

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 42.12.222 and 42.13.101 ) PROPOSED AMENDMENT  
pertaining to implementation of a )  
point-based penalty system and )  
revising procedures relating to )  
revocation, lapse, or suspension of )  
alcoholic beverage licenses )

TO: All Concerned Persons

1. On September 30, 2019, at 1:30 p.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on September 13, 2019. 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. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

42.12.222 PROCEDURE UPON REVOCATION, LAPSE, OR SUSPENSION OF LICENSE (1) Except as provided in (2), ~~When~~ any alcoholic beverages license is suspended or revoked by the department, the department shall cause a notice to be posted on the inside of the licensed premises so that the notice can be seen from the outside, stating that the license has been suspended or revoked. The notice must identify the number of the license, the name of the licensee, the reason for the suspension or revocation, and the period of suspension. The suspension or revocation notice issued by the department must be dated and signed. The notice must be posted at all times during the period of suspension. In the case of a revocation, the notice must be posted on the premises for a period of 10 days. If the notice is removed or caused to be removed by the licensee or any employee of the licensee during a period of suspension, the license shall be permanently revoked and the licensee must be so notified in writing at the time the notice is posted. The license or licenses suspended will be held by the department during the period of suspension.

(2) The department, in its sole discretion, may waive the notice and posting requirements provided in (1).

(3) When a license has been revoked or lapsed, the department shall not accept an application from the underlying individuals qualified for licensure pursuant to 16-4-401, MCA, for one year from the date of revocation or lapse. After the one-year moratorium, an application will only be accepted if the applicant demonstrates to the department that sufficient steps have been taken to prevent future violations or to operate a going establishment.

(4) A revoked or lapsed license affects a license quota area as follows:

(a) if an action against the license causes the creation of the last remaining license for that license type in the quota area, the department shall publish the availability of a retail alcoholic beverage license in accordance with ARM 42.12.502; or

(b) if the number of licenses issued for a quota area exceeds statutory limitations, the license will cease to exist, and the department will adjust the license quota accordingly.

(5) If a revoked or lapsed beer license originally issued within an incorporated city quota area before October 1, 1997, is reinstated, the license may not be used for premises where gambling is conducted.

AUTH: 16-1-303, MCA

IMP: 16-1-303, 16-4-406, MCA

REASONABLE NECESSITY: The department proposes to amend (1) to include an exception to revocation and suspension notice posting requirements proposed in (2). The department finds the proposed amendments necessary to address circumstances where it may be impossible or impractical for the department to post a notice, such as when a licensee no longer operates the business associated with the license or, in the case of leased space, when an entirely different tenant and business occupies the space. The result will also allow the department to expedite quota area license adjustments described in proposed (4).

The department proposes (3), (4), and (5) which comprise language relocated from ARM 42.13.101 to 42.12.222, with revisions that the department believes improves clarity by removal of industry jargon. The department proposes these amendments because ARM 42.12.222 is topically better suited than ARM 42.13.101. The department intends the rule content to be easier to locate and in more plain language.

The department proposes (4)(a) to align department processes for a last available license based on a revocation or lapse with the competitive bidding process provided in 16-4-430, MCA, and ARM 42.12.502. Section 16-4-430, MCA, resulting from the 2019 Legislative session requires licenses, available due to these circumstances, to be issued through the competitive bidding process.

42.13.101 COMPLIANCE WITH LAWS AND RULES (1) All licensees, their agents, and employees, and concessionaires must conduct the premises operate in compliance with the rules of other state and local agencies and abide by all:

(a) through (d) remain the same.

(2) Proof of violation by a licensee, a concessionaire, or the licensee's or concessionaire's agent or employee of any of the provisions of the above laws, ordinances, or rules is sufficient grounds for revocation or suspension of the license or department termination of a concession agreement, and licensees or concessionaires may be warned, reprimanded, or assessed a civil penalty in accordance with 16-4-406, MCA.

(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. For purposes of determining penalties under the progressive penalty schedule, the department uses a three-year lookback. Proposed penalties are assessed based upon the date the violation occurs. For violations that occur over time, such as an undisclosed ownership interest, the violation date shall be the date the department issues its notice of proposed department action. The department may seek license revocation based upon a combination of any four violations during a three-year period.~~

#### Progressive Penalty Schedule

Violation	1st Offense	2nd Offense	3rd Offense	4th Offense
Sale to Underage Person	\$250	\$1,000	\$1,500/20-day Suspension	Revocation
Sale to Intoxicated Person	\$250	\$1,000	\$1,500/20-day Suspension	Revocation
Open after Hours	\$150	\$600	\$1,000/12-day Suspension	Revocation
Sale or Consumption after Hours	\$150	\$600	\$1,000/12-day Suspension	Revocation
Refilling of Bottles	\$250	\$1,000	\$1,500/20-day Suspension	Revocation
Unapproved Premises Alteration	\$300	\$600	\$1,000/12-day Suspension	Revocation
Undisclosed Location Manager	\$150	\$600	\$1,000/12-day Suspension	Revocation

Improper Use of Catering Endorsement	\$150	\$600	\$1,000/12-day Suspension	Revocation
Accept More than 7 Days Credit	\$250	\$1,000	\$1,500/20-day Suspension	Revocation
Extend More than 7 Days Credit	\$250	\$1,000	\$1,500/20-day Suspension	Revocation
Exceed Sample Room Service Limits	\$150	\$600	\$1,000/12-day Suspension	Revocation
Undisclosed Ownership Interest	\$1,500/Revocation			
Denial of Inspection of Premises or Records	\$1,500/Revocation			

(3) The department shall use a point-based penalty system for determination of proposed penalties. The department may use a range of penalties for any combination of violations of any laws, ordinances, or administrative rules. For purposes of determining penalties under the point-based penalty system, 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.

(a) The point-based penalty system is not an exhaustive list of the grounds for administrative action. The department may propose a penalty greater or less than those listed based upon aggravating or mitigating circumstances.

(b) The following schedule details violations with the corresponding point values and monetary penalty amounts:

<u>Violation</u>	<u>Points</u>	<u>Monetary Penalty</u>
<u>Sold Alcoholic Beverages to an Underage Person</u>	<u>5</u>	<u>\$1,500</u>
<u>Sold Alcoholic Beverages to an Intoxicated Person</u>	<u>5</u>	<u>\$1,500</u>
<u>Denied Inspection of Premises</u>	<u>5</u>	<u>\$1,500</u>
<u>Denied Inspection of Records</u>	<u>5</u>	<u>\$1,500</u>
<u>Entered into a Concession Agreement Without Department Approval</u>	<u>5</u>	<u>\$1,500</u>

<u>Failed to Seek Prior Department Approval of a New Owner Pursuant to 16-4-401, MCA</u>	<u>5</u>	<u>\$1,500</u>
<u>Sold/Served Alcoholic Beverages at an Unlicensed Location</u>	<u>5</u>	<u>\$1,500</u>
<u>Stored Alcoholic Beverages at a Location Not Approved by the Department</u>	<u>4</u>	<u>\$1,200</u>
<u>Delivered Alcoholic Beverages to a Retailer at an Unlicensed Location</u>	<u>4</u>	<u>\$1,200</u>
<u>Failed to Ensure Licensee, Employee, or Employee's Immediate Supervisor Possess Valid Responsible Sales and Service Proof of Training Document</u>	<u>4</u>	<u>\$50 (1<sup>st</sup>) \$200 (2<sup>nd</sup>) \$350 (3<sup>rd</sup> +)</u>
<u>Failed to Notify the Department or Local Law Enforcement Before Implementing an Access Control System</u>	<u>4</u>	<u>\$1,200</u>
<u>Sold/Served Alcoholic Beverages After Hours</u>	<u>4</u>	<u>\$1,200</u>
<u>Allowed Alcoholic Beverages to Be Consumed After Hours</u>	<u>4</u>	<u>\$1,200</u>
<u>Sold Alcoholic Beverages Not Approved by the Department</u>	<u>4</u>	<u>\$1,200</u>
<u>Sold Beer or Wine to the Public (Distributor/Wholesaler)</u>	<u>4</u>	<u>\$1,200</u>
<u>Allowed the Self-Service of an Alcoholic Beverage on the Premises</u>	<u>4</u>	<u>\$1,200</u>
<u>Failed to Seek Approval of a Location Manager</u>	<u>4</u>	<u>\$1,200</u>
<u>Refilled Liquor Bottles</u>	<u>4</u>	<u>\$1,200</u>
<u>Failed to Maintain an Active Participation in the Business</u>	<u>3</u>	<u>\$900</u>
<u>Exceeded Sample Room Service Limits</u>	<u>3</u>	<u>\$900</u>
<u>Served Alcoholic Beverages Not Manufactured on the Premises</u>	<u>3</u>	<u>\$900</u>
<u>Failed to Report New Officers or Board Members</u>	<u>3</u>	<u>\$900</u>
<u>Catered an Event Without Notifying Local Law Enforcement</u>	<u>3</u>	<u>\$900</u>
<u>Failed to Timely Seek Approval of a Location Manager</u>	<u>2</u>	<u>\$600</u>
<u>Catered an Event More Than 100 Miles From the Licensee's Premises</u>	<u>2</u>	<u>\$600</u>
<u>Catered an Event Without a Sponsor or Agreement in Place</u>	<u>2</u>	<u>\$600</u>

<u>Catered an Event Longer Than Allowed in ARM 42.12.128</u>	<u>2</u>	<u>\$600</u>
<u>Altered the Premises Without Approval</u>	<u>2</u>	<u>\$600</u>
<u>Failed to Maintain Possessory Interest in the Premises</u>	<u>2</u>	<u>\$600</u>
<u>Allowed Unapproved Individuals to Participate in Profits or Losses of the Business</u>	<u>2</u>	<u>\$600</u>
<u>Served Beer or Wine to a Patron Who Did Not Order Food (RBW)</u>	<u>2</u>	<u>\$600</u>
<u>Operated Premises With More Seats Than Licensed (RBW)</u>	<u>2</u>	<u>\$600</u>
<u>Failed to Meet the 65% Annual Gross Income Food Requirement (RBW)</u>	<u>2</u>	<u>\$600</u>
<u>Accepted More Than 7 Days Credit (Retailer)</u>	<u>2</u>	<u>\$600</u>
<u>Extended More Than 7 Days Credit (Distributor/Wholesaler)</u>	<u>2</u>	<u>\$600</u>
<u>Allowed Consumption of Alcoholic Beverages on Premises Not Sold or Provided by the Licensee</u>	<u>2</u>	<u>\$600</u>
<u>Shipped Table Wine to Consumers Without a Direct Shipping Endorsement</u>	<u>2</u>	<u>\$600</u>
<u>Failed to Maintain at Least Twelve Seats, Exclusive of any Seats at Gambling Machines</u>	<u>2</u>	<u>\$600</u>
<u>Failed to Submit or Timely Submit an Abbreviated Application for License Modification Pursuant to ARM 42.12.118</u>	<u>1</u>	<u>\$300</u>
<u>Failed to Comply With Approved Loan Standards</u>	<u>1</u>	<u>\$300</u>
<u>Failed to Seek Department Approval for a Noninstitutional Lender</u>	<u>1</u>	<u>\$300</u>
<u>Failed to Submit or Failed to Timely Submit Monthly Catering Reports</u>	<u>1</u>	<u>\$300</u>
<u>Sold Liquor at Less Than Posted Price</u>	<u>1</u>	<u>\$300</u>
<u>Accepted Return of Alcoholic Beverages Beyond Ordinary/Usual Reasons</u>	<u>1</u>	<u>\$300</u>
<u>Failed to Notify the Department Before 90 Days of Nonuse Occurs</u>	<u>1</u>	<u>\$300</u>
<u>Failed to Operate a Going Establishment</u>	<u>1</u>	<u>\$300</u>
<u>Failed to Post License or Age Placard in a Conspicuous Place on the Premises</u>	<u>1</u>	<u>\$300</u>

<u>Failed to Notify the Department or Local Law Enforcement an Access Control System Was Removed</u>	<u>1</u>	<u>\$300</u>
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(c) The following penalty point ranges are used for determination of proposed suspension periods and revocation:

(i) upon the accumulation of 15 to 19 points during a three-year period, the department may propose a suspension not to exceed 30 days;

(ii) upon the accumulation of 20 to 24 points during a three-year period, the department may propose a suspension not to exceed 60 days;

(iii) upon the accumulation of 25 to 29 points during a three-year period, the department may propose a suspension not to exceed 90 days; and

(iv) the department may seek license revocation, or concession agreement revocation, or both, based upon the accumulation of 30 or more points during a three-year period.

(d) Suspensions shall occur on consecutive days and when the licensee or concessionaire are normally open for business.

(e) For violations that are ongoing and not resolved by the payment of a monetary penalty or imposition of a suspension, the department may propose revocation of the license, or concession agreement, or both, in addition to any other penalty authorized by Montana law. Ongoing violations that are not resolved by the payment of a monetary penalty or imposition of a suspension include, but are not limited to:

(i) failing to submit a completed application to obtain department approval of a new owner who is subject to the requirements in 16-4-401, MCA;

(ii) failing to submit a completed application to obtain department approval of a premises alteration;

(iii) failing to submit a completed annual license renewal form, or pay the annual license renewal fee, or both; or

(iv) failing to electronically submit a completed alcoholic beverage tax return, or pay alcoholic beverage taxes, or both.

(f) Prior to the issuance of a notice of proposed department action, the department may enter into informal negotiations to resolve a violation.

(g) If the department issues a proposed department action after October 19, 2019, the department shall assign a point value in accordance with (b) and (c) to all admitted, settled, and adjudicated progressive penalty schedule violations during the three-year lookback prior to issuing the proposed department action.

~~(4) When a license has been revoked or lapsed, the department shall not accept an application from those owners vetted pursuant to 16-4-401, MCA, for one year from the date of revocation or lapse. After the one-year moratorium, an application will only be accepted if the applicant demonstrates to the department's satisfaction that sufficient steps were taken to prevent future violations or to operate a going establishment.~~

(4) The failure of an employee to possess a valid responsible alcohol sales and service proof of training document constitutes a violation, the penalty for which is assessed against the licensee. Multiple untrained employees on a particular date shall constitute a single violation; continued noncompliance shall constitute an

additional violation.

~~(5) A revoked or lapsed license affects a license quota area as follows:~~

~~(a) if it causes the area to be under quota, a notice of availability of a license will be published in the newspaper of general circulation in the quota area and invite applications for the available license; or~~

~~(b) if the area is over quota, the revoked or lapsed license will cease to be available for issuance.~~

~~(6) A revoked or lapsed beer license issued within a city quota area before October 1997, if reinstated, will not allow any gaming or gambling activity on the premises.~~

~~(7) The failure of an employee to possess a valid alcohol server training certificate constitutes a violation, the penalty for which is assessed against the licensee. Multiple untrained employees on a particular date shall constitute a single violation; continued noncompliance shall constitute an additional violation. Regardless of other violations within the three-year period, the civil penalties assessed for a violation of the Responsible Alcohol Sales and Service Act shall be \$50 for the first offense, \$200 for the second offense, and \$350 for the third offense.~~

~~(8) A licensee shall receive a reprimand for the violation of selling to an underage person only if:~~

~~(a) it is the licensee's first offense of any kind under that license in the past three years;~~

~~(b) the person who made the sale possesses a valid proof of training document; and~~

~~(c) the licensee has not previously received a reprimand for sale to an underage person under that license.~~

~~(5) The department may reprimand a licensee, or concessionaire, or both.~~

~~(9) In the event a reprimand is issued:~~

~~(a) the incident shall not be considered to be a first an offense for purposes of the progressive point-based penalty schedule system unless the licensee or concessionaire commits the same any offense within one year of the date of the offense leading to the reprimand; and~~

~~(b) remains the same.~~

~~(6) The department may warn a licensee, or concessionaire, or both. The department may consider prior warnings as an aggravating circumstance.~~

~~(10) (7) Aggravating circumstances may result in the imposition of maximum monetary penalties, maximum suspension time or revocation, and will not bind the department to the progressive point-based penalty schedule system.~~

~~(11) (8) Aggravating circumstances include, but are not limited to:~~

~~(a) no effort on the part of a licensee, or concessionaire, or both to prevent a violation from occurring;~~

~~(b) remains the same.~~

~~(c) a licensee's, or concessionaire's, or both involvement in the violation;~~

~~(d) and (e) remain the same.~~

~~(f) lack of cooperation by the licensee, or concessionaire, or both in an investigation; and~~

~~(g) a violation's significant negative effect on the health and welfare of the community in which the licensee, or concessionaire, or both operates; and~~

(h) a licensee's lack of participation or involvement in the business.

~~(42)~~ (9) Nothing in this rule prevents the department from revoking, suspending, or refusing the renewal of a license, or concession agreement, or both if revocation, suspension, or refusing renewal is expressly allowed in law or rule with reference to a prohibited act.

AUTH: 16-1-303, 16-4-1009, MCA

IMP: 16-1-302, 16-3-301, 16-4-406, 16-4-418, 16-4-1004, 16-4-1008, 16-6-314, MCA

**REASONABLE NECESSITY:** The department proposes to amend ARM 42.13.101 by removing the existing progressive penalty schedule in (3) and replacing it with a point-based penalty system based on industry feedback provided to the department that the existing system is too inflexible and does not take into consideration the public harm associated with the violation. The existing progressive penalty schedule subjects a licensee to monetary fees, suspensions, and ultimately revocation of the license when four violations occur within a three-year lookback period. Revocation of the license was administratively required, regardless of the types of violations the licensee committed.

To achieve a violation and penalty system that meets the department's regulatory duties for alcoholic beverage compliance while addressing industry concerns, the department proposes a point-based penalty system where licensees are assessed both points and monetary penalties for violations of the Montana Alcoholic Beverage Code or the department's related administrative rules. The proposed system assigns a point value to each violation type between one and five and a monetary penalty of \$300 for each point. The department also proposes implementing a tiered process where a licensee may be subject to suspension or revocation of the license depending on how many points the licensee has accumulated in the three-year lookback period. The three-year lookback period is in existing rule and the department believes is necessary to maintain in this proposed point-based penalty system.

In the point-based penalty system, the department proposes that violations that pose the most public harm are assessed five points each. Examples include selling alcoholic beverages to an underage person, selling alcoholic beverages to an intoxicated person, or denying department access to the premises or records. Violations that pose the least public harm are assessed one point each. Examples include failing to submit catering reports or failing to post the alcoholic beverage license or age placards in the licensee's premises.

The department's table of proposed violations in (3)(b) is not an exhaustive list but lists more violation types compared to the existing progressive penalty schedule. The department believes the expanded list of violations is necessary to provide licensees with a better understanding of point accumulation and monetary penalties that will be assessed for the various types of violations that could occur. This larger list is in response to industry feedback and, the department contends, will create a more transparent system for licensees.

In addition to changing from a progressive penalty schedule to a point-based penalty system, the department proposes the following amendments:

The addition of the term "concessionaire" in many areas of the rule, where applicable, due to the passage of House Bill 727 during the 2019 Legislative Session. House Bill 727 also amended 16-4-406, MCA, which gives the department authority to also take administrative action against a concessionaire for violations of the Montana Alcoholic Beverage Code or Administrative Rules of Montana.

Section (3) has been revised to reference the new proposed point-based penalty system; otherwise, the three-year lookback process that existed in the progressive penalty schedule will continue to be used. This is necessary for calculating how many points a licensee has accumulated to determine if suspension or revocation is necessary as a next step in the administrative action process.

Subsection (3)(a) reaffirms the department's use of mitigating and aggravating circumstances for determining penalties greater or less than prescribed in the chart as authorized by 16-4-406, MCA. This is language that carries over from existing (3), and has been amended to reference the new point-based penalty system.

Subsection (3)(b) includes the list of violations types with their proposed point value and monetary penalty. This is not an exhaustive list of violation types but includes those that the department has encountered. Within this list the department is proposing to include:

- Violation types for failing to notify the department or local law enforcement prior to implementing an access control system and failing to notify the department or local law enforcement when an access control system has been removed were included because of the passage of Senate Bill 119 during the 2019 Legislative Session.

- The violation "Failed to Ensure Licensee, Employee, or Employee's Immediate Supervisor Possess Valid Responsible Sales and Service Proof of Training Document" has been included within the table. This was previously located in (7) but is easier to locate when included with other violations in the table. Section 16-4-1008, MCA prescribes the penalties for this violation as \$50 for the first offense, \$200 for the second offense, and \$350 for the third offense in a three-year period. Because the statute does not take into consideration additional offenses, the department is proposing the monetary penalty remains at \$350 for each offense in a three-year period after the third offense.

- Violations for "Failed to Seek Prior Department Approval of a New Owner Pursuant to 16-4-401, MCA," "Allowed Unapproved Individuals to Participate in Profits and/or Losses," "Failed to Submit or Timely Submit an Abbreviated Application for License Modification Pursuant to ARM 42.12.118," "Failed to Comply with Approved Loan Standards," and "Failed to Seek Department Approval for a Noninstitutional Lender" have been added to the penalty schedule. This is necessary to distinguish between varying levels of public harm. These types of violations all have an acceptable resolution in place. In other words, the appropriate application and paperwork to fix the violation has been submitted to the department. When an acceptable resolution is not in place, the department will seek revocation of the license for these violations as addressed in (3)(e)(i).

Subsection (3)(c) provides the tiered process by which suspension or revocation may be sought based on the number of points the license was assessed in the three-year lookback period. Clarification in (3)(d) is provided that if a

suspension is assessed, those days shall be consecutive and on days the business is normally open. Conducting the suspension on days the business is normally closed has no impact on the licensee and will not be allowed.

Subsection (3)(e) provides that where the department may seek revocation of the license if the violation is ongoing and not cured by the payment of a monetary penalty or imposition of a suspension. The instances provided are situations where the licensee has failed to comply with the laws and rules of the state and no cure is in place to resolve it. The non-exhaustive list provides examples of the instances where the department may initially seek revocation of the license because paying a monetary fee or agreeing to a suspension does not fix the issue of the violation, so proposing revocation of the license is necessary.

Subsection (3)(f) provides the allowance for the department to enter informal negotiations with a licensee to resolve one or more violations prior to issuance of a proposed department action. The department believes this course towards alternative dispute resolution is necessary and beneficial to the public as it will allow the licensee and department the ability to determine a final decision on a penalty, if agreed on between both parties, without the time, resources, and expenses that often accompany formal litigation.

Because the department is proposing to convert from the progressive penalty schedule to a point-based penalty system, the department is proposing in (3)(g) to assign violations that occurred prior to the effective date of this rulemaking the point values that are established in the point-based penalty system. This is necessary to maintain prior licensee violations issued under the progressive penalty schedule, and is the only feasible way for determining a licensee's total points when using a three-year lookback period.

Section (4) includes language pertaining to responsible sales and service training. This language was previously located in (7). Reorganizing the rule is necessary to enhance the readability of the rule.

Sections (4), (5), and (6) have been stricken and the department proposes to relocate that content into ARM 42.12.222. The content of those sections fits better with the content in ARM 42.12.222 as that rule describes the process for when a license has been suspended, lapsed, or revoked.

Section (5) is amended to affirm the department's authority to issue reprimands pursuant to 16-4-406, MCA, and the text is now broadened to be applicable to all potential violations. This amendment is necessary to provide better guidance to the industry regarding the issuance of reprimands for violations of the Montana Alcoholic Beverage Code. Although the department is proposing to allow any reprimand to be revived regardless if the next offense is the same. This is necessary to ensure future compliance with the Montana Alcoholic Beverage Code.

Section (6) provides the allowance for the department to issue a warning rather than pursuing a reprimand or civil penalty. This allows a licensee to take corrective actions to avoid further disciplinary action.

Section (7) is in existing rule and the department believes it is necessary to maintain this language in the point-based penalty system as the department is statutorily required to consider aggravating circumstances. This section has been revised to remove the reference to the progressive penalty schedule and replace it with a reference to the point-based penalty system.

Section (8) is amended to include a licensee's lack of participation or involvement in the business as an aggravating circumstance because the licensee is ultimately responsible for ensuring the business operations follow all alcoholic beverage laws and regulations. The department believes this is necessary to place the public on notice that the department considers this conduct as an aggravating circumstance.

Lastly, the department has added 16-4-418, MCA, as an implementing citation for this rule, which is necessary for the rule to comply with 2-4-305(3), MCA.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: 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](mailto:todd.olson@mt.gov) and must be received no later than 5:00 p.m., October 4, 2019.

5. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

7. An electronic copy of this notice is available on the department's web site at [revenue.mt.gov](http://revenue.mt.gov), or through the Secretary of State's web site at [sosmt.gov/ARM/register](http://sosmt.gov/ARM/register).

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on August 22, 2019.

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

/s/ Todd Olson  
Todd Olson  
Rule Reviewer

/s/ Gene Walborn  
Gene Walborn  
Director of Revenue

Certified to the Secretary of State August 27, 2019.