BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULES I through III and the amendment of ARM 42.11.402, 42.12.101, 42.12.106, 42.12.109, 42.12.110, 42.12.111, 42.12.118, 42.12.128, 42.12.131, 42.12.132, 42.12.143, 42.12.145, 42.12.146, 42.12.147, 42.12.148, 42.12.149, 42.12.150, 42.12.151, 42.12.152, 42.12.204, 42.12.205, 42.12.208, 42.12.209, 42.12.307, 42.12.323, 42.12.324, 42.12.501, 42.12.502, 42.12.503, 42.12.504, 42.13.106, 42.13.107, 42.13.109, 42.13.111, 42.13.112, 42.13.201, 42.13.211, 42.13.405, 42.13.601, 42.13.802, 42.13.804, 42.13.901, 42.13.1002, 42.13.1003, 42.13.1102, 42.13.1103, 42.13.1104, 42.13.1105, 42.13.1202 pertaining to the implementation of alcoholic beverage legislation enacted by the 68th Montana Legislature	)	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On April 26, 2024, the Department of Revenue published MAR Notice No. 42-1076 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 875 of the 2024 Montana Administrative Register, Issue Number 8.

2. On June 4, 2024, a public hearing was held to consider the proposed adoption and amendment. The following persons were present and provided testimony: John Iverson, Montana Tavern Association (MTA); Michael Lawlor, attorney, Lawlor & Co., PLLC; and Jessica DeMarois, attorney, JDMT Law. The following persons were present but provided no oral testimony: Shauna Helfert, Gaming Industry Association of Montana (GIA); Debra Pitassy, Montana Beer and Wine Distributor's Association (MBWDA); and Jessie Luther, Taylor Luther Group, PLLC, representing the Hospitality and Development Association of Montana (HDAM).

3. The following persons provided written comments to the rulemaking: Ms. Helfert, GIA; Mr. Iverson, MTA; Mr. Lawlor, Lawlor & Co., PLLC; Ms. Pitassy, MBWDA; Cory Lawrence, President of HDAM; Matt Leow, President, Montana

Brewer's Association (MBA); and Jennifer Hensley, representing the Montana Distiller's Guild (Guild).

4. On June 17, 2024, public comments and concerns with the proposed rulemaking were also brought before the Economic Affairs Interim Committee (EAIC) at its scheduled meeting. EAIC voted to object to the entire rulemaking pursuant to 2-4-305(9), MCA. EAIC provided formal notice of the objection to the department by its written correspondence of June 18, 2024.

5. EAIC met on August 29, 2024, and withdrew its objection to this rulemaking.

6. The department has amended ARM 42.11.402, 42.12.109, 42.12.118, 42.12.128, 42.12.131, 42.12.132, 42.12.145, 42.12.146, 42.12.147, 42.12.148, 42.12.151, 42.12.204, 42.12.205, 42.12.208, 42.12.209, 42.12.307, 42.12.323, 42.12.324, 42.12.501, 42.12.502, 42.12.503, 42.12.504, 42.13.107, 42.13.109, 42.13.111, 42.13.112, 42.13.201, 42.13.405, 42.13.802, 42.13.804, 42.13.901, 42.13.1002, 42.13.1003, 42.13.1102, 42.13.1103, 42.13.1104, 42.13.1105, and 42.13.1202 as proposed.

7. The department has adopted NEW RULE I (42.12.153), NEW RULE II (42.13.1107), and NEW RULE III (42.12.154), and amended ARM 42.12.101, 42.12.106, 42.12.110, 42.12.111, 42.12.143, 42.12.149, 42.12.150, 42.12.152, 42.13.106, 42.13.211, and 42.13.601 as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (42.12.153) ADDITIONAL RETAIL SERVICE BUILDINGS OR STRUCTURES (1) In addition to the main licensed premises, ~~A~~ a golf course beer and wine licensee or an all-beverages licensee operating a license at a golf course may use an additional building or structure, one per nine holes of the golf course that is designed to serve golfers alcoholic beverages during the course of play.

(2) In addition to the main licensed premises, ~~An~~ an all-beverages licensee or resort all-beverages licensee may sell alcoholic beverages for consumption on the premises in one or more of the following:

(a) through (5) remain as proposed.

(6) The department will notify the licensee, in writing, within ten business days of the completed investigation of its approval or denial of the additional retail service building or structure.

(7) and (8) remain as proposed.

AUTH: 16-1-303, MCA
IMP: 16-3-302, MCA

NEW RULE II (42.13.1107) COLOCATED LICENSE – CONDITIONS FOR OPERATING (1) In addition to the conditions for operating the license types provided in ARM 42.13.405, 42.13.601, 42.13.802, 42.13.1102, 42.13.1103, and 42.13.1104, a colocated licensee shall:

(a) provide and serve through its retail license, alcoholic beverages that were produced by other manufacturers that are not affiliated or financially interested, either directly or indirectly, in the operation of the manufacturing business at the colocated premises. This includes sufficient on-hand inventory to meet the demand of the public;

(b) remains as proposed.

(c) ~~only~~ deliver alcoholic beverages ~~to retail licenses, including other retail licenses owned by the licensee,~~ pursuant to the limitations set forth in 16-3-213, 16-3-214 ~~and~~, 16-3-411, 16-4-312, and 16-4-401(9)(e), MCA.

(2) remains as proposed.

AUTH: 16-1-303, MCA
IMP: 16-4-401, MCA

NEW RULE III (42.12.154) GUEST RANCHES (1) An all-beverages licensee, an on-premises consumption beer and wine licensee, or an applicant for an all-beverages license or an on-premises consumption beer and wine license operating its license at a guest ranch, as described in 16-3-302(5), MCA, shall submit the following to the department~~, at its sole expense, and in addition to the requirements of ARM 42.12.101~~:

(a) a plat-style map that accurately describes the guest ranch property including all indoor and outdoor portions of the premises; the permanent building where alcoholic beverages will be served; ~~all other temporary, mobile, or partial structures;~~ and indicators of the property's boundaries;

(b) through (4) remain as proposed.

AUTH: 16-1-303, MCA
IMP: 16-4-401, MCA

42.12.101 APPLICATION FOR LICENSE (1) and (2) remain as proposed.

(3) In addition to the license application, as applicable, the applicant shall submit:

(a) through (d) remain as proposed.

(e) the premises floor plan, which for all license types includes accurate dimensions of the premises, the licensee or applicant's name, alcoholic beverage license number, physical address, and submission date, plus:

(i) and (ii) remain as proposed.

(iii) for a winery, brewery, or distillery license, identifies all manufacturing areas, ~~bonded areas,~~ storage areas, and as applicable: sample room, drink preparation areas, patios/decks, doors, hallways, stairways, perimeter barriers, drive-through windows, and permanent floor-to-ceiling walls required between the premises and another licensed alcoholic beverage business, except as otherwise provided in 16-3-311(8) and (9), MCA; or

(iv) through (3)(i) remain as proposed.

(j) for any entity applicant:

(i) remains as proposed.

(ii) stock certificates or other unit ownership certificates that evidence underlying ownership of the entity, as applicable;

(iii) through (5) remain as proposed.

(6) The department shall determine whether a complete application has been submitted. If a complete application has been submitted, the department shall arrange an investigation of the application and, if applicable, publish the notice of application for a license required by 16-4-207, MCA. ~~If the department determines a complete application has not been submitted and processing cannot proceed, the department shall return the incomplete application to the applicant.~~

(7) through (10) remain as proposed.

AUTH: 16-1-303, MCA
IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-207, 16-4-210, 16-4-401, 16-4-402, 16-4-414, 16-4-417, 16-4-420, 16-4-501, 16-4-502, MCA

42.12.106 DEFINITIONS The following definitions apply to this chapter:

(1) through (41) remain as proposed.

(42) "Ski hill," for the purpose of administering 16-3-302(4), MCA, means the site and permanent structures that have been developed for alpine or Nordic skiing ~~and other snow sports~~.

(43) "Special event," as it relates to special permits and catered events, means a short, infrequent, out-of-the-ordinary occurrence such as a picnic, fair, festival, reception, seasonal event, or sporting event for which there is an outcome, conclusion, or result.

(44) through (48) remain as proposed.

AUTH: 16-1-303, MCA
IMP: 16-1-106, 16-1-302, MCA

42.12.110 SERVICE OF NOTICES (1) and (2) remain as proposed.

(3) The licensee, registrant, or applicant must respond to the department in writing within ~~20~~ 23 days of service of the notice of proposed adverse action. Failure to respond will result in the enforcement of the administrative action proposed in the notice.

AUTH: 16-1-303, MCA
IMP: 2-4-601, 16-4-107, 16-4-406, 16-4-407, 16-4-1008, MCA

42.12.111 APPLICATION FEES AND PROCESSING FEES FOR OTHER REQUESTS (1) remains as proposed.

(2) The fees to be charged for processing requests associated with an existing license are as follows:

(a) through (f) remain as proposed.

(g) Increasing current ownership interest from less than ~~10~~ 15 percent to ~~10~~ 15 percent or more…….....$200

(h) through (5) remain as proposed.

AUTH: 16-1-303, 16-4-105, 16-4-201, 16-4-204, 16-4-420, MCA
IMP: 16-1-302, 16-1-303, 16-3-302, 16-4-105, 16-4-201, 16-4-204, 16-4-303, 16-4-313, 16-4-414, 16-4-420, MCA

42.12.143 RESTRICTION ON INTEREST IN OTHER LICENSES

(1) remains as proposed.

(2) A Montana all-beverages licensee may not:

(a) and (b) remain as proposed.

(c) individually or through the person's immediate family, receive financing from or have any affiliation to:

(i) an alcoholic beverage manufacturer or importer of alcoholic beverages, except as provided in 16-4-401(8)(e) and (9), MCA; or

(ii) remains as proposed.

(3) All other Montana retail on-premises consumption alcoholic beverages licensees may not:

(a) remains as proposed.

(b) individually or through the person's immediate family, receive financing from or have any affiliation to:

(i) an alcoholic beverage manufacturer or importer of alcoholic beverages, except as provided in 16-4-401(8)(e) and (9), MCA; or

(ii) through (7) remain as proposed.

AUTH: 16-1-303, MCA
IMP: 16-4-201, 16-4-205, 16-4-401, MCA

42.12.149 WINERY, BREWERY, AND DISTILLERY - PREMISES SUITABILITY REQUIREMENTS (1) through (6) remain as proposed.

(7) A distillery premises may only include one sample room, regardless of the number of manufacturing buildings the licensee operates.

(8) and (9) remain as proposed.

AUTH: 16-1-303, MCA
IMP: 16-3-311, 16-3-411, 16-4-102, 16-4-312, 16-4-402, MCA

42.12.150 ALCOHOLIC BEVERAGE INDUSTRY TRADE SHOWS

(1) For the purpose of this rule, an alcoholic beverage industry trade show means an event sponsored by the department, another state agency of Montana, or a nonprofit association representing an alcoholic beverage ~~industry association~~ group where alcoholic beverage manufacturers showcase their products to industry trade show attendees.

(2) through (8) remain as proposed.

(9) An alcoholic beverage trade show held at a licensed premises or at a location described in (5)(b) must serve only the types of alcoholic beverages authorized under the retail license and catering endorsement, where applicable.

(a) through (c) remain as proposed.

~~(d) The allowable sample serving size per product, per person shall not exceed two ounces for liquor products, 12 ounces for beer products, and five ounces for wine products~~.

(e) remains as proposed but is renumbered (d).

(10) For an alcoholic beverage industry trade show not held at a licensed premises or at a location described in (5)(b), the allowable sample serving size per product, per person shall not exceed two ounces for liquor products, 12 ounces for beer products, and five ounces for wine products.

(10) through (12) remain as proposed but are renumbered (11) through (13).

AUTH: 16-1-303, 16-1-307, MCA
IMP: 16-1-307, 16-3-107, 16-4-201, 16-4-204, 16-4-311, MCA

42.12.152 NONCONTIGUOUS ALCOHOLIC BEVERAGE STORAGE AREAS; RESORT ALTERNATE RETAIL ALCOHOLIC BEVERAGE STORAGE FACILITIES (1) and (2) remain as proposed.

(3) Except as provided in 16-3-311(7), MCA, a noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility ~~must~~ may ~~only~~ be used for the storage of alcoholic beverages and must have adequate physical safeguards to prevent access by individuals other than the licensee or their employees. A noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility may also be used for the storage of items related to the alcoholic beverage business including supplies, equipment, and vehicles.

(4) through (9) remain as proposed.

AUTH: 16-1-303, MCA
IMP: 16-3-301, 16-3-311, 16-4-213, MCA

42.13.106 ALTERATION OF PREMISES (1) through (5) remain as proposed.

(6) ~~Upon completion of the alterations, the~~ The licensee is responsible for ensuring the department receives notification of building, health, and fire code approval for the premises~~, if any such permits were required~~ unless the licensee attests that no building permit was required.

(7) The department will arrange for an inspection of the premises upon either completion of the alterations or upon receipt of the building, health, and fire code approvals or licensee attestation ~~as~~ described in (6).

(8) and (9) remain as proposed.

AUTH: 16-1-303, MCA
IMP: 16-3-302, 16-3-311, 16-4-402, MCA

42.13.211 PERMISSIBLE ADVERTISING (1) remains as proposed.

~~(2) In addition to the requirements of (1), a licensee must not advertise in a manner that would be inconsistent with, or contrary to, the type of license under which the business is operated. Examples of such advertising include an on-premises retailer advertising as a brewery, a brewery advertising an on-premises~~

~~retailer, a licensee who advertises availability of alcoholic beverages that it is not authorized to possess or sell under its license or Montana law; or a concessionaire who advertises the sale and service of alcoholic beverages without attribution to the licensee.~~

(3) and (4) remain as proposed but are renumbered (2) and (3).

AUTH: 16-1-303, MCA
IMP: 16-3-103, 16-3-244, MCA

42.13.601 BREWERY - CONDITIONS FOR OPERATING (1) through (3) remain as proposed.

(4) In addition to all other requirements, a small brewery with an annual nationwide production of not less than 200 gallons or more than 60,000 barrels that operates a sample room shall:

(a) through (i) remain as proposed.

(j) for each brewery participating in a distinct beer collaboration provided in 16-3-213(4), MCA, notify the department at least ~~seven~~ three business days prior to the collaboration and file all required reports with the department subsequent to the collaboration for tax collection purposes. For the purposes of administering 16-3-213(4), MCA, a "distinct collaboration beer" means a single beer manufactured through a single collaboration by two or more brewers. For example, if two brewers collaborate in March to make "Beer 123," that product constitutes one distinct collaboration beer. If the same two brewers collaborate to make the same beer at a later date in the year, that is considered a second distinct beer collaboration counting towards the collaborating brewers' statutory limit.

(5) remains as proposed.

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, 16-3-312, MCA

8. 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: Mr. Lawlor commented that NEW RULE I(2) should be clarified that adding a building or buildings to the licensed premises for the primary lodging quarters, swimming pool area, or ski area are in addition to the main bar building. It should also be clarified that more than one additional building is possible. For example, a licensee could have a bar building licensed, a swimming pool building licensed, and a lodging building licensed, all under the same all-beverages license.

RESPONSE 1: The department agrees with Mr. Lawlor that more than one additional service building or structure is possible. Based on the comments, the department has amended NEW RULE I(2) to provide additional clarity.

COMMENT 2: HDAM requests clarity that the list of allowable service areas in NEW RULE I(2)(a) through (d) allows a licensee meeting the requirements to sell alcoholic beverages for consumption in one or all of the areas described in (a) through (d) - especially a resort - could have a golf course with comfort stations and a hotel, and a swimming area, for example.

Ms. DeMarois similarly comments that NEW RULE I(2)(c) needs additional clarity to define what is allowed. Ms. DeMarois believes edits to the language are necessary to clarify that these concepts can go together, particularly with golf courses, because (1) seems to say you can have one additional building per nine holes but below in (2)(d) a licensee may have its main premises in your clubhouse or ancillary building. The department needs to clarify that those opportunities are not exclusive.

RESPONSE 2: In response to HDAM, the department refers to Response 1 and the amendments made upon adoption to NEW RULE I(2).

Similarly, the department agrees with Ms. DeMarois' comments and has amended NEW RULE I(1) upon adoption.

COMMENT 3: HDAM requests more clarity as to what NEW RULE I(4)(h) seeks and believes (4)(h) is too broad and could include anything. HDAM notes the language is repeated throughout the proposed rules (NEW RULE III(1)(d), 42.12.101(3)(k), etc.) and requests narrowing the provision in all instances where it has been added.

Mr. Lawlor concurs with HDAM 's comments about NEW RULE I(4)(h) and that department should not require anything beyond what the statute requires.

RESPONSE 3: Section 16-1-303, MCA, authorizes the department to make rules necessary to administer the Alcoholic Beverage Code (Code), including prescription of terms and conditions for licenses issued and granted under the Code. Section 16-4-207(1), MCA, also provides that the department may make requests for additional information necessary to complete an application and an application is considered complete when the applicant furnishes the application information requested by the department.

While ARM 42.12.106 defines "complete application," neither the definition or statute encapsulate the often-complex business transactions the department processes, which involve multiple business entities, purchase transactions, loans or sources of funding information, leases, management and concession agreements, and ancillary endorsement documents. Accordingly, the requirements in NEW RULE I(4)(h), NEW RULE III(1)(d), ARM 42.12.101(3)(k) - as well as in ARM 42.12.106 (definitions) and ARM 42.12.152 (noncontiguous storage areas) - are crafted for the greatest number of transactions possible and are administered under the rationale that any document and information requests are reasonably necessary for the department (and/or the Department of Justice) to complete an application investigation under 16-4-402, MCA, and prepare for final license approval or a final decision without increasing the possibility of department denial due to an incomplete application or licensee-initiated request.

Based on this reasoning, the department declines to narrow or modify these requirements.

COMMENT 4: Mr. Lawlor commented that NEW RULE I(4)(g) is unnecessary and inappropriate to include. He states that local building, health, and fire code officials all have their own role to play, and the department should not dictate what those other officials do.

Ms. DeMarois concurs with Mr. Lawlor and repeats the sentiment with respect to ARM 42.13.106 and building, health, and fire code compliance.

RESPONSE 4: The department does not dictate requirements to local building, health, and fire code officials. It has also been a longstanding policy, in excess of 20 years, that the department provides license application information with local officials to ensure that the department is approving an applicant who is likely to operate the establishment in compliance with all applicable laws of the state and local governments. See 16-4-401(2)(a)(i), MCA (emphasis added).

Administrative rule requirements such as those found in NEW RULE I(4)(g) are no different from suitability of premises requirements in other rules, which were promulgated under the department's authority under 16-1-303, MCA. The department declines to make any further revision.

COMMENT 5: Ms. DeMarois comments on NEW RULE I(6) that there is no timeframe for department approval and that one should be included since applicants are held to deadlines, such as ten days to respond or 20 days to respond.

The MTA commented that there are not enough department deadlines or accountability in the processing of an applicant's business in alcoholic beverages licensing and firm deadlines for the department are necessary.

RESPONSE 5: The department understands the requests for the inclusion of department deadlines in NEW RULE I. However, it is unrealistic to confine the entire process to a stated number of days given all of the conditions that must be satisfied prior to the approval of these requests. Notwithstanding, the department has amended NEW RULE I(6) to include a department response time from its receipt of the completed investigation, which is similar to ARM 42.12.132(5) for approval of location managers.

COMMENT 6: Mr. Lawlor commented that all of NEW RULE II(1) should be deleted, that (1)(a) is not a part of statute, and the department is attempting to enforce a TTB requirement. It is the same with (1)(b); and the department should not enforce something that is not in Montana law.

Mr. Lawlor believes that NEW RULE II(1)(c) is incorrect under 16-3-214(6), MCA, and the self-distribution limit does not apply to colocated licenses. Further, by definition, a licensee cannot "deliver" to themselves at a colocated premises because the manufacturer and the retailer are one and the same, and the premises is the same for both licenses. Further still, 16-4-401(9)(e), MCA, provides that "colocated licenses may transfer beer manufactured, liquor distilled, or wine produced by the licensee between the colocated manufacturing license and the retail

license without it being considered distributed or delivered as provided in this code."

RESPONSE 6: As the department stated in Response 3, 16-1-303, MCA, authorizes the department to make rules necessary to administer the Alcoholic Beverage Code, including prescription of terms and conditions for licenses issued and granted under the Code. And every license type in ARM Title 42, chapter 12 has reasonably necessary premises suitability/conditions for operating requirements. Mr. Lawlor's comments regarding NEW RULE II(1) are incorrect in that colocated licenses do not create an exception or some sort of loophole under the law for premises suitability or operating conditions.

Regarding (1)(a), Mr. Lawlor is incorrect. The department directs him to 16-4-401(9)(d)(iii), MCA, which mirrors the first sentence of NEW RULE II(1)(a). As for the requirement of sufficient on hand inventory to meet the demands of the public, this is necessary to meet 16-4-401(9)(d)(iii), MCA, criteria that colocated licensees provide and serve other manufacturer's products. Since each establishment's demand is different, the rule text provided grants the greatest amount of latitude for each licensee within the law.

In NEW RULE II(1)(b), Mr. Lawlor argues a generalized statement in rule of applicability of federal law as improper. The department contends the rule section does not enforce any federal alcohol law, generally, or that of the TTB, specifically. Because the department has adopted certain federal regulations (see ARM 42.13.221), and manufacturers must also comply with federal regulations, there is nothing inappropriate with the operational restriction. In fact, 16-1-201(2), MCA, permits the department to adopt rules as long they are not inconsistent with the Code or with the statutes of the United States of America or its regulations.

As to Mr. Lawlor's comments regarding the applicability of 16-3-214(6), MCA, in NEW RULE II(1)(c) and what is provided in 16-4-401(9)(e), MCA, the department agrees that a colocated licensee can transfer/deliver any amount within the colocated premises. However, delivery to other retailers or the public is limited to the restrictions in the respective manufacturer statutes at 16-3-213, 16-3-214, 16-3-411, 16-4-312, and 16-4-401(9)(e), MCA.

The department agrees the subsection can be clarified and has amended NEW RULE II(1)(c) upon adoption based on the comments and a review of the statutory authority.

COMMENT 7: Ms. DeMarois commented that NEW RULE II(1)(a) which requires licensees to stock alcohol other than its own was not in HB 305 and that the department may not, or should not, dictate business decisions that licensees make or how they are using the retail license that they purchased or acquired.

Converse to Ms. DeMarois, the Guild supports the requirement for colocated retail license holders to carry product from other manufacturers and understands its necessity to avoid any tied house relationship between manufacturer and retailer. The Guild requests an edit to the provision to ensure the department does not arbitrarily decide to determine that the inverse is not available.

RESPONSE 7: The department responds that regardless of what may have been in any iteration of HB 305, 16-4-401(9)(d)(iii), MCA, was included in the final

enactment of the legislation and Ms. DeMarois' disagreement with NEW RULE II(1)(a) is misplaced for the same reasons as Mr. Lawlor, as stated in Response 6.

The department responds to the Guild that 16-4-401(9)(d)(iii), MCA, and NEW RULE II(1)(a) are both clear and the Guild's request for an edit to the rule or some statement of "inverse applicability" is inconsistent with statutory and administrative rule construction - not to insert what has been omitted or to omit what has been inserted. See 1-2-101, MCA. Accordingly, the department declines the request.

Should the Legislature add exceptions or additional provisions to the statute, or should necessity dictate the modification of this straightforward requirement, the department will pursue any necessary rulemaking.

COMMENT 8: HDAM notes a typographical error in NEW RULE II(1)(a) that requests the department add "ic" to the word "alcohol" as the correct modifier for beverages.

RESPONSE 8: The department appreciates the comment and has corrected the typographic error upon adoption.

COMMENT 9: The MBA comments that NEW RULE II(1)(c) is unclear what "only" means. It could mean that breweries with colocated licensees may only deliver to retail licenses (and no one else), or it could mean that deliveries to retail licensees must comply with applicable laws. The MBA requests the department clarify that this change does not impose new limitations beyond the law and requests the department strike the word "only."

RESPONSE 9: The department directs the MBA to the fourth and fifth paragraphs of Response 6, and the revisions to NEW RULE II(1)(c) which the department believes are responsive to the comments and resolve the MBA's concerns.

COMMENT 10: Regarding NEW RULE III, Mr. Lawlor commented that the phrase, "at its sole expense" should be deleted from (1) because it is not part of the statute, and could result in the department requiring unnecessary and burdensome information such as source of funds documentation for submitting an alteration request. Further, the reference to " . . . the requirements of ARM 42.12.101" should only apply in a guest ranch designation request submitted as part of a license application; the materials described in ARM 42.12.101 would not be needed when an existing licensee is requesting guest ranch status via an alteration request.

In NEW RULE III(1)(a), the "temporary, mobile, or partial structures" should not be required to be noted on the plat map. By definition, "temporary" or "mobile" structures will not always be in the same place, so they cannot accurately be shown on a map.

Mr. Lawlor also commented that NEW RULE III(1)(d) should not be included. The department should not require anything beyond what the statute requires.

RESPONSE 10: Upon further review and based on the comments, the department has removed the text at the end of NEW RULE III(1) because

"applicable licensure requirements" which include ARM 42.12.101 requirements are stated in (2) and are sufficient.

The department also agrees with Mr. Lawlor's rationale regarding temporary, mobile, or partial structures and has removed that phrase from NEW RULE III(1)(a).

Regarding Mr. Lawlor's comments on NEW RULE III(1)(d), the department directs him to Response 3 as its response here and declines any further amendments other than described in this response.

COMMENT 11: Mr. Lawlor commented on ARM 42.12.101(3)(e)(iii) that bonded areas should not be included and the department should refrain from doing TTB's job.

Ms. DeMarois agrees with Mr. Lawlor and that bonded areas apply to distilleries and wineries, but they do not apply to breweries. Breweries have tax paid storage and non-tax paid or tax-determined storage and use of bonded areas confuses the rule and has caused delays in colocated license application approvals.

RESPONSE 11: The department directs Mr. Lawlor to the third paragraph of Response 6 as its response here to his TTB comments. Notwithstanding, and based on the comments, the department has amended ARM 42.12.101(3)(e)(iii) upon adoption to remove bonded areas from the floorplan requirements and will rely on identification of the remaining floorplan characteristics in (3)(e).

COMMENT 12: Mr. Lawlor comments that ARM 42.12.101(3)(j)(ii) through (iv) should be reworded and (ii) should include "as applicable" as in (iv) because not all entity types have certificates or a ledger to indicate ownership, and not all have operating, partnership agreements, bylaws, etc. For example, a single-member LLC would likely have none of those things.

Ms. DeMarois agrees with Mr. Lawlor's comments.

RESPONSE 12: While the department agrees that there is differing documentation applicable to each entity type, the department and/or the Department of Justice must still determine that the applicant entity and its underlying owners are qualified for licensure (see Response 3 for additional detail).

In the event that a single-member LLC is the applicant and does not have a written operating agreement, as Mr. Lawlor posits, then the department would accept – as it has done in the past – signed resolutions of the member that management of the entity defaults to the provisions of 35-8-307, MCA, and the Montana Limited Liability Company Act.

The department declines to amend the rule except for the revision to (3)(e)(ii) to add "as applicable."

COMMENT 13: Similar to Comment 3, the Guild comments its belief that the language used in ARM 42.12.101(3)(k) is too broad and the statement of reasonable necessity provided is not enough justification.

RESPONSE 13: The department refers the Guild to Response 3 as its response to this comment.

COMMENT 14: Mr. Lawlor commented that ARM 42.12.101(6) is not a permissible approach under 16-4-207, MCA, because the department does not have statutory authority to return an application it believes is incomplete. The department can ask an applicant to withdraw an application (as is done now). But if the applicant chooses not to withdraw the application, then the department must deny (not return) the application, so as to give the applicant its MAPA rights under the contested case provisions.

Ms. DeMarois generally concurred with Mr. Lawlor that the language is subjective about when is an application deemed complete and that applicants have had the opportunity to supplement or complete that application. It does not seem fair or appropriate to reject an application if there is additional material needed.

RESPONSE 14: The department responds that Mr. Lawlor's and Ms. DeMarois' characterization(s) of the process summary in (6) and the department's authority to return an application are an incomplete description of department procedure and authority (see Response 3, generally). The department also directs Mr. Lawlor and Ms. DeMarois to the statement of reasonable necessity for the inclusion of (6) (that pro se applicants have requested a summary explanation such as what the department provided). Furthermore, the department directs Ms. DeMarois to the definition of "complete application" which contemplates the supplementation of an application.

Section 16-4-402, MCA, and ARM 42.12.101 provide more detail about department and applicant interplay, complete applications, and completion deadlines, none of which substantially conflicts with ARM 42.12.101(6). While the department disagrees with Mr. Lawlor's contention that the department does not have statutory authority to return an application it believes is incomplete, the department has stricken the last sentence of (6), upon adoption, for improved clarity as it continues to evaluate its processes.

COMMENT 15: Mr. Lawlor commented that the new wording in ARM 42.12.106(12) about "information and documentation requested by the department" is too broad. The department should not require anything beyond what the statute requires.

RESPONSE 15: The department directs Mr. Lawlor to Response 3 as its response to this comment.

COMMENT 16: The MTA commented that the definition in ARM 42.12.106(42) needs Nordic skiing to be better defined and that "other snow sports" is too broad and outside of what the legislature had contemplated.

The GIA agrees with the MTA's comments.

Ms. DeMarois commented an appreciation for the inclusion of Nordic skiing in the definition which she notes is logical. Ms. DeMarois expressed some concern about the inclusion of other snow sports or other snow activities in the definition.

RESPONSE 16: The department's proposed definition of "ski hill" was based

on a federal definition that is used with ski hill operators leasing federal land and includes alpine and Nordic skiing.

The department disagrees with the MTA and the GIA that Nordic skiing requires any further definition, given the lack of need to define alpine skiing. Alpine and Nordic skiing are common terms for the operators of ski hills and the public that engage in those activities. The department also appreciates Ms. DeMarois' concurrence with the inclusion of Nordic skiing.

Based on the MTA and the GIA's comments, the department has revised the definition upon adoption to remove "and other snow sports" but declines any further amendment to the definition.

COMMENT 17: HDAM commented that "seasonal event" should be kept as an example of a special event in ARM 42.12.106(43). Seasonal event could encompass many things other than picnics, fairs, festivals, or receptions, such as a farmer's market or an art in the park. This example offers more flexibility in the type of event that could qualify as a seasonal event.

Mr. Lawlor commented similarly to HDAM and requested an explanation of the proposed removal of seasonal event from the list of examples in the definition. Mr. Lawlor also questioned whether the change would affect seasonal [sic] events. Is this change intended to narrow or broaden the definition? Would this change have any effect on something like a Christmas party or a harvest carnival or other similar seasonal events?

The Guild commented its opinion that the justification for removal is insufficient. It prefers to keep more options included in rule rather than fewer.

RESPONSE 17: The department directs Mr. Lawlor and the Guild to the fifth paragraph of the department's reasonable necessity statement for the amendment where the department noted - based on its experience - that the example did not provide measurable guidance or clarification for licensees or the department. And the department notes that any special event could be construed as a seasonal event based on when the event is proposed - like a "Christmas in July" special event. The department was - and remains - satisfied that the examples of picnic, fair, festival, reception, or sporting contest provide the necessary level of clarity for examples of a special event without inclusion of non-exhaustive examples.

Regarding Mr. Lawlor's question about the change affecting the special event examples he mentions, the department responds "no." The removal of the example was not intended to either narrow or broaden the rule for all of the reasons stated in the department's reasonable necessity statement and the first paragraph of this response.

Notwithstanding the foregoing, and based on the comments received, the department has reinstated seasonal event as an example in the list of special events.

COMMENT 18: As an extension of Comment 17, Mr. Lawlor also requests the department place a number on how many events is infrequent and out of the ordinary.

RESPONSE 18: The department declines to place an arbitrary number on special events because the department's analysis of "infrequent and out of the ordinary" are fact-based analyses in that special events apply to both special permits and catered events, and what may be acceptable for a catered event may not be for a special permit.

COMMENT 19: The MTA and the GIA commented that ARM 42.12.111(2)(g) errantly omits legislative changes to 16-4-401, MCA, which increased ownership interest threshold percentages from ten percent to 15 percent.

RESPONSE 19: The department has amended the percentages in (2)(g), upon adoption, to reflect 16-4-401, MCA, as amended in 2023.

COMMENT 20: The Guild states that it has strong differences of opinion in the department's interpretation of the changes to 16-4-401, MCA, and disagrees that text in ARM 42.12.143(2)(c)(i) and (3)(b)(i) should be eliminated. The Guild believes elimination of this option in the rule enacts new law.

The MBA commented similarly with an analysis and a request. The MBA believes the rule is inconsistent with 16-4-401, MCA, which allows for a spouse to own a license, and the department has incorrectly determined that the spouse option for licensure is no longer necessary. Unless the department can assure the MBA that the reference to "except as provided in 16-4-401, MCA," provides adequate confirmation that spouses of manufacturers are still allowed to own a retail license, we request that the original language "except that a licensee's spouse may possess an ownership interest in one or more manufacturer licenses" be restored.

RESPONSE 20: The department responds to the Guild that the amended rule does not enact new law, as that task is reserved to the Legislature, and administrative rules are authorized and implemented by statute.

The department responds to the MBA that the amended rule does not conflict with the 16-4-401(8)(e), MCA, allowance for ownership by spouses. In fact, removal of the text from within the rule increases deference to the statute while not unnecessarily repeating statute. See 2-4-305(2), MCA.

However, the department agrees that ARM 42.12.143(2)(c)(i) and (3)(b)(i) could benefit from more specific deference to statute and has amended the rule subsections based on the comments.

COMMENT 21: Mr. Lawlor commented his belief that ARM 42.12.143(7) is confusing and would make more sense to just say a "licensee" rather than "a person with an ownership interest in a license," because when it is a colocated license the same person owns both.

The Guild commented that while they agree with all the allowances, as in previous sections to (7), the allowances do not negate the inverse. That is, there is no prohibition on a person with an ownership interest in a distillery from owning a brewery; on a person having an ownership interest in more than one distillery. As such, there is no prohibition on a person having an ownership interest in a distillery, a colocated all-beverage license, and an ownership interest in a different

manufacturing license (brewery, distillery, or winery) at a different location if the colocated retail and manufacturing licenses have complete overlap in ownership. The Guild requests the department confirm that simply because this allowance exists does not disallow other business that has been previously allowed.

RESPONSE 21: The department responds to Mr. Lawlor that the terminology/phrasing used in the rule is the same as what is in 16-4-401(9), MCA, and the department declines to revise it based on Mr. Lawlor's rationale.

The department responds to the Guild that HB 305 created colocated licenses in 16-4-401(9), MCA, to allow a limited exception of cross-tier (i.e., manufacturer/retailer) ownership in a license when the licensee has 100 percent of the same ownership between the manufacturing license and the retail license. This exception comports with the "safe harbor" exceptions in federal law (see e.g., 27 CFR 6.25 and 6.27). The Guild's examples do not comply with the statutory exception in 16-4-401(9), MCA, and do not comport with the longstanding policy that an applicant for a manufacturing license may not possess an ownership interest in any establishment licensed for retail sales (see 16-4-401(8)(g), MCA). The department also believes the Guild's requests exceed the plain language of 16-4-401, MCA, and the department's rulemaking authority.

COMMENT 22: The MBA commented its support to the amendment of ARM 42.12.149(4) which implements HB 43 by eliminating the requirement for refrigeration in a warehouse.

RESPONSE 22: The department appreciates the comments in support.

COMMENT 23: The MBA commented on ARM 42.12.149(7) that the reasonable necessity statement is meant to implement HB 579. However, HB 579 applied specifically to distilleries, while this proposed change affects all manufacturers' sample rooms. The MBA's concern is that the proposed rule goes beyond the intent and scope of HB 579.

RESPONSE 23: The department appreciates the MBA's comments and agrees as to the scope of HB 579 applying to distilleries. Based on the comments, the department has amended ARM 42.12.149(7) to clarify its applicability to distilleries only.

COMMENT 24: HDAM commented on ARM 42.12.150(1) that it believes the insertion of "association" after alcoholic beverage industry is duplicative and unnecessary since the beginning of that phrase already notes that an entity could be "a nonprofit association." HDAM comments that alcoholic beverage manufacturers in (1) should include an "s."

RESPONSE 24: Based on the comments provided, the department has corrected the association reference but notes that the alcoholic beverage manufacturers reference is correct as proposed.

COMMENT 25: The MTA commented on ARM 42.12.150(9) that (a) it should not apply to licensees; (b) that manufacturers/brewers have 16 oz. canned beverages – what about them?; (c) any limitations should be for non-licensees and events not at a licensed premises; and (d) it does not serve a productive purpose considering that the licensees are already allowed to generally sell alcohol to people.

The GIA concurred in the MTA's comments.

The Guild similarly commented that the amount of restrictions seems arbitrary and not based in any law. Additionally, the "per product, per person" language seems unenforceable. The Guild proposes eliminating this item from the proposed rules altogether.

RESPONSE 25: Upon further review, the department agrees with the MTA and GIA that regulating samples should be directed at industry trade shows that are not conducted in locations provided in ARM 42.12.150(5)(b), as licensees are accountable under the law for the sale of alcohol to people. Based on these comments, the department has removed (9)(d) from the rule and inserted the provision as new (10), upon adoption, to isolate the requirement to non-licensees.

As far as commenters' criticisms of the sample serving size, and to respond to the Guild's contention that the requirements are not based in law or are enforceable, the department directs commenters to 16-1-307(2)(b), MCA, which allows the department to establish quantities for samples at industry trade shows.

The sample serving amounts the department ultimately chose reflect longstanding industry serving sizes based on equivalency of alcohol content for liquor, beer, and wine, and do not reflect the number of samples that industry trade show attendees may obtain from each vendor or how it is that the vendor provides the sample (i.e., bottle, can, cup).

The department declines to respond to other comments that are outside the scope of the rulemaking and declines any further amendment to the rule, except as described above.

COMMENT 26: The MTA commented on ARM 42.12.152(3) that licensees are interested in using noncontiguous alcoholic beverage storage areas in the practice of catering and they are going to have related equipment and supplies that are not just alcoholic beverages. Further, the size of the facilities could be substantial. The word "only" in the section goes too far; everything should be alcohol adjacent, including trailers and vans.

The GIA similarly commented that the restriction on other nonalcoholic items in a noncontiguous alcoholic beverage storage area should be removed. This requirement is not included in the new law and the department does not have the authority to add additional requirements. It is reasonable to allow the licensee to store other items such as nonalcoholic beverages, mixes, glasses, paperwork, backup computers, delivery vehicles, catering items, etc. - items the licensees would normally have on its main licensed premises.

RESPONSE 26: The department agrees that a noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility may be used for a licensee's storage of supplies and equipment that are related to the sale

and service of alcoholic beverages. The department also agrees that the size of a noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility may vary depending on the licensee's operations, and could include catering delivery vehicles. The department's primary concern is that no alcoholic beverages are sold or consumed at any time at a noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility and that they are restricted to the licensee and its employees.

Based on the comments received, the department has amended ARM 42.12.152(3) to allow storage of equipment, supplies, and vehicles.

COMMENT 27: Mr. Lawlor and the MTA commented their respective opinions which generally object to ARM 42.12.209(6) which requires the current owner of a license to be current on the filing or payment of Montana state taxes or liquor fees, fines, or penalties. They question the appropriateness and offer that a purchaser, as applicant under a transfer application, has no control over a seller's tax status.

RESPONSE 27: The department respectfully responds that the comments are outside the scope of the rulemaking. Notwithstanding, the requirements have been in the administrative rules for 20 years based on the department's interpretation that all applicants meet - and licensees continue to meet – all requirements applicable to licensure, including tax compliance.

Even if the department were amenable to making such a change in response to the comments, it could not be accomplished under the Montana Administrative Procedure Act (MAPA) without adversely affecting the timely implementation of these rules before the closure of most agency rulemaking in the final quarter-year preceding a legislative session (see 2-4-305(11), MCA).

The department continues its willingness to engage with industry stakeholders and policymakers about tax compliance for sellers of licenses.

COMMENT 28: Ms. DeMarois comments on ARM 42.13.106(6) and (7) that changes to 16-3-311, MCA, were intended to make life easier for licensees. She faults the department for reaching out to building health and fire officials, asking them if a licensee needs building permits. Ms. DeMarois contends there is confusion amongst the local agencies and the department about what exactly is needed and it is troubling to ask an applicant to provide proof or verification that they did not need a building permit.

Mr. Lawlor concurs with Ms. DeMarois and repeats his general objection that the department is involved at all in building code compliance regardless of whether the business has an alcohol license.

RESPONSE 28: The department agrees that the rule's clarity and alignment with 16-3-311, MCA, can be improved. Based on the comments received and the department's additional review of statute, the department has revised ARM 42.13.106(6) and (7) upon adoption.

COMMENT 29: The department received several comments of general

objection to the proposed amendments to ARM 42.13.211.

Mr. Lawlor, the MTA, and the MBA commented that the amendments do not seem to take into account colocated (i.e., stacked) licenses and that there is a broader range of names that a colocated licensee may call themselves, or advertise, and not be misleading to the public. The MBA requested an amendment upon adoption similar to ARM 42.12.145, that this restriction does not apply to "advertisements excepted in 16-3-244, MCA."

Ms. DeMarois concurred with the previous commenters and also that requirements for a licensee to post its license in the business is so that people can see what kind of license it is, who owns the license, and what is available under the license. Ms. DeMarois also commented frustration that the department has been inconsistent in the approval of names for licensed businesses citing some names are allowed, some are not, and that previously approved names have been subsequently disapproved.

The Guild commented its belief that the department is dictating language of business names where no need exists, questions the rationale for the rule changes, and questions who the department is attempting to protect with the rule amendments. The Guild views the amendments as burdensome requirements upon businesses without a compelling public interest.

The MBWDA questions whether there are examples of how this might apply to wholesalers/distributors. Specifically, if a wholesaler/distributor advertises via social media or other means, an event happening at a retail account, would this be seen as a violation?

HDAM notes that ARM 42.13.211(2) should have the word "as" inserted after ". . . a brewery advertising as . . . ."

RESPONSE 29: The proposed amendments to ARM 42.13.211 were not directed at colocated licensees or their premises, and the department stands by its statement of reasonable necessity for the changes. However, the department understands how proposed (2) could be construed as a pitfall for industry and raises questions such as the MBWDA offers. Accordingly, the department has struck proposed (2) from the adopted version of the rule and has renumbered the remaining sections.

In response to comments about advertising and signage requirements for colocated licensed establishments, there is no license requirement regarding signage in either ARM 42.13.211 or NEW RULE II. What does exist in administrative rule can be found in the suitability of premises rules, such as in ARM 42.12.145. Those conditions reflect longstanding premises requirements promulgated under 16-1-303, MCA, as necessary terms and conditions for licenses issued and granted under the Code. The department contends that premises suitability, whether colocated or not, is a fact-based analysis that is routinely determined during an inspection of the premises and whether " . . . the type of business is readily determinable due to indoor and outdoor signage and the premises' general layout and atmosphere." ARM 42.12.145(2)(j).

Because the existing suitability rules in ARM Title 42, chapter 12 sufficiently address issues of signage, the department declines to amend this rule any further than as described above.

COMMENT 30: The MBA commented on ARM 42.13.601 that the change from 100 barrels to 200 gallons in (4) is a good one that simply reflects HB 97 changes, and it also agrees with the definition for "distinct collaboration beer." The proposed definition is consistent with the intent of SB 312 to limit the number of collaboration beers a guest brewery may serve in their sample room to six annually.

However, the MBA does not think the requirement of a seven-day notice prior to the collaboration is necessary. SB 312 addresses breweries that participate in a collaboration to serve the produced beer in their own sample room and not whether breweries may participate in a collaboration. Thus, the proposed activity referred to in the reasonable necessity statement should be understood to refer to retail activity rather than manufacturing. Since beer typically takes four to six weeks from the brew day to having a product ready to serve, there should be sufficient time for the department to properly notify any impacted groups before any of the beer produced in the collaboration is ready to be packaged, delivered, and served to the public.

The MBA requests that the department strike "at least seven business days" from the proposed rule.

RESPONSE 30: The department appreciates the constructive comments from the MBA and understands the request for modification. Based on the comments, the department has modified "seven business days" in ARM 42.13.601(4)(j) to "three business days."

COMMENT 31: The department received comments objecting to the amendment to ARM 42.12.110(2) to remove the three-day mailing time from mailing a notice. Commenters believe that licensees should be afforded additional mailing time in the service of, and response to, notices as provided in (3).

RESPONSE 31: The department understands the commenters' concerns, and the department did not intend to propose a decrease in the amount of time to respond to a department action. The department adopted ARM 42.12.110 in 2005 with a three-day service completion time because it reflected Montana Rules of Civil Procedure 6(e)(2005) for responding to legal documents (e.g., notices). This was in addition to the 20-day response deadline in (3) which reflected longstanding department practice. Because calculating service completion dates was still somewhat confusing to licensees, the department began some time ago to reference 23 days as a response requirement in its notices even though Rule 6(e) was removed from the Montana Rules of Civil Procedure in 2011. The lack of a proposed amendment to ARM 42.12.110(3) to aggregate response times to reflect department process was an unintentional oversight.

Based on the comments and the need for consistency between the rule and department's acknowledgement portion of its notices, the department has amended ARM 42.12.110(3) to add three days to the 20-day response deadline.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State September 10, 2024.