MONTANA ADMINISTRATIVE REGISTER

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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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 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) 438-6122.

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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 42.12.106, 42.12.111, 42.12.118, 42.12.133, 42.12.143, 42.12.145, 42.12.146, 42.12.147, 42.12.149, 42.12.209, 42.12.301, 42.13.106, 42.13.111, 42.13.405, 42.13.601, 42.13.802, 42.13.1102 through 42.13.1105, and 42.13.1202 pertaining to department implementation of legislation for House Bills 157, 226, 525, 705 and Senate Bill 320 enacted by the 2021 Montana Legislature	)	AMENDED NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On July 22, 2022, the Department of Revenue (department) published MAR Notice No. 42-1052 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1246 of the 2022 Montana Administrative Register, Issue Number 14. The department held the required public hearing on August 12, 2022.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on August 30, 2022. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. Upon review of the Montana Tavern Association's letter of objection to the Economic Affairs Interim Committee regarding the department's proposed amendments to ARM 42.12.149(3), the department proposes to amend its proposed changes and the statement of reasonable necessity for ARM 42.12.149(3) as described in paragraphs 5 and 6.

4. The adoption of New Rule I and the amendments to ARM 42.12.106, 42.12.111, 42.12.118, 42.12.133, 42.12.143, 42.12.145, 42.12.146, 42.12.147, 42.12.209, 42.12.301, 42.13.106, 42.13.111, 42.13.405, 42.13.601, 42.13.802, 42.13.1102 through 42.13.1105, and 42.13.1202 contained in the original MAR notice remain as proposed.

5. ARM 42.12.149 is being amended from the original proposal notice, new matter underlined, deleted matter interlined:

42.12.149 WINERY, BREWERY, AND DISTILLERY - PREMISES SUITABILITY REQUIREMENTS (1) and (2) remain as proposed.

(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) through (9) remain as proposed.

AUTH: 16-1-303, MCA
IMP: 16-3-311, 16-4-102, 16-4-402, MCA

6. The statement of reasonable necessity for ARM 42.12.149 is being amended as follows, new matter underlined, deleted matter interlined:

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.12.149 to implement the statutory changes made under HB 157, HB 226, HB 525, and HB 705.

The department proposes an amendment to (2)(f) because HB 525 and HB 705 changed premises suitability requirements in 16-3-311, MCA, and the department desires that manufacturer premises suitability requirements have the greatest degree of parity with on-premises consumption license requirements as is possible. Section 16-3-311(3), MCA, requires the interior portion of the premises to be a continuous area under the control of the licensee and addresses multiple floors and common area shared by multiple building tenants in the same building, including entryways, hallways, stairwells, and elevators. Subsections (2)(f) and (g) are also proposed to contain amendments which refer to the suitability of premises exception that was created by HB 157's amendments to 16-3-311, MCA, regarding a retail on-premises licensee being adjacent to a brewery and winery.

The department's other proposed amendment to (2)(g) implements HB 226's curbside pickup and use of a drive-through window, provided the window is noted on the floor plan and all other suitability and service requirements are met.

~~While not connected to any legislation, the department also proposes a minor amendment to (3) which is necessary for manufacturing premises conformity with Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations for continuity of plant premises located at 27 CFR 19.53, to which the department gives deference on the matter. This amendment will reflect the ability of a manufacturer to pursue more than one building for manufacturing in accordance with TTB regulations and this rule.~~ The department proposes to revert the text in (3) to that of the existing rule section.

Lastly, the department proposes to amend the implementing statutory citations for the rule to comply with the requirements of 2-4-305, MCA.

7. No additional public hearing will be held to consider this amended proposal notice. The department is extending the comment period for this proposed rulemaking in accordance with 2-4-305, MCA, as described in paragraph 8.

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: Todd Olson, 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 todd.olson@mt.gov and must be received no later than 5:00 p.m., September 2, 2022.

/s/ Todd Olson	/s/ Brendan Beatty
Todd Olson	Brendan Beatty
Rule Reviewer	Director of Revenue

Certified to the Secretary of State August 16, 2022.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.43.1306 pertaining to actuarial rates and assumptions	)))	NOTICE OF DECISION ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 5, 2022, the Public Employees' Retirement Board (board) published MAR Notice No. 2-43-631 pertaining to the proposed amendment of the above-stated rule at page 1349 of the 2022 Montana Administrative Register, Issue Number 15.

2. The board is withdrawing the rulemaking notice due to the inadvertent omission of sending the notice to the staff of the State Administration and Veterans' Affairs Interim Committee for review consistent with 2-4-302(2)(a), MCA. Due to the timing provisions of 2-4-305(11), MCA, the board will propose the rule amendments in 2023.

/s/ Nicholas Domitrovich
Nicholas Domitrovich
Chief Legal Counsel
and Rule Reviewer

/s/ Maggie Peterson
Maggie Peterson
President
Public Employees' Retirement Board

Certified to the Secretary of State August 16, 2022.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.59.1738 pertaining to renewal fees of mortgage brokers, mortgage lenders, mortgage servicers, and mortgage loan originators	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On June 24, 2022, the Department of Administration published MAR Notice No. 2-59-626 pertaining to the proposed amendment of the above-stated rule at page 944 of the 2022 Montana Administrative Register, Issue Number 12.

2. The department has amended the above-stated rule as proposed.

3. No comments or testimony were received.

/s/ Misty Ann Giles
Misty Ann Giles, Director
Department of Administration

/s/ Don Harris
Don Harris, Rule Reviewer
Department of Administration

Certified to the Secretary of State August 16, 2022.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE MONTANA STATE AUDITOR

In the matter of the adoption of New Rules I through VIII and the amendment of ARM 6.6.6701, 6.6.6705, and 6.6.6707 pertaining to Term and Universal Life Insurance Reserve Financing	))))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On July 8, 2022, the Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI) published MAR Notice No. 6-269 pertaining to the proposed adoption and amendment of the above-stated rules at page 1120 of the 2022 Montana Administrative Register, Issue Number 13.

2. A public hearing was not contemplated or requested. No comments or testimony were received.

3. CSI has amended ARM 6.6.6701, 6.6.6705, and 6.6.6707 as proposed.

4. CSI has adopted New Rules I through VIII as proposed: New Rules I (6.6.6720), II (6.6.6721), III (6.6.6722), IV (6.6.6723), V (6.6.6724), VI (6.6.6725), VII (6.6.6726), and VIII (6.6.6727).

5. The above-stated amendments and new rules are effective September 1, 2022.

/s/ *Kirsten Madsen*
Kirsten Madsen
Rule Reviewer

/s/ *Ole Olson*
Ole Olson
Chief Legal Counsel
Commissioner of Securities and Insurance,
Office of the Montana State Auditor

Certified to the Secretary of State August 16, 2022.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the repeal of an emergency rule closing the Stillwater River in Stillwater County	)))	NOTICE OF REPEAL OF EMERGENCY RULE

TO: All Concerned Persons

1. On June 16, 2022, the Department of Fish, Wildlife and Parks (department) adopted an emergency rule closing the Stillwater River within Stillwater County to all public occupation and recreation in Notice No. 12-571, which was published at page 1044 of the 2022 Montana Administrative Register, Issue No. 12. Severe flooding and dangerous conditions existed in the Stillwater River including downed powerlines and other structures. It was possible for other obstructions to fall into the Stillwater River due to erosion of the riverbank causing the banks to become unstable. Persons recreating on the river would be at risk of electrocution, injury, or drowning due to collision with unexpected obstructions in the river. The situation constituted an imminent peril to public health, safety, and welfare to anyone using the river.

2. As this situation no longer constitutes an imminent peril to public health, safety, and welfare, the department is repealing NEW RULE I STILLWATER RIVER IN STILLWATER COUNTY EMERGENCY CLOSURE.

3. The repeal of NEW RULE I is effective August 8, 2022.

4. The special notice requirements of 2-4-303, MCA have been met. All committee members and staff of the Environmental Quality Council, with addresses provided on the Montana Legislature's website (leg.mt.gov), were contacted by e-mail on August 8, 2022.

/s/ Hank Worsech
Hank Worsech
Director
Department of Fish, Wildlife and Parks

/s/ Zach Zipfel
Zach Zipfel
Rule Reviewer

Certified to the Secretary of State August 8, 2022.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the adoption of an emergency rule closing the Stillwater River in Stillwater County	)))	NOTICE OF ADOPTION OF AN EMERGENCY RULE

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of an emergency rule:

(a) A pipeline exposed in the Stillwater River is impeding persons floating on the river. Persons recreating on the river are required to exit their watercraft to negotiate around the pipeline into fast moving waters and a strainer.

(b) Persons recreating on the river are at risk of injury or drowning due to the pipeline obstruction and downstream strainer.

(c) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties and published as an emergency rule in Issue No. 16 of the 2022 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on September 9, 2022, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; or e-mail JessSnyder@mt.gov.

3. The emergency rule is effective August 8, 2022, when this rule notice is filed with the Secretary of State.

4. The text of the emergency rule provides as follows:

NEW RULE I STILLWATER RIVER IN STILLWATER COUNTY EMERGENCY CLOSURE (1) A portion of the Stillwater River is in Stillwater County.

(2) The Stillwater River is closed to floating and boating from the Absaroka Fishing Access Site to the confluence of Rosebud Creek.

(3) Fishing from the shoreline is not restricted by this rule.

(4) This rule will expire as soon as the department determines the river is again safe for occupation and recreation. This will depend on the duration of the pipeline remaining in the river. Signs closing the river will be removed when the rule is no longer effective.

AUTH: 2-4-303, 87-1-202, MCA
IMP: 2-4-303, 87-1-202, MCA

5. The rationale for the emergency rule is set forth in paragraph 1.

6. Concerned persons are encouraged to submit their comments to the department. Please submit comments along with names and addresses to: Jessica Snyder, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59602-0701; e-mail JessSnyder@mt.gov. Any comments must be received no later than September 23, 2022.

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, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

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

9. The special notice requirements of 2-4-303, MCA have been met. All committee members and staff of the Environmental Quality Council, with addresses provided on the Montana Legislature's website (leg.mt.gov), were contacted by e-mail on August 8, 2022.

/s/ Mike Volesky
Mike Volesky
Chief of Operations
Department of Fish, Wildlife and Parks

/s/ Zach Zipfel
Zach Zipfel
Rule Reviewer

Certified to the Secretary of State August 8, 2022.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.36.345, 17.38.101, 17.38.209, Department Circular PWS-5 regarding ground water under the direct influence of surface water determinations, and section 3.2.2 and Appendix A of Circular DEQ-1 regarding standards for public water supply systems	))))))))	NOTICE OF AMENDMENT (PUBLIC WATER SYSTEMS)

TO: All Concerned Persons

1. On May 27, 2022, the Department of Environmental Quality (department) published MAR Notice No. 17-422 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 713 of the 2022 Montana Administrative Register, Issue No. 10.

2. The department has amended the rule text of ARM 17.36.345, 17.38.101, and 17.38.209 as proposed.

3. The department has amended section 3.2.2 and Appendix A of department Circular DEQ-1 as proposed.

4. The department has made changes to Circular PWS-5 as originally proposed in MAR Notice No. 17-422, 2022 Montana Administrative Register, Issue No. 10, based on the comments that the department received during the public comment period.

5. The department has thoroughly considered the comments received. A summary of the comments and the department's responses are as follows:

COMMENT 1: One commenter stated that Circular PWS-5 is well-written and does a great job of being clear and concise. The commenter noted that many extraneous descriptions and details have been removed, making the Circular more understandable.

RESPONSE 1: The department appreciates the comments.

COMMENT 2: One commenter identified a typographical error in section 4 and suggested a correction.

RESPONSE 2: The department believes that this comment relates to an earlier draft and that the typographical error has been corrected in the final Circular.

COMMENT 3: The department received two comments that identified a typographical mistake in the first sentence of section 4.2.

RESPONSE 3: The department agrees and has made the following change

to section 4.2:

~~An~~ MPA testing is used to determine if surface water organisms are present in subsurface water sources.

COMMENT 4: One public water system operator raised concerns about the potential effects of the Circular on the commenter's public water supply system. The commenter explained how the commenter's system had gone through the evaluation process for groundwater under the direct influence of surface water (GWUDISW) and had received a negative result in the microscopic particulate analysis (MPA). The commenter believed that this result should be sufficient. The commenter further noted that the commenter's system would not have the financial ability to install chlorination, as it was already struggling to cover the costs associated with other system repairs.

RESPONSE 4: The department cannot comment directly on how individual systems may be affected, since each GWUDISW review is a case-by-case evaluation. The area around a source and the source itself will change over time, which may make a source susceptible to contamination.

Under its duties as a primacy state, the department is required to conduct sanitary surveys at every public water supply system every three or five years, depending on the type of system. During the sanitary survey, the department must evaluate the adequacy of the source to provide safe drinking water. 40 C.F.R. § 141.401. If the sanitary survey or other information (such as sample results) indicates that conditions around the source have changed in such a way to make the source more susceptible to contamination, then it is important that the source be reevaluated as necessary based on that new condition. This process has existed in previous editions of Circular PWS-5 and remains unchanged in the new edition. To clarify this process, the department has modified section 4.3.2 of the Circular as follows:

~~DEQ will evaluate and classify any water system that the water system owner has chosen to modify the source, the nearest surface water, or the area around the source, beginning with completion of a PA.~~ If modifications have occurred to the source, to the area around the source, or to the nearby surface water, DEQ will complete a new GWUDISW evaluation, starting with a new PA based on the changed circumstances.

As for the potential costs to the system caused from receiving a GWUDISW classification, sources that are classified as GWUDISW pose a risk to public health. To correct this problem, a system may decide to use an alternate water source, make appropriate modifications to remove the surface water influence, or meet the applicable filtration and disinfection requirements of the Surface Water Treatment Rule and DEQ-1. These are existing rules that are required as part of the department's primacy agreement with EPA and remain unchanged in this rulemaking.

In the nearly thirty years that the department has been making GWUDISW determinations, only 42 water sources have been classified as GWUDISW, while

3,238 have been classified as groundwater. Thus, only 1.3% of water sources have been classified as GWUDISW.

COMMENT 5: One commenter stated that the MPA method does not designate a source as having a low-, moderate-, or high-risk of surface water influence that corresponds with the risk of Giardia or Cryptosporidium contamination. Rather, the commenter noted, the MPA result assigns a relative risk score based on ranges of indicators observed.

RESPONSE 5: The department agrees that the MPA results are reported as a points score that correspond to a relative risk. To reduce confusion, the department has modified the Circular in response to this comment to refer to the MPA result score in points, rather than relative risk.

The department has modified section 4.2 as follows:

In addition to the organism counts found in the sample, the MPA results ~~provide a designation of low-, moderate-, or high-risk of surface water influence~~ are converted to a points score. The MPA scores, as defined by the *Consensus Method*, are as follows:

Low- risk	< 9 points
Moderate- risk	10–19 points
High- risk	>20 points

All subsurface water sources to be tested must be completely constructed and able to operate. DEQ may require the test source or, for systems with more than one source, other sources to be operating before or during the test. For subsurface water sources that are artificially recharged by surface water, the MPA must be completed during a recharge event.

In most circumstances, two MPAs must be completed—one in May or June and one in August or September. If, however, the first MPA result is ~~moderate or high risk~~ 10 or more points, a second test is not needed for classification and will not be conducted. DEQ may also require additional tests in circumstances in which there is low confidence in the accuracy of a test result.

The department also has modified section 4.3.2 as follows:

Any subsurface water source with one ~~or more moderate- or high-risk~~ MPA result~~s~~ of 10 or more points will be classified as GWUDISW, except in cases where it is highly probable the surface water indicators did not originate from the water source. A classification of a subsurface water source as GWUDISW based on a ~~moderate- or high-risk~~ MPA result score of 10 or more points is final for that configuration of the source.

COMMENT 6: One commenter disagreed with the proposed approach of using a single MPA with a moderate- or high-risk finding to classify a subsurface source as GWUDISW. The commenter noted that the MPA is a non-standard

subjective analytical method that lacks thorough quality assurance/quality control. The commenter also noted that the economic and operational implications of misclassifying a source as GWUDISW are significant and stated that primary reliance on the MPA would subject the regulated community to an overly conservative approach without adequate opportunity to question or allow for verification of the finding. Finally, the commenter provided several reasons why a single MPA result should not be the sole deciding factor in whether a source is GWUDISW.

RESPONSE 6: The requirement that a water source with one MPA test result with 10 or more points (moderate- or high-risk) be classified as GWUDISW is not new to this version of the Circular. Section 7, PWS-5 (2008 ed.) ("If results of any MPA test indicate moderate or high risk then the source will be considered to be under the direct influence of surface water unless there are mitigating factors associated with well construction or other human activities."). In adopting the 2008 Circular, the department and Board of Environmental Review determined that an MPA test result of 10 or more points (both moderate- and high-risk results) indicates that a source has an unacceptable potential to adversely affect public health. Response to Comments Nos. 19 and 21, Notice of Amendment and Adoption, No. 17-273, 2008 MAR page 2625 (Dec. 24, 2008). While the commenter mentioned the economic and operational implications to the water system that can result from a GWUDISW classification, there are also health and economic implications for people who are exposed to untreated surface water. The department continues to believe that this approach appropriately balances the risk to human health from contaminated water.

Further, the presence of surface water indicators in subsurface water, without another explanation, during one MPA is strong evidence that the water source is influenced by surface water and poses a risk to human health. The MPA is a representative water sample, and it is improbable that the MPA test was collected on the only day when surface water indicators are present. Once a water source has one MPA test result of 10 points or more, further sampling will not change the fact that surface water indicators have been found in that source. While subsequent MPA samples may have results with fewer than 10 points, this will be after the direct surface water influence has already been established. When the surface water influence is not continuous, it is nearly impossible for the water system to predict that influence (if the system is even aware that it has occurred) and to modify operations to not serve the contaminated water. If surface water influence can happen once, it can happen again, often unpredictably and in a way to which the system is unable to respond. Thus, finding surface water indicators in subsurface water sources, even in just one MPA at quantities that score 10 or more points, is reason to classify the source as GWUDISW.

As the commenter notes, the MPA consensus method has some limitations. Nevertheless, it remains the recommended analytical method by EPA, see Guidance Manual for Compliance with the Filtration and Disinfection Requirements for Public Water Systems Using Surface Water Sources 2-7 and 2-8 (March 1991), (Guidance Manual), and is the leading tool available to directly test whether surface water organisms are able to travel to the subsurface water source. As with all laboratory analyses, the quality of the sample being analyzed will affect the test results and

their subsequent interpretation, which is why the new Circular requires the department staff to collect all MPA samples.

Finally, the MPA is not conducted in a vacuum. The MPA would be conducted only after the preliminary assessment and other information available to the department indicated a susceptibility of direct surface water influence.

The department acknowledges, however, that there may be some issue that would cause the MPA test result to not correctly describe the risks associated with the source. The department has modified section 4.3.2 in response to this comment to provide an exception in certain instances where the surface water indicators are caused by something other than the source water. Given the health risks associated with surface water contamination, as discussed above, it is necessary that this exception apply only in instances in which it is highly probable—that is, clear and convincing—that the surface water indicators were caused by something other than the direct influence of surface water.

> Any subsurface water source with one ~~or more moderate- or high-risk~~ MPA result~~s~~ of 10 or more points will be classified as GWUDISW, except in cases where it is highly probable the surface water indicators did not originate from the water source. A classification of a subsurface water source as GWUDISW based on a ~~moderate- or high-risk~~ MPA result score of 10 or more points is final for that configuration of the source.

COMMENT 7: One commenter stated that the department should not exclude significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH, noting that those characteristics were part of the GWUDISW definition. The commenter also noted that such water quality information may be used to determine that a source is not GWUDISW. The commenter also provided an example in which water quality parameters were used as a deciding factor even though surface water algae appeared in an MPA result.

RESPONSE 7: The department has been managing this rule for over two decades. Initially, the department implemented this rule by first requiring hydrogeologic assessments and water quality analyses for water sources identified as susceptible by the preliminary assessment, as these analyses were cheaper and potentially easier for the water system to complete. Nevertheless, MPAs frequently were required because the hydrogeologic assessments and water quality analyses were insufficient to make a confident determination. This experience led the department to move directly to MPA tests and use those results as the basis of determination. Moving to the MPA first provides faster, more definitive answers that save the system time and money, while being more protective of public health.

Hydrogeologic assessments and water quality analyses can provide important corroborating information in the GWUDISW evaluation process, and the department will consider all available information to understand the hydrogeologic system around the water source to make a determination. However, the MPA still provides the best evidence of direct surface water influence. As EPA notes, water quality parameters "would not give a direct indication of whether pathogens originating in surface water were present, but could indicate whether the water chemistry was or was not similar to a nearby surface water and/or whether source water chemistry

changed in a similar pattern to surface water chemistry." Guidance Manual 2-11. The water quality data is best used in a supporting role and not as deciding factor.

As for the example provided by the commenter, the department believes that such situations would be adequately addressed in the changes to section 4.3.2 described in response to comment 6 above.

COMMENT 8: One commenter stated that section 4.3.1 should include allowances for reevaluating a source due to temporary events, such as flooding of a wellhead or spring box. The commenter noted that flooding would not be reason to classify the water as GWUDISW because it is an event-driven and correctable situation.

RESPONSE 8: Floods may overtop a wellhead or spring box and directly introduce contaminants to drinking water systems. In such cases, it is understood that the flooded well would not be classified as GWUDISW but would be handled as an emergency event by the system. Floods may have other impacts on sources, however. Floods may raise the water table near or around a well, which could introduce contaminants into the source. Floods also may erode the riverbank or even alter the river course, which could change the distance between the source and the surface water. While these effects could be short lived and restricted to the flooding event, they also could change the hydraulic system around the water source. Flooding is a significant enough event to warrant reviewing the water source again, so the department has left this section of the Circular unchanged.

COMMENT 9: One commenter noted that it was incorrect to use the term "certified laboratory" in section 4.2 because there is no certification program for MPA laboratories or analysts.

RESPONSE 9: The department agrees and has modified section 4.2 of the Circular in response to this comment as follows:

> The public water system shall be responsible for coordinating with a ~~certified~~ laboratory capable of conducting the MPA to secure the sample kit, shipping the samples to the ~~certified~~ laboratory, and paying for analysis and shipping costs.

COMMENT 10: One commenter suggested wording changes to section 4.2 to indicate that MPA sampling, rather than the MPA analysis itself, would be conducted by department staff.

RESPONSE 10: The department agrees and has modified section 4.2 of the Circular in response to this comment as follows:

> All MPA sample collection must be conducted by DEQ staff.

COMMENT 11: One commenter suggested wording changes in section 1 to remove references to viruses and bacteria, noting that viruses and bacteria are not included in the federal or state definitions of GWUDISW and stating that their presence in groundwater does not imply risk of contamination of the water by Giardia or Cryptosporidium.

RESPONSE 11: The department agrees and has modified section 1 of the Circular in response to this comment as follows:

> Direct influence of surface water is that influence that causes a risk of pathogenic organisms (primarily large pathogens such as *Giardia lamblia*, and *Cryptosporidium*, viruses, and bacteria) to transfer from a surface source water to a subsurface drinking water source.

COMMENT 12: EPA Region 8 recommended that the department take a holistic approach to GWUDISW screening and expand on the elements of the preliminary assessment when assessing if additional evaluation is appropriate. The commenter recommended that the department take into account all readily available information in the department's initial screening of the source, including pieces of information contained within a hydrogeologic assessment and a water quality analysis. The commenter supported the flexibility provided in sections 4 and 4.1.1 of the Circular.

REPSONSE 12: The department agrees that a holistic approach is necessary. The preliminary assessment is a screening tool that separates those sources that are easily recognized as groundwater. All other water sources will undergo further review. This review will involve all available information and may include a site visit. This review will be used to create a conceptual model of the hydraulics of the water source, and the level of effort will vary depending on the complexity of each water source. The department has modified section 4 of the Circular in response to this comment to more explicitly describe the scope of information that may be considered, as follows:

> As described in this section, DEQ evaluates all subsurface water sources using a preliminary assessment (PA) and, if necessary, a microscopic particulate analysis (MPA). DEQ also may rely on other relevant materials, including but not limited to, photos of the water source and surrounding topography, well logs, aquifer test results, annular seal installation reports, geologic maps, groundwater studies, water quality data, historic rainfall data, river gauging data, engineering drawings, and other documents. A hydrogeologic assessment may be done as appropriate on a case-by-case basis. If necessary, a microscopic particulate analysis (MPA) will be conducted pursuant to this section

In response to this comment, the department also has modified section 4.3.1 to remove any misleading language about the holistic approach adopted in sections 4.1.1 and 4.1.2. The department has also modified this section to refer to the MPA points score, as discussed in response to comment 5:

> A source may be classified as ground water if either (1) the subsurface water source scores less than 40 points on the PA; 2) if the PA score is more than 40 points and upon further review it is found that DEQ determines that direct surface water influence is not likely; or 3(2) if both MPAs indicate a low risk score fewer than 10 points.

COMMENT 13: EPA Region 8 recommended that GWUDISW evaluations be repeated or reviewed, as appropriate. The commenter noted that sanitary surveys offer the department the opportunity to confirm or update information used within the GWUDISW evaluation.

REPSONSE 13: The department agrees, as discussed above in response to comment 4, and has modified the Circular in response to this comment. The department has modified section 4.1 as follows:

> The GWUDISW evaluation process begins with a PA. All PAs must be completed by DEQ as part of a site visit. DEQ will score water sources according to the criteria and score in the table below.

The department has modified section 4.3.1 as follows:

> DEQ will, as part of regularly scheduled sanitary surveys, inspect every source for any changes in and around the source. If such changes have occurred, a new PA will be completed. DEQ may reevaluate a ground water classification upon changes to the source environment, water quality, or construction. Examples of such changes include, but are not limited to, flooding of the source, moving of an existing surface water body, installation of a new artificial surface water body closer to the water source, E. coli positive sample results, or reconstruction of a spring box. In any of these cases, the process begins with a new PA based on the new configuration.

COMMENT 14: EPA Region 8 commented on section 2.2, which provides that the department may exclude from the preliminary assessment temporary surface water bodies that are unlikely to harbor or transport surface water organisms to the ground water. The commenter recommended not preemptively excluding these surface water features, noting that they may be temporary surficial expressions of underlying permanent groundwater features. The commenter included examples of cut-off walls associated with infiltration galleries and groundwater collection boxes that can be utilized to artificially raise groundwater elevations in certain locations for water collection.

RESPONSE 14: The department considered this comment but left the Circular unchanged. Section 2.2 of the Circular only excludes those features "that contribute little or no water to the subsurface." A surficial expression of groundwater, as suggested by the commenter, would contribute water to the subsurface, meaning that such features would be considered a surface water body on the preliminary assessment form.

COMMENT 15: EPA Region 8 recommended that section 3 be reworded to include a broader list of potential sources to underground water, including springs, infiltration galleries, and horizontal wells. The commenter noted that the set of examples provided could lead to misinterpretation of which sources would be evaluated.

RESPONSE 15: This comment revealed an ambiguity in the section that the

department has corrected. The intent of section 3 is not to list all potential sources but to emphasize that sources that are available to serve a public water supply system are subject to evaluation, even if those sources are not actively supplying water to the system. For instance, emergency wells and backup wells may not actively supply water to the system but are connected to the system and have the potential to introduce contamination to the system if they are used. The department has modified section 3 of the Circular in response to this comment as follows:

> This Circular applies to all public water supply systems with a subsurface water source (e.g., wells, springs, horizontal wells, infiltration galleries, etc.). Each subsurface source that serves a public water supply system must be evaluated and classified as ground water or GWUDISW. Sources that are available to serve a public water supply system—including, for example and without limitation, lag wells, emergency wells, and backup wells—are subject to the requirement of this Circular.

COMMENT 16: EPA Region 8 recommended evaluating total coliform and E. coli violations in the preliminary assessment Question 4, as done in the 2008 edition of the Circular.

RESPONSE 16: The 2008 edition of PWS-5 included consideration of violations of the maximum contaminant level (MCL) for total coliform. EPA removed the MCL for total coliform in 2016 with adoption of the Revised Total Coliform Rule. Likewise, the E. coli samples are not included in the 2008 edition because that edition predated EPA's adoption of the Groundwater Rule in 2009. It is the department's opinion that E. coli-positive samples are a better indicator of surface water risk than total coliform results. The department has left preliminary assessment Question 4 unchanged.

COMMENT 17: EPA Region 8 recommended modifications to Question 7 of the preliminary assessment, which concerns the construction characteristics of the source. The commenter recommended (1) evaluating whether a two-inch annular space between the borehole and the outer casing is present to be more consistent with industry best practices; (2) using cement bond log information, if applicable and available, to qualify the seal in areas where cement grout is utilized; and (3) considering the presence of a pitless adaptor and its disturbance and impact to the annular seal.

RESPONSE 17: The department considered this comment but decided to leave Question 7 unchanged. Montana's well drillers' rules and the department design standards in DEQ-1 both require a 1 1/2-inch annular space, meaning that most sources would fail the commenter's proposed revision of 2 inches. Designing a question that most sources would fail undermines the screening value of the preliminary assessment review, and the department believes that the difference between the two is negligible. Cement bond log information is generally not available for most wells. If that information is available, the department may consider it under section 4. Pitless adaptors are very common in Montana, and the department's experience in administering the rule in Montana has revealed that they are not a factor for surface water influence. Those few cases in which a leaking

pitless adaptor contributed to negative water quality (i.e., E. coli samples) were identified and resolved as significant deficiencies under the Groundwater Rule.

To the extent that the commenter recommends changes to specific design criteria, such recommendations are outside the scope of this PWS-5 rule making.

COMMENT 18: EPA Region 8 commented that the term "static water level" in Question 9 of the preliminary assessment implied only well completions in unconsolidated sediments. The commenter recommended that the department provide additional information regarding confined conditions in bedrock wells and wells with artesian pressures.

RESPONSE 18: "Static water level" means the ambient water level elevation in a cased well where the aquifer has not been stressed. Willis D. Weight, Hydrogeology Field Manual 738 (2008). The definition of static water level is purely an observation and does not include any aquifer interpretation, so it includes all aquifer types (e.g., unconfined, confined, porous media, fractured, etc.). The static water level reported on the well logs is used to answer Question 9 from the preliminary assessment. The department has left preliminary assessment Question 9 unchanged.

/s/ Edward Hayes
EDWARD HAYES
Rule Reviewer

/s/ Christopher Dorrington
CHRISTOPHER DORRINGTON
Director
Department of Environmental Quality

Certified to the Secretary of State August 16, 2022.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the amendment of ARM 36.12.905 regarding the Horse Creek Controlled Groundwater Area	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On May 13, 2022, the Department of Natural Resources and Conservation (department) published MAR Notice No. 36-22-214 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 670 of the 2022 Montana Administrative Register, Issue Number 9.

2. The department has amended ARM 36.12.905 as proposed.

3. The department has thoroughly considered the comments received. No written comments were submitted. A summary of the oral comments from the June 21, 2022 public hearing appears below with the department's responses:

COMMENT 1: Commenters were concerned that the broad area of the SPI may not accurately reflect precipitation at the Horse Creek CGWA.

RESPONSE 1: As originally adopted, the Horse Creek CGWA relied upon the Fishtail weather station to develop the SPI (Standard Precipitation Index). The Fishtail weather station was discontinued in 2021.

Data from the Montana Climate Center and the Upper Missouri River Basin (UMRB) Drought Indicators Dashboard are relied upon by the department for precipitation and other climatic applications throughout Montana. The SPI measurement provided by the Montana Climate Center is taken at the center of Section 15, T4S, R18E, from the UMRB Drought Indicators Dashboard. The UMRB Drought Indicators Dashboard represents an accurate SPI from a reliable source for the Horse Creek CGWA.

COMMENT 2: Commenters were concerned that the use of SPI or other cumulative drought/precipitation data does not correlate with groundwater recharge within the Horse Creek CGWA.

RESPONSE 2: The current Horse Creek CGWA rule uses a three-month SPI. See ARM 36.12.905(7). Although the amendment specifies a 90-day SPI instead of a three-month SPI, it does not materially alter the duration of time used for the SPI. Concerns regarding the use of SPI or cumulative data are beyond the scope of the proposed amendment.

COMMENT 3: Monitoring aquifer conditions within the Horse Creek CGWA or monitoring flows within Horse Creek itself would provide a more accurate measurement of groundwater conditions.

RESPONSE 3: The current Horse Creek CGWA rule provides for measuring and reporting. See ARM 36.12.905(5). The amendment does not alter that aspect of the rule. Concerns regarding monitoring are beyond the scope of the proposed amendment.

/s/ Amanda Kaster
Amanda Kaster
Director
Natural Resources and Conservation

/s/ Brian Bramblett
Brian Bramblett
Rule Reviewer

Certified to the Secretary of State on August 16, 2022.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.12.222 and 42.13.101 pertaining to department procedures involving penalties against alcoholic beverages licenses	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On May 27, 2022, the Department of Revenue published MAR Notice No. 42-1046 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 788 of the 2022 Montana Administrative Register, Issue Number 10.

2. On June 22, 2022, a public hearing was held to consider the proposed amendment. The following persons were present and provided oral testimony: Shauna Helfert, Gaming Industry Association of Montana (GIA) and John Iverson, Montana Tavern Association (MTA). Jon Sonju, Hospitality and Development Association of Montana was present but did not provide any oral testimony. The GIA also provided written comments to the department which mirrored Ms. Helfert's oral testimony.

3. The department has amended ARM 42.12.222 as proposed.

4. The department has amended ARM 42.13.101 as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

42.13.101 COMPLIANCE WITH LAWS AND RULES (1) and (2) remain as proposed.

(3) The department may use a range of progressive and proportional penalties for any combination of violations of any laws, ordinances, and rules. 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, non-exhaustive examples of which are described in (4) and (5). 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. ~~If a violation jeopardizes health, welfare, and safety, or there is not a cure in place, t~~The department may proceed to revoke or refuse to grant the renewal of a license, concession agreement, or both, only if a violation jeopardizes health, welfare, and safety, or there is not a cure in place.

Progressive Penalty Schedule

Violation	Penalty
1st Violation	Up to a $250 monetary penalty
2nd Violation	Up to a $600 monetary penalty
3rd Violation	Up to a $1,000 monetary penalty, up to a 2-day suspension, or both
4th Violation	Up to a $1,500 monetary penalty, up to a 5-day suspension, or both
5th Violation	Up to a $1,500 monetary penalty, up to a 7-day suspension, or both
Subsequent Violations	In accordance with 16-4-406, MCA

(4) through (6) remain as proposed.

AUTH: 16-1-303, MCA
IMP: 16-1-302, 16-3-301, 16-4-406, 16-6-314, 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: Ms. Helfert commented that the GIA thanks the department for its determination to adjust the penalty schedule to reflect the legislative intent and to simplify the rule. The GIA generally supports the overall concept of the rules and specifically supports the new penalty structure in ARM 42.13.101. The GIA appreciates the statement of reasonable necessity commentary that the department will be better able to match the penalty and fine with the severity of the violation and allow for more flexibility.

RESPONSE 1: The department thanks Ms. Helfert and the GIA for their comments, for their involvement as an alcohol coalition member, and for the valuable input provided in the development of this rulemaking.

COMMENT 2: Ms. Helfert comments that the department's last sentence amendment to ARM 42.13.101(3) misstates the legislative intent of House Bill 705 (HB 705) amendments to 16-4-406(2), MCA. Ms. Helfert contends the department is changing the focus of requirements because of wording variation in the sentence from statute. Ms. Helfert suggests that one-sale-to-minor violation could occur and the department could revoke a license despite her/the GIA's understanding - as communicated to them by the department - that is not the intention of the law or the department. Ms. Helfert requests the department remove the new sentence since it is already stated in law, or if the sentence is necessary, match the language with the law.

RESPONSE 2: The department agrees with Ms. Helfert and the GIA that 16-4-406(2)(b), MCA, clearly states that the department may " . . . proceed to revoke a license or the concession agreement of the concessionaire or both only if the violations jeopardize health, welfare, and safety or there is not a proposed cure in place." The department has revised the sentence structure upon adoption in response to the comment.

As to Ms. Helfert's comments about the department's pursuit of license revocation for a single sale-to-minor violation, the department again responds that 16-4-406(2)(b), MCA, is clear. Although the department cannot readily identify a circumstance where a single sale-to-minor violation would jeopardize health, welfare, and safety or where there is not a proposed cure in place, the Alcoholic Beverage Code provides the framework for the department to determine whether the specific facts and circumstances surrounding an alleged violation warrant a proposal to revoke a license. Furthermore, Senate Bill 129 (2021) amendments to 16-4-406, MCA, provide additional licensee (and concessionaire) safeguards where a violation was based solely on a contrived event. The department reiterates its response that statute and the revised sentence in (3) of the rule obviates these concerns.

COMMENT 3: Ms. Helfert requests the department remove the second sentence of ARM 42.13.101(3) as unnecessary because the new penalty structure does not list each violation.

RESPONSE 3: The listing of individual violation types from ARM 42.13.101(3), became immaterial with HB 705 amendments to 16-4-406, MCA, but penalties for multiple license violations within the statutorily provided timeframe are still progressive by their nature.

The department stated in this rulemaking that ". . . the existing progressive penalty schedule does not adequately represent the new penalty structure of 16-4-406(2), MCA," and " . . . penalties are now determined in accordance with a new progressive penalty schedule which allows the department flexibility to consider the public harm of a violation, or lack thereof." Both statements are accurate. Since the request is inconsistent with the construction of the rule, the department declines to remove the sentence or references to the progressive penalty schedule.

COMMENT 4: Ms. Helfert and the GIA request that new (4) and (5) [*sic*] of ARM 42.13.101 be removed as they are already described in statute or because they are beyond the department's rulemaking authority.

Ms. Helfert also requests that the beginning of (4) is provided in 16-4-406, MCA, and should be removed from rule on the sole basis of inclusion in the rule.

RESPONSE 4: ARM 42.13.101(4) and (5) are not new rule sections. ARM 42.13.101(4) and (5) are renumbered rule sections based on the department's amendments in this rulemaking and have remained substantively the same since 2017. The minor amendments in (4)(c) and (f) add location manager involvement in violations and (4)(g) is statutory deference - all for the reasons stated in the proposal notice.

The department also responds to the GIA and MTA now, as it did in 2017 under MAR Notice No. 42-2-968 (see Notice of Amendment, Comment and Response No. 19)(March 24, 2017)), that 16-4-406(3) and (4), MCA, require the department to consider aggravating and mitigating circumstances and that the department may adjust penalties based upon these considerations. The department lists additional aggravating and mitigating circumstances in administrative rule to increase transparency. None of the recent legislative changes to 16-4-406, MCA, have altered these requirements, the statute still maintains its non-exhaustive list of aggravating and mitigating circumstances, and the department must assume that the legislative intent in 16-4-406(4), MCA, for the department's consideration of aggravating and mitigating circumstances in violation penalty matters remains unchanged.

For the same reasons provided in 2017 and in this Response, the department disagrees with Ms. Helfert's comment that the department is somehow exceeding its rulemaking authority through its inclusion of aggravating circumstances in the administrative rule because Ms. Helfert's comment is inconsistent with what is provided in 16-4-406, MCA, and is contrary to 16-1-303(1), MCA ("The department and the department of justice may make rules not inconsistent with this code necessary to efficiently administer this code").

As for Ms. Helfert's request that the beginning of ARM 42.13.101(4) be removed on the sole basis of inclusion in the rule, the department declines to fulfill the request for the reasons provided above and because the inclusion of statutory language in administrative rule is not prohibited. Section 2-4-305, MCA, provides rules may not unnecessarily repeat statutory language. The department's inclusion and maintenance of statutory language in this rule section is necessary for transparency, context, and attribution to the underlying law.

COMMENT 5: Ms. Helfert and the GIA provided additional comments relative to ARM 42.13.101(4) and (5), as renumbered, that are opinion, a misreading of the law and rules, or are outside the scope of this rulemaking.

Ms. Helfert commented concerns relative to ARM 42.13.101(4) and (5) on the basis of prejudice, the absence of authorizing language for aggravating circumstances in statute, and due process in violation matters between the department and a licensee.

Ms. Helfert also opined that there are, ostensibly, three types of violations: a violation without mitigating or aggravating circumstance (a normal run of the mill violation), a violation with mitigating circumstance, and a violation with aggravating circumstance. And as written, once a violation occurs, it is automatically kicked into one of the two special circumstances: aggravating or mitigating. Ms. Helfert continues that the legislative intent is not to have every violation be mitigating or aggravating; these are left for the extreme circumstances.

RESPONSE 5: The department generally refers Ms. Helfert and the GIA to Response Nos. 1 through 4 as its responses to the remainder of the aggravating and mitigating circumstances comments raised even if the comments do not correspond directly to the department's proposals.

The department declines to respond in detail to Ms. Helfert's violation observations and conclusions other than her premise and conclusions are incorrect because they are not grounded in statute, rule, or case law (e.g., that violations are "automatically kicked" into the special circumstances). The Alcoholic Beverage Code and the department's rules provide the construct and substance of violations, including the legislative mandate that the department consider aggravating and mitigating circumstances. Whether aggravating or mitigating circumstances may be applied, as authorized by the Legislature, is determined through a review of the facts surrounding the alleged violation, and is subject to due process and opportunity for a hearing under the Montana Administrative Procedure Act.

COMMENT 6: At the June 22, 2022 public hearing, Mr. Iverson and the MTA stated on the record their support and concurrence with the testimony of Ms. Helfert on behalf of the GIA and did not provide any additional commentary.

RESPONSE 6: The department thanks Mr. Iverson and the MTA for their involvement as an alcohol coalition member, and the valuable input provided in the development of this rulemaking.

In response to Mr. Iverson's or the MTA's support of shared commentary submitted by Ms. Helfert and the GIA, as discussed above, the department refers Mr. Iverson and the MTA to Responses 1 through 5 as its required responses.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ David R. Stewart
David R. Stewart
Authorized Signor
for the Department of Revenue

Certified to the Secretary of State August 16, 2022.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.2.613, 42.2.614, 42.2.615, 42.2.616, 42.39.102, 42.39.112, 42.39.115, 42.39.118, 42.39.123, 42.39.203, 42.39.413, 42.39.502, 42.39.505 and the repeal of ARM 42.39.109, 42.39.110, and 42.39.120 pertaining to Montana Marijuana Regulation and Taxation Act post-legislative rules revisions and contested case rules updates	))))))))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On June 24, 2022, the Department of Revenue published MAR Notice No. 42-1053 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1016 of the 2022 Montana Administrative Register, Issue Number 12.

2. On July 18, 2022, a public hearing was held to consider the proposed amendment and repeal. No persons were present and no oral testimony was provided. The only written comments that the department received came from Karen J. Tracy, Assistant City Attorney for Billings, on behalf of the city of Billings, Montana.

3. The department has amended ARM 42.2.613, 42.2.614, 42.2.615, 42.2.616, 42.39.112, 42.39.115, 42.39.118, 42.39.123, 42.39.203, 42.39.413, 42.39.502, and 42.39.505 as proposed.

4. The department has repealed ARM 42.39.109, 42.39.110, and 42.39.120 as proposed.

5. The department has amended ARM 42.39.102 as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

42.39.102 DEFINITIONS The following definitions apply to this chapter:

(1) through (18) remain as proposed.

(19) "Green county" means a county where the majority of voters voted to approve Initiative Measure No. 190 in the November 3, 2020 general election or where the local government approval provisions of 16-12-301, MCA, have been satisfied. This definition does not include a municipality that has approved or disapproved a category or categories of marijuana businesses, as authorized in 16-12-301, MCA.

(20) through (42) remain as proposed.

(43) "Red county" means a county where the majority of voters voted against approval of Initiative Measure No. 190 in the November 3, 2020 general election or where the local government has voted to prohibit all marijuana businesses pursuant to 16-12-301, MCA. This definition does not include a municipality that has approved or disapproved a category or categories of marijuana businesses, as authorized in 16-12-301, MCA.

(44) through (54) remain as proposed.

AUTH: 16-12-112, MCA
IMP: 16-12-101, 16-12-102, 16-12-104, 16-12-105, 16-12-112, 16-12-201, 16-12-207, 16-12-208, 16-12-210, 16-12-301, 16-12-501, 16-12-503, 16-12-508, 16-12-515, 16-12-533, MCA

6. 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: Ms. Tracy comments that 16-12-201(2)(b), MCA, refers to ". . . a jurisdiction that allows for the operation of marijuana businesses pursuant to 16-12-301. . . " and does not specify a "Green County" and "Red County." Further, 16-12-301, MCA, sets out the right of a city within a county that approved Initiative Measure No. 190 to hold an election to prohibit one or more of the marijuana business categories. The City of Billings is a "jurisdiction" that prohibits retail (i.e., recreational-use) marijuana dispensaries.

Ms. Tracy contends that by using definitions such as "red county" and "green county" the department creates confusion for jurisdictions such as the City of Billings which sits within a "green county" while having also opted out of certain categories as permitted by 16-12-301, MCA.

RESPONSE 1: The department agrees with Ms. Tracy's reading of the law that the citizens of a "jurisdiction" (e.g., an incorporated city or town) may opt, through election, for a different result that has been reached by the voters of the county in which the city or town is located.

However, during its implementation of the Marijuana Regulation and Taxation Act (MRTA), the department found it necessary to adopt certain terminology into the rules for brevity of concepts introduced under the MRTA. Thus, the definitions for "Green County" and "Red County" were adopted to describe the outcomes of known voter initiatives and became effective January 1, 2022. Those terms can be found in ARM 42.39.401, 42.39.405, and 42.39.409, in addition to ARM 42.39.102.

While the department declines to adopt a definition that is already provided in statute, it has amended "Green County" and "Red County" definitions, upon adoption, to lend more clarity and to separate jurisdictional concepts.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State August 16, 2022.

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 an online 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 recent rulemaking 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.

RECENT RULEMAKING BY AGENCY

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 March 31, 2022. This table includes notices in which those rules adopted during the period February 25, 2022, through August 6, 2022, occurred 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 March 31, 2022, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2022 Montana Administrative Register.

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EXECUTIVE BRANCH 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 executive branch appointees and upcoming vacancies on those boards and councils.

In this issue, appointments effective in July 2022 appear. Potential vacancies from August 1, 2022 through August 31, 2022, are also listed.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of August 1, 2022.

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.

EXECUTIVE BRANCH APPOINTEES FOR JULY 2022

Appointee	Appointed By	Succeeds	Appointment/End Date
Board of Chiropractors			
Jaime Larese	Governor	Sheryl Olson	7/18/2022
Helena			7/1/2025
Qualifications (if required): Public member			
Board of Massage Therapy			
Ms. Susan Carlson	Governor	Anne Gergen	7/1/2022
Billings			7/1/2026
Qualifications (if required): Licensed Massage Therapist			
Board of Regents of Higher Education			
Mr. Norris Blossom	Governor	Amy Sexton	7/1/2022
Bozeman			7/1/2023
Qualifications (if required): Student Regent			
Board of Sanitarians			
Mr. Van Puckett	Governor	Stephanie Ler	7/18/2022
Twin Bridges			7/1/2025
Qualifications (if required): Registered sanitarian			
Council on Developmental Disabilities			
Mr. John Gorton	Governor	Erin Butts	7/1/2022
Helena			1/5/2025
Qualifications (if required): OPI Representative			

EXECUTIVE BRANCH APPOINTEES FOR JULY 2022

Appointee	Appointed By	Succeeds	Appointment/End Date
Future Fisheries Review Panel			
Mr. William Mytton	Governor	Reappointed	7/1/2022
Absarokee			7/1/2024
Qualifications (if required): Expertise in commercial agriculture			
Ms. Nancy Winslow	Governor	Reappointed	7/1/2022
Missoula			7/1/2024
Qualifications (if required): Expertise in mining reclamation techniques			
Housing Task Force Advisory Council			
Mr. Patrick Barkey	Governor	New	7/14/2022
Missoula			7/1/2023
Qualifications (if required): Director of Bureau of Business and Economic Research			
Hon. Ellie Boldman	Governor	New	7/14/2022
Missoula			7/1/2023
Qualifications (if required): State Senator			
Terry Brockie	Governor	New	7/14/2022
Hays			7/1/2023
Qualifications (if required): CEO of Island Mountain Development Group			

EXECUTIVE BRANCH APPOINTEES FOR JULY 2022

Appointee	Appointed By	Succeeds	Appointment/End Date
Housing Task Force Advisory Council Cont.			
Mr. Ross Butcher Lewistown Qualifications (if required): Commissioner of Fergus County	Governor	New	7/14/2022 7/1/2023
Mr. Kendall Cotton Helena Qualifications (if required): President and CEO of Frontier Institute	Governor	New	7/14/2022 7/1/2023
Mr. Nathan Dugan Whitefish Qualifications (if required): President and Co-founder of Shelter WF	Governor	New	7/14/2022 7/1/2023
Mr. Mark Egge Bozeman Qualifications (if required): Former member of Bozeman Planning Board	Governor	New	7/14/2022 7/1/2023
Ms. Laurie Esau Helena Qualifications (if required): Commissioner of the Department of Labor and Industry	Governor	New	7/14/2022 7/1/2023
Ms. Jaclyn Giop Butte Qualifications (if required): President of Montana Water Well Drillers Assn	Governor	New	7/14/2022 7/1/2023

EXECUTIVE BRANCH APPOINTEES FOR JULY 2022

Appointee	Appointed By	Succeeds	Appointment/End Date
Housing Task Force Advisory Council Cont.			
Mr. Eugene Graf	Governor	New	7/14/2022
Bozeman			7/1/2023
Qualifications (if required):	Owner of EG Construction		
Ms. Emily Hamilton	Governor	New	7/14/2022
Arlington			7/1/2023
Qualifications (if required):	Sr Research Fellow and Director of Urbanity Project, Mercatus Center		
Mr. Adam Hertz	Governor	New	7/14/2022
Missoula			7/1/2023
Qualifications (if required):	Secretary of Montana Board of Housing		
Hon. Greg Hertz	Governor	New	7/14/2022
Polson			7/1/2023
Qualifications (if required):	State Senator		
Director Amanda Kaster	Governor	New	7/14/2022
Helena			7/1/2023
Qualifications (if required):	Director of DNRC		
Mr. Bob Kelly	Governor	New	7/14/2022
Great Falls			7/1/2023
Qualifications (if required):	Mayor of Great Falls		

EXECUTIVE BRANCH APPOINTEES FOR JULY 2022

Appointee	Appointed By	Succeeds	Appointment/End Date
Housing Task Force Advisory Council Cont.			
Mr. Jacob Kuntz	Governor	New	7/14/2022
Helena			7/1/2023
Qualifications (if required):	Helena Area Habitat for Humanity		
Mr. Bill Leininger	Governor	New	7/14/2022
Big Fork			7/1/2023
Qualifications (if required):	President of Montana Assn of Realtors		
Mr. Todd O'Hair	Governor	New	7/14/2022
Helena			7/1/2023
Qualifications (if required):	President and CEO of Montana Chamber of Commerce		
Mr. Scott Osterman	Governor	New	7/14/2022
Helena			7/1/2023
Qualifications (if required):	Director of DOC		
Ms. Nicole Rolf	Governor	New	7/14/2022
Miles City			7/1/2023
Qualifications (if required):	Sr Director of Governmental Affairs for Mt Farm Bureau Fed		
Mr. Mike Smith	Governor	New	7/14/2022
Kalispell			7/1/2023
Qualifications (if required):	Market President of Glacier Bank		

EXECUTIVE BRANCH APPOINTEES FOR JULY 2022

Appointee	Appointed By	Succeeds	Appointment/End Date
Housing Task Force Advisory Council Cont.			
Ms. Valerie Stacey	Governor	New	7/14/2022
Helena			7/1/2023
Qualifications (if required):	Environmental Health Specialist with Lewis and Clark County		
Mr. Don Sterhan	Governor	New	7/14/2022
Billings			7/1/2023
Qualifications (if required):	Steering Committee Member of MT House Coalition; Pres and CEO Mtn Plains Equity Group		
Hon. Danny Tenenbaum	Governor	New	7/14/2022
Missoula			7/1/2023
Qualifications (if required):	State Representative		
Hon. Sue Vinton	Governor	New	7/14/2022
Billings			7/1/2023
Qualifications (if required):	State Representative		
Montana Forest Action Advisory Council			
Mr. Mark Aagnes	Governor	New	7/1/2022
Helena			7/1/2024
Qualifications (if required):	Wildlife Conservation or land trust organization		

EXECUTIVE BRANCH APPOINTEES FOR JULY 2022

Appointee	Appointed By	Succeeds	Appointment/End Date
Montana Forest Action Advisory Council Cont.			
Mr. Jeff Burrows	Governor	New	7/1/2022
Hamilton			7/1/2024
Qualifications (if required):	Elected County Official		
Ms. Kari Decker	Governor	New	7/1/2022
Missoula			7/1/2024
Qualifications (if required):	Representative at Large		
Mr. Jim Durglo	Governor	New	7/1/2022
St Ignatius			7/1/2024
Qualifications (if required):	Montana's Tribal Nations		
Ms. Julia Kertz Grant	Governor	New	7/1/2022
Seattle			7/1/2024
Qualifications (if required):	Private Landowners Rep		
Mr. Ethan Kunard	Governor	New	7/1/2022
Helena			7/1/2024
Qualifications (if required):	Watershed Restoration Rep		
Mr. Tim Love	Governor	New	7/1/2022
Missoula			7/1/2024
Qualifications (if required):	Collaboratives or Firesafe Councils Rep		

EXECUTIVE BRANCH APPOINTEES FOR JULY 2022

Appointee	Appointed By	Succeeds	Appointment/End Date
Montana Forest Action Advisory Council Cont.			
Mr. Gordy Sanders	Governor	New	7/1/2022
Seeley Lake			7/1/2024
Qualifications (if required): Timber Industry Rep			
Mr. Jeff Schmidt	Governor	New	7/1/2022
Red Lodge			7/1/2024
Qualifications (if required): Recreation Industry			
Montana Small Business Development Center Advisory Council			
Mr. Brent Donnelly	Governor	New	7/1/2022
Helena			6/30/2024
Qualifications (if required): Public rep			
Shandy Hanks Moran	Governor	New	7/1/2022
Scobey			6/30/2024
Qualifications (if required): Public Rep			
Ms. Julia Jaksha	Governor	New	7/1/2022
Butte			6/30/2024
Qualifications (if required): Public rep			

EXECUTIVE BRANCH APPOINTEES FOR JULY 2022

Appointee	Appointed By	Succeeds	Appointment/End Date
Montana Small Business Development Center Advisory Council Cont.			
Ms. Tracy McIntyre Great Falls Qualifications (if required): Public rep	Governor	New	7/1/2022 6/30/2024
Mr. Reed W. Bassett Great Falls Qualifications (if required): Public Rep	Governor	New	7/1/2022 6/30/2024
Mr. Joe Fanguy Missoula Qualifications (if required): Public Rep	Governor	New	7/1/2022 6/30/2024
Mr. Paddy Fleming Bozeman Qualifications (if required): Public Rep	Governor	New	7/1/2022 6/30/2024
Mr. Dan Gorton Kalispell Qualifications (if required): Public Rep	Governor	New	7/1/2022 6/30/2024

EXECUTIVE BRANCH APPOINTEES FOR JULY 2022

Appointee	Appointed By	Succeeds	Appointment/End Date
Petroleum Tank Release Compensation Board			
Mr. Tom Pointer	Governor	Keith Schneider	7/14/2022
Billings			7/1/2025
Qualifications (if required): Petroleum services industry rep			
Jess Stenzel	Governor	Mark Johnson	7/14/2022
Great Falls			7/1/2025
Qualifications (if required): Insurance industry rep			
State Electrical Board			
Ms. Merna Terry	Governor	Harry Freebourn	7/1/2022
Kalispell			7/1/2025
Qualifications (if required): Public Member			

EXECUTIVE BRANCH VACANCIES – AUGUST 1, 2022 THROUGH AUGUST 31, 2022

Board/Current Position Holder	Appointed By	Term End
Board of Private Security		
Mr. Dirk C. Bauwens, Billings	Governor	8/1/2022
Qualifications (if required): Electronic security company		
Board of Veteran Affairs		
Ms. Brenda York, Belgrade	Governor	8/1/2022
Qualifications (if required): Training, education, or experience related to Veterans' issues		
Representative Marvin Weatherwax Jr., Browning	Governor	8/1/2022
Qualifications (if required): State Administration and Veterans Affairs Committee Member		
Mr. Mitch Godfrey, Bozeman	Governor	8/1/2022
Qualifications (if required): Region 2 Veteran		
Dr. Daniel Edelman, Billings	Governor	8/1/2022
Qualifications (if required): Region 4 Veteran		
Mr. Duane Cunningham, Helena	Governor	8/1/2022
Qualifications (if required): U.S. Veterans Affairs Representative, non-voting member		
Mr. Richard Klose Sr, Laurel	Governor	8/1/2022
Qualifications (if required): Region 4 Veteran		
Mr. Ronald D. Milam, Missoula	Governor	8/1/2022
Qualifications (if required): Region 1 Veteran		

EXECUTIVE BRANCH VACANCIES – AUGUST 1, 2022 THROUGH AUGUST 31, 2022

Board/Current Position Holder	Appointed By	Term End
Board of Veteran Affairs Cont.		
Mr. Joren Underdahl, Columbia Falls	Governor	8/1/2022
Qualifications (if required): Representative of the Dept. of Public Health and Human Services		
Ms. Tova Reddick, Fort Harrison	Governor	8/1/2022
Qualifications (if required): U.S. Veteran's Affairs Representative		
Mrs. Casinda R. Jourdan, Molt	Governor	8/1/2022
Qualifications (if required): District Region 4 Veteran		
Board of Veterinary Medicine		
Dr. Barbara Hilton Calm, Kila	Governor	8/1/2022
Qualifications (if required): Licensed Veterinarian		
Information Technology Managers Advisory Council		
Mr. Mike Bousliman, Helena	Governor	8/1/2022
Qualifications (if required): Information Technology Manager		
Ms. Christi Breland, Helena	Governor	8/1/2022
Qualifications (if required): Information Technology Manager		
Ms. Kellee English, Helena	Governor	8/1/2022
Qualifications (if required): Information Technology Manager		
Mr. Timothy Bottenfield, Helena	Governor	8/1/2022
Qualifications (if required): Chief Information Officer		

EXECUTIVE BRANCH VACANCIES – AUGUST 1, 2022 THROUGH AUGUST 31, 2022

Board/Current Position Holder	Appointed By	Term End
Information Technology Managers Advisory Council Cont.		
Mr. Butch Huseby, Helena	Governor	8/1/2022
Qualifications (if required): Information Technology Manager		
Mr. Chris Hunt, Whitefish	Governor	8/1/2022
Qualifications (if required): Local Government Representative		
Ms. Jessica Plunkett, Helena	Governor	8/1/2022
Qualifications (if required): Information Technology Manager		
Ms. Angela Riley, Helena	Governor	8/1/2022
Qualifications (if required): Information Technology Manager		
Mr. Manuel Soto, Helena	Governor	8/1/2022
Qualifications (if required): Information Technology Manager		
Montana Organic Commodity Advisory Council		
Mr. Sam Schmidt, Great Falls	Governor	8/19/2022
Qualifications (if required): Organic Handler		
Ms. Lindsey Aull, Hamilton	Governor	8/19/2022
Qualifications (if required): Producer		
Mr. Patrick Carr, Moccasin	Governor	8/19/2022
Qualifications (if required): Consumer		

EXECUTIVE BRANCH VACANCIES – AUGUST 1, 2022 THROUGH AUGUST 31, 2022

Board/Current Position Holder	Appointed By	Term End
Montana Organic Commodity Advisory Council Cont.		
Mr. Nate Powell-Palm, Bozeman	Governor	8/19/2022
Qualifications (if required): Livestock Producer		

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SECRETARY OF STATE

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