application for Review - Plan Review Termination - Quality Control - Changes to Reviewed Plans - Unit Identification - Plan Renewal - Insignias - Fees - Inspections - Certificates - Effective Date - Information Required to Dealer - Application for Approval - Model Manufactured Location - Out-of-State Applicant - Evidence of Review - Discontinuance of Review, p. 276, 887

(Board of Behavioral Health)

24.154.301 and other rules - Definitions - Fee Schedule - Military Training or Experience - Education Requirement - Application Procedures - Licensure by Endorsement - Supervised Work Experience - Nonresident Licensed Addiction Counselor Services - Inactive Status and Conversion From Inactive to Active Status - Continuing Education Requirements - Continuing Education Procedures and Documentation - Unprofessional Conduct - Supervisor Qualifications - Qualified Treatment Setting - Addiction Counselor Licensure Candidate Application Procedures - Addiction Counselor Licensure Candidate Requirements - Addiction Counselor Licensure Candidate Annual Registration Requirements - Gambling Disorder Education Requirement for Current Licensed Addiction Counselor Licensees - Procedural Rules - Public Participation Rules - Renewals - Complaint Procedure, p. 646, 1457

(Board of Chiropractors)

24.126.411 and other rules - Patient Records Retention - Continuing Education Requirements - Approved Continuing Education - Unprofessional Conduct - Sexual Relations With a Patient and Sexual Misconduct - Board Meetings - Record of Minutes and Hearings - Renewals, p. 270, 733

(Board of Clinical Laboratory Science Practitioners)

24.129.401 and other rules - Fees - Supervision - Minimum Standards for Licensure - Military Training or Experience - Temporary Practice Permits - Unprofessional Conduct - Nonroutine Applications, p. 2040

(Board of Nursing)

24.159.301 and other rules - Definitions - Purpose - Criteria for Delegation of Nursing Tasks - General Nursing Functions - Parliamentary Authority - Preparation of Licenses - Duplicate or Lost Licenses - Nursing Delegation, p. 497, 1010

(Board of Nursing Home Administrators)

24.162.401 and other rules - General Requirements - Fee Schedule - Military Training or Experience - Examinations - Reciprocity Licenses - Inactive License - Continuing Education - Nonroutine Applications - Quorum - Submittals and Requests - Record of Minutes and Hearings - Application Denial - Hearings or Proceedings - Reinstatement - Renewals, p. 1222, 1958

(Board of Occupational Therapy Practice)

24.165.302 and other rules - Definitions - Fees - Continuing Education, p. 1523

(Board of Outfitters)

24.171.401 and other rules - Fees - Outfitter Records - Watercraft Identification - Outfitter Qualifications - Fishing Outfitter Operations Plans - Outfitter Examination - Operations Plans and Amendments - Renewals - Unprofessional Conduct and Misconduct - Transfer of River-Use Days, p. 855, 1960

(Board of Pharmacy)

24.174.501 Examination for Licensure as a Registered Pharmacist, p. 1345, 1696

(Board of Physical Therapy Examiners)

24.177.2105 and other rule - Continuing Education - Dry Needling, p. 576, 1697

(Board of Plumbers)

24.180.2102 and other rules - Continuing Education Requirements - Board Meetings - General Responsibilities - Investigation - Renewals - Complaint Procedure, p. 1790

(Board of Professional Engineers and Professional Land Surveyors)

24.101.413 and other rules - Renewal Dates and Requirements - Standards of Responsible Charge - Fee Schedule - Branch Office - Teaching of Advanced Engineering Subjects - Certificate of Authorization - Board-Approved Curricula - Applications - Exhibits of Land Surveying - Examination Procedures - Grant and Issue Licenses - License Seal - Comity - Classification of Experience - Uniform Standards - Inactive Status - Complaints - Teaching of Land Surveying Subjects - Definitions - Direct Supervision - Application for Emeritus Status - Renewals - Late Renewals, p. 1117

(Board of Psychologists)

24.189.401 and other rules - Fee Schedule - Application Procedures - Minimum Standards - Work Samples—Examination - Temporary Permit - License Preparation - Renewals - Complaint Procedure, p. 1348

(Board of Public Accountants)

24.201.301 and other rules - Definitions - Fee Schedule - Use of CPA/LPA Designation - Licensing and Examinations - Professional Conduct Rules - Mandatory Peer Review - Renewal and Continuing Education - Complaint Procedures - Firms—Registration - Approved Peer Review Programs and Standards - Fee Abatement - Out-of-State Applicants Continuing Education Requirement, p. 110, 1016

(Board of Real Estate Appraisers)

24.207.2101 Continuing Education, p. 995, 1853

(Board of Veterinary Medicine)

24.225.425 and other rules - Nonroutine Applications - Unprofessional Conduct - Renewals, p. 1795

LIVESTOCK, Department of, Title 32

- 32.2.401 and other rules - Feral Swine Mandatory Reporting - Fees - Additional Requirements for Cattle - Semen Shipped Into Montana, p. 2221, 223
- 32.2.401 and other rule - Department of Livestock Animal Health Division Fees - Exportation of Alternative Livestock, p. 1646, 2062
- 32.2.404 Brands Enforcement Division Fees, p. 1231, 1570
- 32.2.406 Licensee Assessments to Administer the Milk Inspection and Milk Diagnostic Lab Functions of the Department, p. 998, 1260
- 32.3.207 and other rules - Permits - Special Requirements for Sheep - Brands and Earmarks, p. 2047
- 32.3.221 and other rules - Special Requirements for Alternative Livestock as Defined in 87-4-406, MCA - Intrastate Movement of Cattle: Identification - Elk-Red Deer Hybridization Tests - Importation of Alternative Livestock, p. 505, 889
- 32.3.1203 and other rule - Isolation of Rabid or Suspected Rabid Animals - Animal Contacts, p. 863, 1259
- 32.6.712 Food Safety and Inspection Service (Meat, Poultry), p. 1527, 1854

(Board of Milk Control)

New Rule and other rule - Penalties, p. 293, 588

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

New Rule Rye Creek Stream Depletion Zone, p. 2235, 297, 890

(Board of Land Commissioners)

- 36.11.432 and other rule - Grizzly Bear Conservation Measures on the Stillwater and Coal Creek State Forest, p. 8, 589
- 36.25.1001 and other rules - Cabin Site Leasing, p. 181, 1020

(Board of Oil and Gas Conservation)

- New Rule Notification of Application for Permit to Drill, p. 1531
- 36.22.1242 Oil and Gas Privilege and License Tax, p. 866, 1571

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

- New Rule and other rules - Creating the Montana Achieving a Better Life Experience (ABLE) Program, p. 869, 1575
- 37.5.301 and other rule - Formal and Informal Hearing and Appeal Procedures Concerning the Children's Mental Health Bureau, p. 1156, 1707
- 37.8.116 Increasing Certain Fees for Certified Copies of Vital Records, p. 434, 893

- 37.34.3005 and other rule - Reimbursement of Services Provided to Persons Who Are Recipients of Developmental Disabilities Services Funded by Medicaid, p. 1354, 1709
- 37.36.604 Updating Poverty Guidelines to 2016 Levels, p. 1048, 1710
- 37.40.301 and other rules - Nursing Facility Reimbursement - Updating Outdated Terms, p. 697, 1071
- 37.40.801 and other rules - Hospice Reimbursement and Updates, p. 807, 1167
- 37.57.101 and other rules - Children's Special Health Services Financial Assistance Program, p. 664, 1855
- 37.71.401 and other rules - Low Income Weatherization Assistance Program (LIWAP) for the 2014-2015 Heating Season and the 2015-2016 Heating Season, p. 1142, 1574
- 37.80.101 and other rules - Child Care Assistance Provided Through the Best Beginnings Child Care Scholarship (BBCCS) Program, p. 1359, 1711
- 37.80.101 and other rules - Child Care Assistance - Implementation of Required Policy Changes Under the Child Care and Development Block Grant of 2014, p. 1652, 590
- 37.81.304 Maximum Big Sky Rx Premium Change, p. 1802
- 37.85.104 and other rule - Revision of Fee Schedules for Medicaid Provider Rates Effective July 1, 2016, p. 669, 804, 1058
- 37.85.104 and other rule - Updating Medicaid Fee Schedules With Medicare Rates - Updating Effective Dates to July 1, 2016 and January 1, 2017, p. 1924
- 37.85.105 and other rule - Montana Medicaid Pharmacy Reimbursement, p. 1043, 1462
- 37.85.204 and other rules - Medicaid Program Treatment Limits - Cost-Share Requirements - Medicaid Coverage, p. 409, 829
- 37.85.204 Medicaid Cost Share, p. 2051
- 37.85.212 and other rule - Adding a New Provider Called Mobile Imaging/Portable X-Ray Provider Type - Reimbursement for State Fiscal Year 2017, p. 1932
- 37.85.406 and other rules - Hospitals - Inpatient Hospitals - Rural Health Clinics - Federally Qualified Health Centers, p. 705, 840
- 37.85.406 and other rules - Hospital Reimbursement - FQHC and RHC Definitions, p. 1234, 1712
- 37.86.105 and other rules - Changes to Montana Medicaid Pharmacy Reimbursement, p. 684, 1065
- 37.86.1005 Removal of Dental Orthodontia Service Lifetime Limits in Medicaid Dental Services, p. 1373
- 37.86.2102 and other rule - Medicaid Eyeglass Reimbursement, p. 1656, 2064
- 37.86.2928 Inpatient Hospital Reimbursement, p. 1799
- 37.87.809 Targeted Case Management Services for Youth With Serious Emotional Disturbance, Reimbursement, p. 1534, 2063
- 37.87.903 Children's Mental Health Bureau Medicaid Services Policy Manual Revisions, p. 817, 1393
- 37.87.1303 and other rules - Integrated Co-Occurring Treatment Provider Requirements, p. 1408, 1856

- 37.87.1803 and other rules - Removal of Montana Child and Adolescent Needs and Strengths (CANS) Assessments for Mental Health Centers (MHC) Involving Comprehensive School and Community Treatment (CSCT), p. 1151, 1706
- 37.95.162 and other rules - Annual Training Requirements for Child Care Facilities, p. 1649
- 37.104.3006 and other rules - Trauma Care Councils and Registry, p. 1001, 1461
- 37.106.704 Ten Additional Inpatient Beds Granted by a Waiver Under the Patients and Providers Act of 2008 for Critical Access Hospitals, p. 430, 839
- 37.107.117 Reduction of Application and Renewal Fees Associated With the Montana Marijuana Act Cardholder Registry, p. 298, 1166

PUBLIC SERVICE REGULATION, Department of, Title 38

- 38.2.4801 and other rules - Procedural Rules, p. 580, 877, 1966

REVENUE, Department of, Title 42

- New Rule Montana Ammunition Availability Act - Property Tax Exemption Applications, p. 1251, 1862
- New Rule Requests for Nondisclosure of Property Owner Record Information, p. 1429, 1971
- 42.2.303 and other rule - Meetings With Department Leadership, Information Access, and the Department's Acceptance of Power of Attorney Requests, p. 439, 841
- 42.2.304 and other rules - Application of Penalties and Interest - Reasonable Cause - Timeframe for Appealing Notices of Assessment, p. 1668, 2073
- 42.2.613 and other rules - Uniform Dispute Review Process - Department's Office of Dispute Resolution, p. 442, 510, 1072
- 42.2.705 Alternative Business Office Hours in Qualified County Offices, p. 1376, 1863
- 42.9.110 and other rules - Pass-Through Entity Audit Adjustments - Computation of Composite Tax - Pension and Annuity Income Exclusions - Small Business Liability Funds, p. 1660, 2072
- 42.17.101 and other rules - Computation of Wage Withholding for State Income Taxes, p. 1557, 1974
- 42.18.122 and other rules - Property Reappraisal, p. 1805
- 42.18.206 and other rules - Certification Testing Requirements for Department Property Appraisers, p. 1243, 1714
- 42.19.401 and other rules - Property Tax Assistance Programs, p. 1379, 1865
- 42.19.1401 and other rules - Urban Renewal Districts (URD), Targeted Economic Development Districts (TEDD), Tax Increment Finance Districts (TIFD), p. 1424, 1968
- 42.20.106 and other rule - Golf Course Valuation, p. 1433
- 42.20.173 and other rules - Property Reappraisal Cycles - Assessment Review Deadlines - Electronic Classification and Appraisal Notices -

- Agricultural Land Regions - Bona Fide Agricultural Operation Determinations (Montana Tax Appeal Board Ruling), p. 1416, 1537, 2065
- 42.20.660 and other rules - Agricultural Land Valuation, p. 1833
- 42.21.113 and other rules - Trended Depreciation Schedules for Valuing Property, p. 1813
- 42.22.1311 Industrial Machinery and Equipment Trend Factors, p. 456, 736
- 42.23.108 and other rules - Corporate Income Tax, p. 1539
- 42.25.1801 Crude Oil Pricing - Stripper Well Bonus and Stripper Well Exemption Definitions, p. 301, 735
- 42.29.101 and other rules - Universal System Benefits Programs, p. 13, 712, 894, 1027

SECRETARY OF STATE, Office of, Title 44

- New Rule Rotation of Executive Branch Agencies on the State Records Committee, p. 1565, 1866
- 1.2.104 Administrative Rules Services Fees, p. 716, 1465
- 1.2.104 and other rule - Fees Charged by Administrative Rules Services, p. 1939
- 1.2.419 Scheduled Dates for the 2017 Montana Administrative Register, p. 1936
- 44.2.204 Access to Documents and Fees for Copies, p. 2055
- 44.2.301 and other rules - Business Services Division Filings and Fees, p. 304, 594

BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in October 2016 appear. Vacancies scheduled to appear from December 1, 2016 through February 28, 2017, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of November 1, 2016.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2016

| <u>Appointee</u> | <u>Appointed by</u> | <u>Succeeds</u> | <u>Appointment/End Date</u> |
|--|---------------------|-----------------|-----------------------------|
| 911 Advisory Council (Administration) | | | |
| Mr. Curt Stinson Helena | Governor | Musson | 10/14/2016 9/1/2017 |
| Qualifications (if required): Montana Association of Chiefs of Police | | | |
| Alternative Health Care (Labor and Industry) | | | |
| Dr. Sandy Shepherd Missoula | Governor | Camber | 10/14/2016 9/1/2019 |
| Qualifications (if required): Montana physician whose practice includes obstetrics | | | |
| Board of Athletic Trainers (Labor and Industry) | | | |
| Mr. Kaleb Birney Dillon | Governor | Heard | 10/14/2016 10/1/2019 |
| Qualifications (if required): Athletic trainer | | | |
| Ms. Nichole Borst Havre | Governor | Coble | 10/14/2016 10/1/2019 |
| Qualifications (if required): Athletic trainer | | | |
| Board of County Printing (Administration) | | | |
| Commissioner Carol Brooker Plains | Governor | reappointed | 10/14/2016 4/1/2017 |
| Qualifications (if required): County Commissioner | | | |
| Mr. Jim Strauss Great Falls | Governor | Wester | 10/14/2016 4/1/2017 |
| Qualifications (if required): Printing Industry | | | |

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2016

| <u>Appointee</u> | <u>Appointed by</u> | <u>Succeeds</u> | <u>Appointment/End Date</u> |
|--|---------------------|-----------------|-----------------------------|
| Board of Pharmacy (Labor and Industry) | | | |
| Mr. Tony King Helena | Governor | Baumgartner | 10/14/2016 7/1/2021 |
| Qualifications (if required): Licensed Pharmacist | | | |
| Board of Real Estate Appraisers (Labor and Industry) | | | |
| Mr. Myles Link Missoula | Governor | Fleming | 10/14/2016 5/1/2019 |
| Qualifications (if required): Representative of the public who is not engaged in the occupation of real estate | | | |
| Governor's Postsecondary Scholarship Advisory Council (Board of Regents) | | | |
| Ms. Connie Wittak Flaxville | Governor | reappointed | 10/14/2016 7/1/2019 |
| Qualifications (if required): Experience in secondary or postsecondary education | | | |
| Mental Disabilities Board of Visitors (Governor) | | | |
| Mrs. Melissa Ancell Poplar | Governor | Hertz | 10/14/2016 6/30/2018 |
| Qualifications (if required): Consumer of Developmental disabilities | | | |
| Mr. Dan Laughlin Anaconda | Governor | reappointed | 10/14/2016 6/30/2018 |
| Qualifications (if required): Possessing knowledge relative to treatment and welfare of adults with mental illnesses | | | |
| Ms. Amy Tipton Wolf Point | Governor | reappointed | 10/14/2016 6/30/2018 |
| Qualifications (if required): Possessing knowledge relative to treatment and welfare of adults with mental illnesses | | | |

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2016

| <u>Appointee</u> | <u>Appointed by</u> | <u>Succeeds</u> | <u>Appointment/End Date</u> |
|---|---------------------|-----------------|-----------------------------|
| Montana Alfalfa Seed Committee (Agriculture) | | | |
| Dr. Laura Burkle Baseman | Governor | Westein | 10/14/2016 12/1/2018 |
| Qualifications (if required): Actively engaged in the growing of alfalfa seed | | | |
| Mr. Dallas Steiger Hysham | Governor | reappointed | 10/14/2016 12/1/2018 |
| Qualifications (if required): Actively engaged in the growing of alfalfa seed | | | |
| Montana Invasive Species Advisory Council (Natural Resources and Conservation) | | | |
| Mr. Jon Siddoway Bozeman | Governor | Jacobs | 10/14/2016 12/1/2016 |
| Qualifications (if required): USDA Natural Resources Conservation Service | | | |
| Mr. Andy Welch Helena | Governor | Reller | 10/14/2016 12/1/2016 |
| Qualifications (if required): Hydropower Utility Representative | | | |
| Organic Crop Commodity Advisory Council (Administration) | | | |
| Mr. Sam Schmidt Great Falls | Governor | | 10/14/2016 9/1/2017 |
| Qualifications (if required): | | | |
| Petroleum Tank Release Board (Environmental Quality) | | | |
| Mr. Jerry M. Breen Choteau | Governor | reappointed | 10/14/2016 7/1/2019 |
| Qualifications (if required): Representative of Independent Petroleum Marketers and Chain Retailers | | | |

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2016

| <u>Appointee</u> | <u>Appointed by</u> | <u>Succeeds</u> | <u>Appointment/End Date</u> |
|---|---------------------|-----------------|-----------------------------|
| Petroleum Tank Release Board (Environmental Quality) cont. | | | |
| Mr. Mark Allen Johnson Bozeman | Governor | Noble | 10/14/2016 7/1/2019 |
| Qualifications (if required): Representative of the Petroleum Release Remediation Consultant Industry | | | |
| Mr. Keith Schnider Great Falls | Governor | reappointed | 10/14/2016 7/1/2019 |
| Qualifications (if required): Insurance Industry Representative | | | |
| Pulse Crop Commodity Advisory Council (Agriculture) | | | |
| Mr. Roger Sammons Cut Bank | Governor | Kreger | 10/14/2016 2/1/2019 |
| Qualifications (if required): Producer | | | |
| State Emergency Response Commission (Military Affairs) | | | |
| Mr. Bob Habeck Helena | Governor | Lovelace | 10/14/2016 10/1/2019 |
| Qualifications (if required): Representative of the Department of Environmental Quality | | | |
| State Employee Group Benefit Advisory Council (Administration) | | | |
| Ms. Diane Fladmo Glendive | Governor | Ehli | 10/14/2016 12/31/2016 |
| Qualifications (if required): State Employees and Labor Organization | | | |
| State Historic Preservation Review Board (Montana Historical Society) | | | |
| Mr. Charles McLeod Missoula | Governor | reappointed | 10/14/2016 10/1/2020 |
| Qualifications (if required): Archaeologist | | | |

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2016

| <u>Appointee</u> | <u>Appointed by</u> | <u>Succeeds</u> | <u>Appointment/End Date</u> |
|--|---------------------|-----------------|-----------------------------|
| State Historic Preservation Review Board (Montana Historical Society) cont. | | | |
| Mr. Jeffrey Shelden Lewistown Qualifications (if required): Architect | Governor | Gilmore | 10/14/2016 10/1/2020 |
| Ms. Marcella Walter Helena Qualifications (if required): Architectural Historian | Governor | Axline | 10/14/2016 10/1/2020 |
| Traumatic Brain Injury Advisory Council (Public Health and Human Services) | | | |
| Dr. Ruth Ross Missoula Qualifications (if required): Advocates for brain-injured persons | Governor | Smith | 10/14/2016 1/1/2017 |

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2016 THROUGH FEBRUARY 28, 2017

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|---|---------------------|-----------------|
| Board of Aeronautics (Transportation) | | |
| Rep. Walter L. McNutt, Sidney Qualifications (if required): member of the Montana Chamber of Commerce | Governor | 1/1/2017 |
| Mr. Fred Leistiko, Kalispell Qualifications (if required): representative of the Montana Airport Management Association | Governor | 1/1/2017 |
| Ms. Tricia McKenna, Bozeman Qualifications (if required): member of the Montana Pilots' Association | Governor | 1/1/2017 |
| Mr. Roger Lincoln, Gildford Qualifications (if required): member of the Association of the Montana Aerial Applicators | Governor | 1/1/2017 |
| Mr. Bill Hunt Jr., Shelby Qualifications (if required): representative of the Montana League of Cities and Towns and an Attorney | Governor | 1/1/2017 |
| Mr. Robert Buckles, Bozeman Qualifications (if required): representative of interstate commercial airline operators | Governor | 1/1/2017 |
| Mr. Daniel Hargrove, Billings Qualifications (if required): engaged in aviation education in this state | Governor | 1/1/2017 |
| Board of Crime Control (Justice) | | |
| Mr. James R. Cashell, Bozeman Qualifications (if required): Public Representative | Governor | 1/1/2017 |
| Mr. Steve McArthur, Butte Qualifications (if required): Community Corrections Representative | Governor | 1/1/2017 |

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2016 THROUGH FEBRUARY 28, 2017

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|--|---------------------|-----------------|
| Board of Crime Control (Justice) cont. Sheriff Leo C. Dutton, Helena Qualifications (if required): Local Law Enforcement Representative | Governor | 1/1/2017 |
| Chief William Dial, Whitefish Qualifications (if required): Local Law Enforcement Representative | Governor | 1/1/2017 |
| Mr. Nickolas C. Murnion, Glasgow Qualifications (if required): Law Enforcement Representative | Governor | 1/1/2017 |
| Commissioner Laura Obert, Townsend Qualifications (if required): Local Government Representative | Governor | 1/1/2017 |
| Mr. Tim Brurud, Havre Qualifications (if required): Youth Justice Council Representative | Justice | 1/1/2017 |
| Ms. Pamela Carbonari, Kalispell Qualifications (if required): Youth Justice Council Chair | Governor | 1/1/2017 |
| Mr. Curtis Harper, Billings Qualifications (if required): Public Representative | Governor | 1/1/2017 |
| Mrs. Michelle Miller, Butte Qualifications (if required): Community Based Organization Representative | Governor | 1/1/2017 |
| Ms. Kelly McIntosh, Dillon Qualifications (if required): Public Representative | Governor | 1/1/2017 |

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2016 THROUGH FEBRUARY 28, 2017

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|---|---------------------|-----------------|
| <p>Board of Crime Control (Justice) cont. Ms. Danna Jackson, Helena Qualifications (if required): Professional and Community Organizations</p> | Governor | 1/1/2017 |
| <p>Mr. Hubert Abrams, Wibaux Qualifications (if required): Public Representative</p> | Justice | 1/1/2017 |
| <p>Board of Dentistry (Labor and Industry) Dr. George Johnston, Dillon Qualifications (if required): Licensed Dentist</p> | Governor | 1/1/2017 |
| <p>Board of Environmental Review (Environmental Quality) Mr. Chris D. Tweeten, Helena Qualifications (if required): attorney</p> | Governor | 1/1/2017 |
| <p>Director Joan Miles, Helena Qualifications (if required): Local Government</p> | Governor | 1/1/2017 |
| <p>Ms. Robin Shropshire, Helena Qualifications (if required): Hydrologist</p> | Governor | 1/1/2017 |
| <p>Ms. Marietta Canty, Clancy Qualifications (if required): Environmental Sciences</p> | Governor | 1/1/2017 |
| <p>Board of Hail Insurance (Agriculture) Rep. Monica J. Lindeen, Huntley Qualifications (if required): State Auditor</p> | Governor | 1/1/2017 |

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2016 THROUGH FEBRUARY 28, 2017

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|---|---------------------|-----------------|
| <p>Board of Hearing Aid Dispensers (Labor and Industry) Mr. Edward Eaton, Helena Qualifications (if required): Public Member</p> | Governor | 1/1/2017 |
| <p>Board of Horse Racing (Commerce) Sen. Dale Mahlum, Missoula Qualifications (if required): member of the horse racing industry</p> | Governor | 1/1/2017 |
| <p>Mr. Shawn Real Bird, Garryowen Qualifications (if required): District 2 Representative</p> | Governor | 1/1/2017 |
| <p>Mr. Steve Austin, Helena Qualifications (if required): District 5 Representative</p> | Governor | 1/1/2017 |
| <p>Mr. Ralph Young, Columbus Qualifications (if required): member of the horse racing industry</p> | Governor | 1/1/2017 |
| <p>Board of Housing (Commerce) Mr. Doug Kaercher, Havre Qualifications (if required): Public Representative</p> | Governor | 1/1/2017 |
| <p>Mr. J.P. Crowley, Helena Qualifications (if required): Public Representative</p> | Governor | 1/1/2017 |
| <p>Ms. Ingrid Firemoon, Wolf Point Qualifications (if required): Public Representative</p> | Governor | 1/1/2017 |

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2016 THROUGH FEBRUARY 28, 2017

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|---|---------------------|-----------------|
| Board of Housing (Commerce) cont. Mr. Patrick E. Melby, Helena Qualifications (if required): Attorney | Governor | 1/1/2017 |
| Board of Investments (Commerce) Rep. Mark E. Noennig, Billings Qualifications (if required): business person | Governor | 1/1/2017 |
| Ms. Marilyn J. Ryan, Missoula Qualifications (if required): Teachers Retirement System Board member | Governor | 1/1/2017 |
| Mr. Jack Prothero, Great Falls Qualifications (if required): small business representative | Governor | 1/1/2017 |
| Ms. Sheena Wilson, Helena Qualifications (if required): Public Employees' Retirement System Board Representative | Governor | 1/1/2017 |
| Commissioner Kathy Bessette, Havre Qualifications (if required): agriculture representative | Governor | 1/1/2017 |
| Unemployment Insurance Appeals Board (Labor and Industry) Sen. Joseph Tropila, Great Falls Qualifications (if required): Alternate | Governor | 1/1/2017 |
| Mr. Brian Boland, Great Falls Qualifications (if required): Public Representative | Governor | 1/1/2017 |

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2016 THROUGH FEBRUARY 28, 2017

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|---|---------------------|-----------------|
| <p>Unemployment Insurance Appeals Board (Labor and Industry) cont. Mr. John Hart, Missoula Qualifications (if required): Attorney</p> | Governor | 1/1/2017 |
| <p>Ms. Leslie Thomas, Boulder Qualifications (if required): Alternate</p> | Governor | 1/1/2017 |
| <p>Ms. Sara Novak, Anaconda Qualifications (if required): Alternate Member</p> | Governor | 1/1/2017 |
| <p>Board of Milk Control (Livestock) Mr. Jim Parker, Missoula Qualifications (if required): Public Representative and a Democrat</p> | Governor | 1/1/2017 |
| <p>Mrs. Dahlman Lemire, Forsyth Qualifications (if required): Public Representative and a Democrat</p> | Governor | 1/1/2017 |
| <p>Ms. Ariel Overstreet-Adkins, Helena Qualifications (if required): Public Representative and Independent</p> | Governor | 1/1/2017 |
| <p>Mr. Erik Somerfeld, Power Qualifications (if required): Public Representative</p> | Governor | 1/1/2017 |
| <p>Board of Occupational Therapy Practice (Labor and Industry) Ms. Brenda Toner, Missoula Qualifications (if required): Occupational Therapist</p> | Governor | 12/31/2016 |

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2016 THROUGH FEBRUARY 28, 2017

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|---|---------------------|-----------------|
| <p>Board of Occupational Therapy Practice (Labor and Industry) cont. Ms. Lora Wier, Choteau Qualifications (if required): Public Representative</p> | Governor | 12/31/2016 |
| <p>Board of Oil and Gas Conservation (Natural Resources and Conservation) Sen. Linda Nelson, Medicine Lake Qualifications (if required): landowner with minerals</p> | Governor | 1/1/2017 |
| <p>Director Mary Sexton, Helena Qualifications (if required): public representative</p> | Governor | 1/1/2017 |
| <p>Mr. Wayne Smith, Valier Qualifications (if required): oil and gas industry representative</p> | Governor | 1/1/2017 |
| <p>Mr. John Evans, Butte Qualifications (if required): oil and gas industry representative</p> | Governor | 1/1/2017 |
| <p>Mrs. Peggy Nerud, Circle Qualifications (if required): Public Representative</p> | Governor | 1/1/2017 |
| <p>Board of Pardons and Parole (Corrections) Mr. Jack Puckett, Missoula Qualifications (if required): Public Representative</p> | Governor | 1/1/2017 |
| <p>Mr. Pete Lawrenson, Missoula Qualifications (if required): Public Representative</p> | Governor | 1/1/2017 |

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2016 THROUGH FEBRUARY 28, 2017

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|---|---------------------|-----------------|
| <p>Board of Pardons and Parole (Corrections) cont. Ms. Coleen Magera, Plains Qualifications (if required): Attorney</p> | Governor | 1/1/2017 |
| <p>Board of Personnel Appeals (Labor and Industry) Mr. James Reardon, East Helena Qualifications (if required): Labor Union Representative</p> | Governor | 1/1/2017 |
| <p>Mr. Quinton Nyman, Helena Qualifications (if required): Labor Union Representative</p> | Governor | 1/1/2017 |
| <p>Ms. Rina Fontana-Moore, Great Falls Qualifications (if required): Management Representative</p> | Governor | 1/1/2017 |
| <p>Mr. Jim Soumas, Joliet Qualifications (if required): Full-time employee or elected official of a labor union</p> | Governor | 1/1/2017 |
| <p>Board of Public Assistance (Public Health and Human Services) Commissioner Marianne Roose, Eureka Qualifications (if required): Public Representative</p> | Governor | 1/1/2017 |
| <p>Ms. Amy D. Christensen, Helena Qualifications (if required): an Attorney</p> | Governor | 1/1/2017 |
| <p>Ms. Laura John, Missoula Qualifications (if required): Public Representative</p> | Governor | 1/1/2017 |

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2016 THROUGH FEBRUARY 28, 2017

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|--|---------------------|-----------------|
| <p>Board of Public Education (Higher Education) Ms. Erin Williams, Missoula Qualifications (if required): resident of District 1 and identifies herself as a Democrat</p> | Governor | 1/1/2017 |
| <p>Board of Regents (Higher Education) Ms. Angela McLean, Anaconda Qualifications (if required): resident of District 1 and identifies herself as a Democrat</p> | Governor | 2/1/2017 |
| <p>Mr. William Johnstone, Great Falls Qualifications (if required): District 1 and a Democrat</p> | Governor | 2/1/2017 |
| <p>Board of Respiratory Care Practitioners (Labor and Industry) Mr. Tony Jay Miller, Joplin Qualifications (if required): Respiratory Care Practitioner</p> | Governor | 1/1/2017 |
| <p>Mr. Leonard Bates, Great Falls Qualifications (if required): Respiratory Care Practitioner</p> | Governor | 1/1/2017 |
| <p>Ms. Maria Clemons, Libby Qualifications (if required): Public Representative</p> | Governor | 1/1/2017 |
| <p>Mr. Rusty Davies, Billings Qualifications (if required): Respiratory Care Practitioner with a Pulmonary Function Specialty</p> | Governor | 1/1/2017 |
| <p>Board of Review (Revenue) Director Angela Wong, Helena Qualifications (if required): Director of Montana Lottery</p> | Governor | 1/1/2017 |

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2016 THROUGH FEBRUARY 28, 2017

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|---|---------------------|-----------------|
| Board of Behavioral Health (Labor and Industry) Mr. John Lynn, Missoula Qualifications (if required): licensed counselor | Governor | 1/1/2017 |
| Mr. Henry Pretty On Top, Crow Agency Qualifications (if required): licensed Social Worker | Governor | 1/1/2017 |
| Ms. Kimberly Gardner, Helena Qualifications (if required): licensed Social Worker | Governor | 1/1/2017 |
| Ms. Vonnie Brown, Great Falls Qualifications (if required): licensed Social Worker | Governor | 1/1/2017 |
| Board of Speech-Language Pathologists and Audiologists (Labor and Industry) Ms. Sharon Dinstel, Colstrip Qualifications (if required): Speech-Language Pathologist | Governor | 12/31/2016 |
| Ms. Lucy Hart-Paulson, Missoula Qualifications (if required): Speech Language Pathologist | Governor | 12/31/2016 |
| Mr. Rich Turner, Billings Qualifications (if required): Consumer | Governor | 12/31/2016 |
| Butte Natural Resource Damage Restoration Council (Justice) Rep. Edith McClafferty, Butte Qualifications (if required): Public Representative | Governor | 1/1/2017 |

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2016 THROUGH FEBRUARY 28, 2017

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|---|---------------------|-----------------|
| <p>Butte Natural Resource Damage Restoration Council (Justice) cont. Ms. Helen O'Connor, Butte Qualifications (if required): Public Representative</p> | Governor | 1/1/2017 |
| <p>Mr. Dave Williams, Butte Qualifications (if required): Public Representative</p> | Governor | 1/1/2017 |
| <p>Capitol Complex Advisory Council (Administration) Ms. Sheena Wilson, Helena Qualifications (if required): Public Representative</p> | Governor | 1/1/2017 |
| <p>Rep. Diane Sands, Missoula Qualifications (if required): Montana General Public</p> | Administration | 1/1/2017 |
| <p>Coal Board (Commerce) Sen. Thomas E. "Tom" Towe, Billings Qualifications (if required): District 2 and an attorney</p> | Governor | 1/1/2017 |
| <p>Mayor John Williams, Colstrip Qualifications (if required): District 2 impact area</p> | Governor | 1/1/2017 |
| <p>Mr. Dan F. Miles, Butte Qualifications (if required): District 1</p> | Governor | 1/1/2017 |
| <p>Mr. C.J. Stewart, Crow Agency Qualifications (if required): District 1 Impact Area</p> | Governor | 1/1/2017 |

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2016 THROUGH FEBRUARY 28, 2017

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|--|---------------------|-----------------|
| <p>Commission for Human Rights (Labor and Industry) Mr. Chuck Tooley, Billings Qualifications (if required): public member</p> | Governor | 1/1/2017 |
| <p>Confederated Salish and Kootenai Tribes' Fish and Wildlife Board (Fish, Wildlife and Parks) Mr. Michael Jamison, Whitefish Qualifications (if required): Public Representative</p> | Governor | 1/1/2017 |
| <p>Ms. Pelah Hoyt, Missoula Qualifications (if required): Public Representative</p> | Governor | 1/1/2017 |
| <p>Mr. Rodd Richardson, St Ignatius Qualifications (if required): Public Representative</p> | Governor | 1/1/2017 |
| <p>Drought and Water Supply Advisory Committee (Natural Resources and Conservation) Ms. Angela McLean, Anaconda Qualifications (if required): Governor's Office Representative</p> | Governor | 1/1/2017 |
| <p>Education Commission of the States (Governor) Mr. Mike Thiel, Kalispell Qualifications (if required): Educator Engaged in K-12 Education</p> | Governor | 1/1/2017 |
| <p>Ms. Carmen Taylor, Polson Qualifications (if required): Educator Engaged in Higher Education</p> | Governor | 1/1/2017 |
| <p>Ms. Elly Driggers, Helena Qualifications (if required): Educator Engaged in K-12 Education</p> | Governor | 1/1/2017 |

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2016 THROUGH FEBRUARY 28, 2017

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|--|---------------------|-----------------|
| Fish and Wildlife Commission (Fish, Wildlife and Parks) Representative Bob Ream, Helena Qualifications (if required): District 1 Representative | Governor | 1/1/2017 |
| Mr. Richard Stuker, Chinook Qualifications (if required): District 3 Representative | Governor | 1/1/2017 |
| Mr. Matthew Tourlotte, Billings Qualifications (if required): District 5 Representative | Governor | 1/1/2017 |
| Mr. Gary Wolfe, Missoula Qualifications (if required): District 1 | Governor | 1/1/2017 |
| Hard-Rock Mining Impact Board (Commerce) Ms. Mary Ellen Cremer, Big Timber Qualifications (if required): Financial Industry or Institution, District 1 and an Impact Area | Governor | 1/2/2017 |
| Mr. Joe Michaletz, Helena Qualifications (if required): Industry Representative, District 2 and an Impact Area | Governor | 1/2/2017 |
| Mr. Andrew Werk Jr., Harlem Qualifications (if required): Public Representative and District 2 | Governor | 1/2/2017 |
| Human Rights Commission (Labor and Industry) Mr. Dennis M. Taylor, Billings Qualifications (if required): Public Representative | Governor | 1/1/2017 |

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2016 THROUGH FEBRUARY 28, 2017

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|---|---------------------|-----------------|
| Human Rights Commission (Labor and Industry) cont. Ms. Rhonda Howlett, Arlee Qualifications (if required): Public Representative | Governor | 1/1/2017 |
| Ms. Shelley Hayes, Billings Qualifications (if required): Public Representative | Governor | 1/1/2017 |
| Information Technology Board (Administration) Rep. Mike Kadas, Missoula Qualifications (if required): Agency Representative | Governor | 1/1/2017 |
| Mr. James E. Reno, Billings Qualifications (if required): Local Government Representative | Governor | 1/1/2017 |
| Mr. Scott Darkenwald, Helena Qualifications (if required): Agency Representative | Governor | 1/1/2017 |
| Director Richard Opper, Helena Qualifications (if required): Agency Representative | Governor | 1/1/2017 |
| Ms. Amanda Kelly, Stanford Qualifications (if required): Local Government Representative | Governor | 1/1/2017 |
| Mr. Dan Burke, Missoula Qualifications (if required): Private Sector | Governor | 1/1/2017 |
| Commissioner Pam Bucy, Helena Qualifications (if required): Agency Representative | Governor | 1/1/2017 |

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2016 THROUGH FEBRUARY 28, 2017

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|---|---------------------|-----------------|
| Information Technology Board (Administration) cont. Director John Tubbs, Helena Qualifications (if required): Agency Representative | Governor | 1/1/2017 |
| Ms. Jennie Stapp, Helena Qualifications (if required): Agency Representative | Governor | 1/1/2017 |
| Mr. Jonathan Anderson, Whitefish Qualifications (if required): Local Government | Governor | 1/1/2017 |
| Mr. Jason Wiener, Missoula Qualifications (if required): representative of the private sector | Governor | 1/1/2017 |
| Commissioner Chris Mehl, Bozeman Qualifications (if required): Local government | Governor | 1/1/2017 |
| Interstate Oil Compact Commission (Natural Resources and Conservation) Mr. Jim Halvorson, Billings Qualifications (if required): Associate Official Representative | Governor | 1/1/2017 |
| Judicial Nomination Commission (Judicial Branch) Sen. Lane Larson, Billings Qualifications (if required): lay member | Governor | 1/1/2017 |
| Ms. Elizabeth Halverson, Billings Qualifications (if required): not listed | Supreme Court | 1/1/2017 |

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2016 THROUGH FEBRUARY 28, 2017

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|---|---------------------|-----------------|
| <p>Land Information Advisory Council (State Library) Rep. Mike Kadas, Missoula Qualifications (if required): Agency Representative</p> | Governor | 1/1/2017 |
| <p>Ms. Tracy Stone-Manning, Missoula Qualifications (if required): Agency Representative</p> | Governor | 1/1/2017 |
| <p>Director Jeff Hagener, Helena Qualifications (if required): Agency Representative</p> | Governor | 1/1/2017 |
| <p>Director Mike Tooley, Helena Qualifications (if required): Agency Representative</p> | Governor | 1/1/2017 |
| <p>Livestock Loss Board (Livestock) Mr. James Cross, Kalispell Qualifications (if required): Wildlife Conservation</p> | Governor | 1/1/2017 |
| <p>Mrs. Whitney Klasna, Lambert Qualifications (if required): Public Representative with experience in Livestock</p> | Governor | 1/1/2017 |
| <p>Mr. Seth Wilson, Missoula Qualifications (if required): Wildlife Conservation</p> | Governor | 1/1/2017 |
| <p>Montana Alfalfa Seed Committee (Agriculture) Mr. Tom Matchett, Billings Qualifications (if required): Alfalfa Seed Grower</p> | Governor | 12/1/2016 |

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2016 THROUGH FEBRUARY 28, 2017

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|---|---------------------|-----------------|
| <p>Montana Alfalfa Seed Committee (Agriculture) cont. Mr. Tom Neibur, Malta Qualifications (if required): Alfalfa Seed Grower</p> | Governor | 12/1/2016 |
| <p>Montana Arts Council (Montana Arts Council) Ms. Cynthia Andrus, Bozeman Qualifications (if required): public representative</p> | Governor | 2/1/2017 |
| <p>Rabbi Allen Secher, Whitefish Qualifications (if required): public representative</p> | Governor | 2/1/2017 |
| <p>Mr. J.P. Gabriel, Bozeman Qualifications (if required): public representative</p> | Governor | 2/1/2017 |
| <p>Ms. Judy Ulrich, Dillon Qualifications (if required): public representative</p> | Governor | 2/1/2017 |
| <p>Ms. Tracy Linder, Molt Qualifications (if required): Public Representative</p> | Governor | 2/1/2017 |
| <p>Ms. Jane Waggoner Deschner, Billings Qualifications (if required): public representative</p> | Governor | 2/1/2017 |
| <p>Montana Children's Trust Fund Board (Public Health and Human Services) Ms. Valerie Widmer, Hamilton Qualifications (if required): Public Representative</p> | Governor | 1/1/2017 |

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2016 THROUGH FEBRUARY 28, 2017

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|--|---------------------|-----------------|
| Montana Committee for the Humanities (Governor) Ms. Carmen McSpadden, Bozeman Qualifications (if required): Public Representative | Governor | 1/1/2017 |
| Mr. Aaron Pruitt, Bozeman Qualifications (if required): Mint Gower | Governor | 1/1/2017 |
| Ms. Mandy Smoker Broaddus, Helena Qualifications (if required): Public Representative | Governor | 1/1/2017 |
| Mr. David Irion, Billings Qualifications (if required): Public Representative | Governor | 1/1/2017 |
| Montana Council on Developmental Disabilities (Commerce) Ms. Diana Tavary, Helena Qualifications (if required): Advocacy Organization | Governor | 1/1/2017 |
| Ms. Erin Butts, Helena Qualifications (if required): Agency Representative | Governor | 1/1/2017 |
| Ms. Kimm Evermann, Helena Qualifications (if required): Agency Representative | Governor | 1/1/2017 |
| Mr. Jeff Sturm, Helena Qualifications (if required): Agency Representative | Governor | 1/1/2017 |
| Rep. Robyn Driscoll, Billings Qualifications (if required): Legislator | Governor | 1/1/2017 |

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2016 THROUGH FEBRUARY 28, 2017

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|--|---------------------|-----------------|
| Montana Council on Developmental Disabilities (Commerce) cont. Mr. Shawn Parker, Box Elder Qualifications (if required): Primary Consumer | Governor | 1/1/2017 |
| Rep. Clarena M. Brockie, Harlem Qualifications (if required): Legislator | Governor | 1/1/2017 |
| Mr. Don Berryman, Anaconda Qualifications (if required): Secondary Consumer | Governor | 1/1/2017 |
| Rep. Edith McClafferty, Butte Qualifications (if required): State Legislator | Governor | 1/1/2017 |
| Ms. Debra Ekblom, Boulder Qualifications (if required): Secondary Consumer | Governor | 1/1/2017 |
| Mr. Isaiah Devereaux, Glasgow Qualifications (if required): Primary Consumer | Governor | 1/1/2017 |
| Ms. Marla Swanby, Helena Qualifications (if required): Agency Representative | Governor | 1/1/2017 |
| Mr. Jim Marks, Helena Qualifications (if required): Agency Representative | Governor | 1/1/2017 |
| Mr. Marty Blair, Missoula Qualifications (if required): University Program Representative | Governor | 1/1/2017 |

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2016 THROUGH FEBRUARY 28, 2017

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|--|---------------------|-----------------|
| Montana Council on Developmental Disabilities (Commerce) cont. Mr. Bob DeJardins, Dillon Qualifications (if required): Secondary Consumer | Governor | 1/1/2017 |
| Mr. Jacob Harrison, Helena Qualifications (if required): Primary Consumer | Governor | 1/1/2017 |
| Ms. Denise Higgins, Helena Qualifications (if required): Agency Representative | Governor | 1/1/2017 |
| Mr. Matt Kuntz, Helena Qualifications (if required): representing an advocacy organization | Governor | 1/1/2017 |
| Ms. Charlene Carley Lefthand-Irvine, Polson Qualifications (if required): Primary Consumer | Governor | 1/1/2017 |
| Ms. Virgeana Brown, Belgrade Qualifications (if required): Secondary Consumer | Governor | 1/1/2017 |
| Mr. Blake Reese, Columbia Falls Qualifications (if required): Primary Consumer | Governor | 1/1/2017 |
| Ms. Nanette Whiteman-Holmes, Helena Qualifications (if required): Secondary Consumer | Governor | 1/1/2017 |
| Mrs. Shiree Lyons, Great Falls Qualifications (if required): Secondary Consumer | Governor | 1/1/2017 |

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2016 THROUGH FEBRUARY 28, 2017

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|---|---------------------|-----------------|
| <p>Montana Council on Developmental Disabilities (Commerce) cont. Ms. Rebecca DeCamera, Helena Qualifications (if required): Agency Representative</p> | Governor | 1/1/2017 |
| <p>Mr. Trenton Butler, Big Sandy Qualifications (if required): primary Consumer</p> | Governor | 1/1/2017 |
| <p>Montana Facility Finance Authority (Commerce) Mr. James W. (Bill) Kearns, Townsend Qualifications (if required): Public Representative</p> | Governor | 1/1/2017 |
| <p>Mr. Jon Marchi, Polson Qualifications (if required): Public Representative</p> | Governor | 1/1/2017 |
| <p>Mr. Larry Putnam, Helena Qualifications (if required): Public Representative</p> | Governor | 1/1/2017 |
| <p>Mr. Richard C. King, Missoula Qualifications (if required): Public Representative</p> | Governor | 1/1/2017 |
| <p>Montana Small Business Development Center Advisory Council (Commerce) Ms. Kathie Bailey, Lewistown Qualifications (if required): Small Business Owner</p> | Director | 1/1/2017 |
| <p>Mr. Jim Atchison, Colstrip Qualifications (if required): Economic Developer</p> | Director | 1/1/2017 |

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2016 THROUGH FEBRUARY 28, 2017

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|---|---------------------|-----------------|
| Montana Small Business Development Center Advisory Council (Commerce) cont. Mr. John Cech, Billings Qualifications (if required): Educator | Director | 1/1/2017 |
| Ms. Linda Kindrick, Clancy Qualifications (if required): Economic Developer | Director | 1/1/2017 |
| Mr. Kevin Keeler, Helena Qualifications (if required): Small Business Owner | Director | 1/1/2017 |
| Mr. Dave Glaser, Missoula Qualifications (if required): Economic Developer | Director | 1/1/2017 |
| Ms. Carol Cunningham, Polson Qualifications (if required): Economic Developer | Director | 1/1/2017 |
| Rep. Patricia Rae Peppers, Lame Deer Qualifications (if required): Small Business Owner | Director | 1/1/2017 |
| Mr. Paddy Fleming, Bozeman Qualifications (if required): Economic Developer | Director | 1/1/2017 |
| Pacific Northwest Economic Region (Commerce) Ms. Diane Smith, Whitefish Qualifications (if required): Governor's Designee | Governor | 1/1/2017 |

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2016 THROUGH FEBRUARY 28, 2017

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|--|---------------------|-----------------|
| Phillips County Transportation Improvement Authority (Local Government) | | |
| Mr. Duane Murray, Malta | Governor | 1/1/2017 |
| Qualifications (if required): Public Representative | | |
| Public Safety Officer Standards and Training Council (POST Council) (Justice) | | |
| Mr. Mike Batista, Helena | Governor | 1/1/2017 |
| Qualifications (if required): Department of Corrections Representative | | |
| Sheriff Tony Harbaugh, Miles City | Governor | 1/1/2017 |
| Qualifications (if required): Sheriff | | |
| Mr. John Strandell, Helena | Governor | 1/1/2017 |
| Qualifications (if required): State Government Law Enforcement Representative | | |
| Mr. William J. "Bill" LaBrie, Whitefish | Governor | 1/1/2017 |
| Qualifications (if required): Board of Crime Control Representative | | |
| Ms. Kim Burdick, Fort Benton | Governor | 1/1/2017 |
| Qualifications (if required): Public Representative | | |
| Mrs. Laurel Bulson, Helena | Governor | 1/1/2017 |
| Qualifications (if required): Detention Center Representative | | |
| Mr. Jim Thomas, Canyon Creek | Governor | 1/1/2017 |
| Qualifications (if required): Public Representative | | |

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2016 THROUGH FEBRUARY 28, 2017

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|--|---------------------|-----------------|
| Rail Service Competition Council (Transportation) | | |
| Mr. Todd O'Hair, Helena Qualifications (if required): Knowledge of Coal Industry Transportation | Governor | 1/1/2017 |
| Mr. Michael V. O'Hara, Fort Benton Qualifications (if required): Knowledge of Farm Commodity Transportation | Governor | 1/1/2017 |
| Mr. Jerry Jimison, Glendive Qualifications (if required): Knowledge of Class I Railroads | Governor | 1/1/2017 |
| Commissioner Tony Berget, Libby Qualifications (if required): Knowledge of Mineral Industry Transportation | Governor | 1/1/2017 |
| Rangeland Resources Committee (Natural Resources and Conservation) | | |
| Mr. John Hollenback, Gold Creek Qualifications (if required): Cattle Producer/Rancher West of the Divide | Governor | 1/1/2017 |
| Mr. Les Gilman, Alder Qualifications (if required): Cattle Producer/Rancher Western Montana | Governor | 1/1/2017 |
| Mr. Steve Hedstrom, Raynesford Qualifications (if required): Cattle Producer/Rancher Central Montana | Governor | 1/1/2017 |
| Ms. Diane Ahlgren, Winnett Qualifications (if required): Cattle Producer/Rancher Eastern Montana | Governor | 1/1/2017 |
| Mr. Noel Keogh, Nye Qualifications (if required): Cattle Producer/Rancher Southern Montana | Governor | 1/1/2017 |

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2016 THROUGH FEBRUARY 28, 2017

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|---|---------------------|-----------------|
| Rangeland Resources Committee (Natural Resources and Conservation) cont. Ms. Connie Iversen, Culbertson Qualifications (if required): Cattle Producer/Rancher Northern Montana | Governor | 1/1/2017 |
| State Emergency Response Commission (Military Affairs) Ms. Siri Smillie, Helena Qualifications (if required): Governor's Office Representative | Governor | 1/1/2017 |
| State Employee Group Benefits Advisory Council (Administration) Mr. John Putnam, Helena Qualifications (if required): state employee representative | Governor | 12/31/2016 |
| State Lottery Commission (Administration) Mr. Frank DiFonzo, Sidney Qualifications (if required): Law Enforcement | Governor | 1/1/2017 |
| Mr. Wilbur Rehmann, Helena Qualifications (if required): Public Representative | Governor | 1/1/2017 |
| State Parks and Recreation Board (Fish, Wildlife and Parks) Ms. Diane Conradi, Whitefish Qualifications (if required): District 1 | Governor | 1/1/2017 |
| Mr. Jeff Welch, Livingston Qualifications (if required): District 2 | Governor | 1/1/2017 |
| Mr. Douglas Smith, Plentywood Qualifications (if required): District 4 | Governor | 1/1/2017 |

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2016 THROUGH FEBRUARY 28, 2017

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|---|---------------------|-----------------|
| State Tax Appeal Board (Administration) Ms. Samantha Sanchez, Helena Qualifications (if required): public representative | Governor | 1/1/2017 |
| State Trails Advisory Committee (STAC) (Fish, Wildlife and Parks) Mr. William Parker, Malta Qualifications (if required): none specified | Director | 1/1/2017 |
| Mr. Michael J. Dailey, Glasgow Qualifications (if required): none specified | Director | 1/1/2017 |
| Mr. Garry Edson, Bozeman Qualifications (if required): none specified | Director | 1/1/2017 |
| Mr. Thomas Kilmer, Helena Qualifications (if required): none specified | Director | 1/1/2017 |
| Mr. Frank LaLiberty, Cascade Qualifications (if required): none specified | Director | 1/1/2017 |
| Ms. Katie Morrison, Big Sky Qualifications (if required): none specified | Director | 1/1/2017 |
| Mr. Dick Owenby, Dillon Qualifications (if required): none specified | Director | 1/1/2017 |
| Mr. Mark Reinsel, Missoula Qualifications (if required): none specified | Director | 1/1/2017 |

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2016 THROUGH FEBRUARY 28, 2017

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|--|---------------------|-----------------|
| State Trails Advisory Committee (STAC) (Fish, Wildlife and Parks) cont. Mr. Larry Skiles, Dillon Qualifications (if required): none specified | Director | 1/1/2017 |
| Mr. Dan Thompson, Victor Qualifications (if required): none specified | Director | 1/1/2017 |
| Ms. Betsy Miller, Helena Qualifications (if required): none specified | Director | 1/1/2017 |
| Ms. Christina Miller, Billings Qualifications (if required): none specified | Director | 1/1/2017 |
| Mr. Tom Reilly, Helena Qualifications (if required): none specified | Director | 1/1/2017 |
| Ms. Beth R. Shumate, Helena Qualifications (if required): none specified | Director | 1/1/2017 |
| Mr. Alan Woodmansey, Helena Qualifications (if required): none specified | Director | 1/1/2017 |
| Ms. Angie Zanin, Helena Qualifications (if required): none specified | Director | 1/1/2017 |
| State Workforce Innovation Board (Labor and Industry) Director Richard Opper, Helena Qualifications (if required): Director of Department of Public Health and Human Services | Governor | 1/1/2017 |

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2016 THROUGH FEBRUARY 28, 2017

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|---|---------------------|-----------------|
| State Workforce Innovation Board (Labor and Industry) cont. | | |
| Ms. Meg O'Leary, Big Sky Qualifications (if required): Director of Department of Commerce | Governor | 1/1/2017 |
| Mr. John Rogers, Helena Qualifications (if required): Governor's Office Representative | Governor | 1/1/2017 |
| Commissioner Pam Bucy, Helena Qualifications (if required): Labor and Industry Commissioner | Governor | 1/1/2017 |
| Statewide Independent Living Council (Public Health and Human Services) | | |
| Ms. Karen Underwood, Billings Qualifications (if required): At-Large Member | Governor | 12/1/2016 |
| Ms. Barbara Varnum, Kalispell Qualifications (if required): Disabilities Community Representative | Governor | 12/1/2016 |
| Mr. Dick Trerise, Helena Qualifications (if required): Agency Representative | Governor | 12/1/2016 |
| Mr. Troy Spang, Ashland Qualifications (if required): Section 121 Representative | Governor | 12/1/2016 |
| Mr. Tom Osborn, Black Eagle Qualifications (if required): Independent Living Center Representative | Governor | 12/1/2016 |
| Mr. Jarrett Clark, Denton Qualifications (if required): Disabilities Community Representative | Governor | 12/1/2016 |

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2016 THROUGH FEBRUARY 28, 2017

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|---|---------------------|-----------------|
| Statewide Independent Living Council (Public Health and Human Services) cont. Ms. Lori Gaustad, Billings Qualifications (if required): Disabilities Community Representative | Governor | 12/1/2016 |
| Task Force on State Public Defender Operations (Legislative Services Division) Ms. Wendy Holton, Helena Qualifications (if required): Group Facilitator | Governor | 12/31/2016 |
| Mr. Mike Eakin, Billings Qualifications (if required): Attorney experienced in the federal Indian Child Welfare Act | Governor | 12/31/2016 |
| Mr. Jason Trinity Holden, Great Falls Qualifications (if required): Attorney with experience in the criminal defense of misdemeanor and felony offenses | Governor | 12/31/2016 |
| Ms. Juli Pierce, Billings Qualifications (if required): Attorney with experience in the prosecution of misdemeanor and felony offenses | Governor | 12/31/2016 |
| Transportation Commission (Transportation) Ms. Barb Skelton, Billings Qualifications (if required): District 5 Representative | Governor | 1/1/2017 |
| Sen. John Cobb, Augusta Qualifications (if required): District 3 Representative | Governor | 1/1/2017 |
| Mr. Rick Griffith, Butte Qualifications (if required): District 2 Representative | Governor | 1/1/2017 |

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2016 THROUGH FEBRUARY 28, 2017

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|---|---------------------|-----------------|
| Traumatic Brain Injury Advisory Council (Public Health and Human Services) | | |
| Ms. Kathy Smith, Great Falls Qualifications (if required): Advocate of Brain-Injured Persons | Governor | 1/1/2017 |
| Ms. Melveena Malatare, Browning Qualifications (if required): Advocate for Brain-Injured Persons | Governor | 1/1/2017 |
| Water Pollution Control Advisory Council (Environmental Quality) | | |
| Dr. Debra Bucklin Sanchez, Helena Qualifications (if required): Licensed Professional Engineer with Experience in Sanitary Engineering | Governor | 1/1/2017 |
| Mr. Mitchell Leu, Columbia Falls Qualifications (if required): Organic Waste Disposal Industry Representative | Governor | 1/1/2017 |
| Mr. Dudley L. Tyler, Livingston Qualifications (if required): Realtor Representative | Governor | 1/1/2017 |
| Mr. Earl Salley, Great Falls Qualifications (if required): Inorganic Waste Disposal Industry Representative | Governor | 1/1/2017 |
| Mr. Michael Wendland, Rudyard Qualifications (if required): Production Agriculture | Governor | 1/1/2017 |
| Mr. Trevor Selch, Helena Qualifications (if required): Fisheries Biologist | Governor | 1/1/2017 |
| Mr. Keith Smith, Hamilton Qualifications (if required): Public Works Director | Governor | 1/1/2017 |

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2016 THROUGH FEBRUARY 28, 2017

| <u>Board/current position holder</u> | <u>Appointed by</u> | <u>Term end</u> |
|---|---------------------|-----------------|
| Water Pollution Control Advisory Council (Environmental Quality) cont. Mr. Norris "Mack" Cole, Forsyth Qualifications (if required): Irrigated Agriculture | Governor | 1/1/2017 |
| Ms. Barbara Hall, Missoula Qualifications (if required): Conservation Organization | Governor | 1/1/2017 |
| Ms. Stevie Newman, Vaughn Qualifications (if required): Supervisor for a Soil and Water Conservation District | Governor | 1/1/2017 |
| Western Interstate Energy Board (Governor) Mr. Andy Poole, Helena Qualifications (if required): Alternate Board Member | Governor | 1/1/2017 |
| Mr. Jeff Blend, Helena Qualifications (if required): Board Member | Governor | 1/1/2017 |
| Mr. Craig Jones, Helena Qualifications (if required): Alternate Montana Representative | Governor | 1/1/2017 |