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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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PROPOSAL NOTICE SECTION

BEFORE THE STATE COMPENSATION INSURANCE FUND
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.55.320 pertaining to classifications of employments	)	NOTICE OF PROPOSED AMENDMENT
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On January 30, 2015, the Montana State Fund proposes to amend the above-stated rule.

2. The Montana State Fund will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Montana State Fund no later than 5:00 p.m. on January 13, 2015, to advise us of the nature of the accommodation that you need. Please contact Nancy Butler, Montana State Fund, P.O. Box 4759, 855 Front Street, Helena, Montana 59604-4759; telephone (406) 495-5138; fax (406) 495-5023; or e-mail nbutler@mt.gov.

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

2.55.320 METHOD FOR ASSIGNMENT OF CLASSIFICATIONS OF EMPLOYMENTS (1) and (2) remain the same.

(3) The State Fund staff shall assign its insureds to classifications contained in the classifications section of the State Compensation Insurance Fund Policy Services Underwriting Manual effective July 1, ~~2013~~ 2014, and assign new or changed classifications as approved by the board. That section of the manual is incorporated by reference. Copies of the classification section of the manual may be obtained from the Insurance Operations Support Department of the State Fund, 855 Front Street, P.O. Box 4759, Helena, Montana 59604-4759.

AUTH: 39-71-2315, 39-71-2316, MCA
IMP: 39-71-2311, 39-71-2316, MCA

REASON: This amendment to ARM 2.55.320 is reasonably necessary at this time to reflect the updates to the State Fund's Underwriting Manual (manual), effective July 1, 2014.

Under 39-71-2316(1)(e), MCA, after rules have been adopted, the State Fund is not subject to the rulemaking provisions of the Montana Administrative Procedure Act when changing classifications and premium rates.

The underwriting manual is used by State Fund staff in their usual duties of assigning classifications to insured employers of the State Fund. Each of these classifications has a premium rate that is adopted by the State Fund board in accordance with the board's ratemaking authority. This amendment is made each year to adopt the current version of the manual, which includes new rates, values, and classification code updates effective July 1, 2014. The classification code updates may be those adopted by the Classification Review Committee established in Title 33, chapter 16, MCA, or by the State Fund board of directors. The entire underwriting manual is available on State Fund's web site at www.montanastatefund.com.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Nancy Butler, Montana State Fund, P.O. Box 4759, 855 Front Street, Helena, Montana 59604-4759; telephone (406) 495-5138; fax (406) 495-5023; or e-mail nbutler@mt.gov. Any comments must be received no later than 5:00 p.m., January 20, 2015.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments, orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments to Nancy Butler at the above address no later than 5:00 p.m., January 20, 2015.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 2600 persons based on 26,000 policyholders.

7. The Montana State Fund 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, e-mail, and mailing address of the person and specifies that the person wishes to receive notices regarding the Montana State Fund. If you prefer to receive notices by e-mail, please indicate this in your request. Such written request may be mailed or delivered to Nancy Butler, Montana State Fund, P.O. Box 4759, 855 Front Street, Helena, Montana 59604-4759; faxed to the office at (406) 495-5023; e-mail nbutler@mt.gov; or may be made by completing a request form at any rules hearing held by the Montana State Fund.

8. An electronic copy of this notice of proposed amendment is available through the Secretary of State's web site at http://sos.mt.gov/ARM/Register. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but

advises all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

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

/s/ Nancy Butler
Nancy Butler, General Counsel
Rule Reviewer

/s/ Elizabeth Best
Elizabeth Best
Chair of the Board

/s/ Michael P. Manion
Michael P. Manion, Chief Legal Counsel
and Rule Reviewer

Certified to the Secretary of State December 1, 2014.

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 12.9.206 pertaining to McLean Game Preserve	)	NOTICE OF PROPOSED REPEAL
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On March 26, 2015, the Fish and Wildlife Commission (commission) proposes to repeal the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on December 26, 2014, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-9785; or e-mail jesssnyder@mt.gov.

3. The commission proposes to repeal the following rule:

12.9.206 MCLEAN GAME PRESERVE

AUTH: 87-1-301, MCA
IMP: 87-1-305, MCA

REASON: The 1,464-acre McLean Game Preserve in Pondera County was established over 40 years ago to provide upland game bird nesting habitat. Following the death of the original property owner, the land within the preserve was purchased by two individuals. Since that time, much of the native rangeland has been converted to small grains production. The remainder is seasonally grazed and does not provide quality nesting habitat for upland game birds. Further, available nesting habitat in good condition exists in the vicinity of the preserve to meet the needs of local upland game bird populations.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Ryan Rauscher, Department of Fish, Wildlife and Parks, 514 South Front Street, Suite C, Conrad, Montana, 59425; fax (406) 761-8477; or e-mail rrauscher.fwp@gmail.com, and must be received no later than January 9, 2015.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must

make written request for a hearing and submit this request along with any written comments to Ryan Rauscher at the above address no later than January 9, 2015.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be more than 25 based on the number of Montana citizens.

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

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sos.mt.gov/ARM/Register. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

10. With regard to the requirements of 2-4-111, MCA, the commission has determined that the repeal of the above-referenced rule will not significantly and directly impact small businesses.

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

/s/ Zach Zipfel
Zach Zipfel
Rule Reviewer

Certified to the Secretary of State December 1, 2014.

BEFORE THE TRANSPORTATION COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 18.6.202, 18.6.203, 18.6.205, 18.6.206, 18.6.211, 18.6.212, 18.6.215, 18.6.231, 18.6.239, 18.6.251, 18.6.252, pertaining to Outdoor Advertising Control	)	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On January 12, 2015, the Transportation Commission proposes to amend the above-stated rules.

2. The Transportation Commission will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Transportation no later than 5:00 p.m. on December 31, 2014, to advise us of the nature of the accommodation that you need. Please contact Patrick J. Hurley, Department of Transportation, Outdoor Advertising Control, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-6068; fax (406) 444-7254; TTY Service (406) 444-7696 or (800) 335-7592; or e-mail phurley@mt.gov.

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

18.6.202 DEFINITIONS (1) and (1)(a) remain the same.

(b) the sign has been without a message, or contained sign leasing information only, for a period of at least six months;

(c) through (2) remain the same.

(3) "Agricultural, forestry, grazing, farming, and related ~~Activity~~ activity" means any activity on improved or unimproved land directly related to the production of crops, dairy products, poultry, or livestock; any activity directly related to the cultivation or harvesting of trees; or any activity directly related to fish farms. The term does not include commercial businesses which sell products or provide services directly or indirectly to agricultural, forestry, grazing, or farming entities, and whose products and services are available to the general public, including but not limited to farm and ranch supply stores and veterinary clinics.

(4) through (28) remain the same.

(29) "Mobile advertising device" or "car wrap" or "taxi display" means devices displayed on vehicles that may independently become part of traffic flow, or may be parked at specific locations, and which are capable of being transported over public roads and streets whether or not it is so transported. The term includes devices displayed on other portable or movable objects or animals.

(30) through (42) remain the same.

(43) "Sign structure" means an advertising device including the sign face, base or apron, supports, ~~and other structural members~~ poles, bracings, lateral supports, and other material of every kind and nature used to support a face or surface on which outdoor advertising is placed, whether located on or attached to the surface of the earth or to a man-made structure.

(44) through (49) remain the same.

AUTH: 75-15-121, MCA
IMP: 75-15-103, 75-15-111, 75-15-112, 75-15-113, 75-15-121, MCA

REASON: The proposed amendments are necessary to clarify definitions used throughout this subchapter. The proposed amendment to (1)(b) will clarify that sign face information listing the sign itself as "for lease" for at least six months will not qualify as required copy, but will allow the sign to be considered as an abandoned sign. Federal and state statutes do not allow abandoned signs to remain in a permitted location. The proposed amendment to (3) will expand the definition of "agricultural activity" to exclude commercial businesses who may sell products or services to agricultural businesses such as farms or ranches. Many commercial businesses deal in agricultural products, but the business location itself may still qualify for a permitted off-premise sign location if the agricultural products or customers are only a part of the larger commercial business. The proposed amendment to (29) is necessary to expand the definition of "mobile advertising devices" to include other portable objects or animals as items upon which off-premise advertising must not be placed. The proposed amendment to (43) is necessary to expand the definition of "sign structure" to list other sign parts which are considered part of the sign structure when evaluating whether sign maintenance or repairs are allowed to conforming and nonconforming signs.

18.6.203 UNZONED COMMERCIAL ACTIVITY (1) through (1)(d) remain the same.

(e) a commercial activity must be connected to one or more utilities and ~~shall be occupied and open~~ have at least one employee available at the activity site at least ~~to the public during regularly scheduled hours in excess of~~ 20 hours per week, distributed over five days per week;

(f) through (i) remain the same.

(j) a commercial business shall hold a current, valid business license issued by a local, county, or state government which authorizes the business to operate from that location. If no business license is required for the location, a government-issued authority for the business operation (e.g., State DEQ permit or Secretary of State business registration), which establishes the length of time for the business operation, may be substituted with department approval;

(k) and (l) remain the same.

(2) A maximum of two signs ~~shall~~ may be permitted from a qualifying activity and its structure or building, regardless of the number of separate qualifying commercial activities conducting business from the same structure or building.

(3) The signs must meet the following requirements:

(a) The sign(s) shall be located on the same side of the controlled highway as the qualifying activity, unless the property is separated from the controlled highway by a frontage, access, or other type of road parallel to the controlled highway.~~.~~;

(b) If the property is located adjacent to a parallel road, the sign(s) shall be located on the same side of the parallel road as the qualifying activity, and shall not be located between the parallel road and the controlled highway.

~~(3)~~(4) Unzoned commercial areas are not created when:

(a) through (c) remain the same.

(d) spot-zoning or strip-zoning of an area, solely or primarily for the displaying of outdoor advertising has occurred.~~;~~ or

(e) a commercial activity is established on the location solely or primarily to qualify the location for outdoor advertising.

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

AUTH: 75-15-121, MCA
IMP: 75-15-103, 75-15-111, 75-15-113, MCA

REASON: The proposed amendments are necessary to clarify the establishment of unzoned commercial activities which may qualify a location for an off-premise outdoor advertising permit. The proposed amendments will address situations which may create confusion for future permit applicants, including: availability of business employees at the business location; requirement of a government-issued business license or alternative permit or registration which establishes at least a one year length of business operation; limit of two permitted signs on any location, regardless of the number of separate businesses on the site; failure of establishment of unzoned commercial areas by prohibited activities; and failure of establishment of unzoned commercial areas by sham businesses which do not later operate on the site.

18.6.205 OFF-PREMISE SIGNS - LOCATIONS - COMPLIANCE WITH STATUTES, RULES, ORDINANCES (1) through (5) remain the same.

(6) Local transit authority bus shelters erected within the right-of-way on controlled routes, under an approved department encroachment permit, may display and maintain commercial advertisements, without obtaining an outdoor advertising permit, subject to the following requirements:

(a) commercial advertisements may only be placed on interior shelter panels with font size and message intended for viewing by shelter occupants, with only incidental visibility to the traveling public;

(b) commercial advertisements must not exceed 24 square feet on each shelter panel;

(c) commercial advertisements must not be placed on the roof of the shelter; and

(d) commercial advertisements must not be placed on the exterior sides of the shelter.

(6) and (7) remain the same but are renumbered (7) and (8).

AUTH: 75-15-121, MCA
IMP: 75-15-111, MCA

REASON: The proposed amendment is necessary to address requests for commercial advertising on bus shelters which may be erected within the right-of-way on controlled routes. The proposed amendment will cross reference the department's encroachment permit process to ensure all standards for safety of encroachments within the right-of-way are met before advertising is considered on the bus shelter. The proposed amendment will also list the requirements necessary for commercial advertising within a bus shelter, to ensure the ads conform to a standard size, and are visible to the bus shelter occupants only, and not to the traveling public, which would trigger the need for issuance of an outdoor advertising permit.

18.6.206 UNZONED INDUSTRIAL ACTIVITY (1) through (1)(f) remain the same.

(g) an industrial activity shall hold a current, valid business license issued by a local, county, or state government which authorizes the industrial activity to operate from that location~~;~~. If no business license is required for the location, a government-issued authority for the business operation (e.g., State DEQ permit or Secretary of State business registration), which establishes the length of time for the business operation, may be substituted with department approval;

(h) and (i) remain the same.

(2) A maximum of two signs ~~shall~~ may be permitted from a qualifying industrial activity and its structure or building, regardless of the number of separate qualifying industrial activities conducting business from the same structure or building.

(3) The signs must meet the following requirements:

(a) The sign(s) shall be located on the same side of the controlled highway as the qualifying activity, unless the property is separated from the controlled highway by a frontage, access, or other type of road parallel to the controlled highway.

(b) If the property is located adjacent to a parallel road, the sign(s) shall be located on the same side of the parallel road as the qualifying activity, and shall not be located between the parallel road and the controlled highway.

~~(3)~~(4) Unzoned industrial areas are not created when:

(a) remains the same.

(b) an industrial activity is engaged in or established primarily for the purpose of qualifying an area for the displaying of outdoor advertising; ~~or~~

(c) spot-zoning or strip-zoning of an area solely or primarily for the display of outdoor advertising has occurred~~.~~; or

(d) an industrial activity is established on the location solely or primarily to qualify the location for outdoor advertising.

(4) and (5) remain the same, but are renumbered (5) and (6).

AUTH: 75-15-121, MCA
IMP: 75-15-103, 75-15-111, 75-15-113, MCA

REASON: The proposed amendments are necessary to clarify the establishment of unzoned industrial activities which may qualify a location for an off-premise outdoor advertising permit. The proposed amendments will address situations which may create confusion for future permit applicants, including: requirement of a government-issued business license or alternative permit or registration which establishes at least a one-year length of business operation; limit of two permitted signs on any location, regardless of the number of separate businesses on the site; failure of establishment of unzoned industrial areas by prohibited activities; and failure of establishment of unzoned industrial areas by sham businesses which do not later operate on the site.

18.6.211 PERMITS (1) through (4) remain the same.

(5) Signs shall be assigned a permit number and given a permanent identification plate that must be attached to the structure. The permit plate must not be leased to any other party. Permit plates remain the property of the department and shall be returned to the department upon relinquishment or revocation of the permit or upon request of the department.

(6) through (8) remain the same.

(9) Ownership of a sign permit ~~may~~ must not be transferred without the express written consent of the permit holder(s), on a form provided by the department, within 30 days of the transfer. Failure to provide the transfer form within 30 days may result in voiding any transfer or revocation of the permit. The current permit holder(s) must sign the form transferring the permit. Only off-premise commercial advertising sign permits may be transferred. Temporary, church and service club, directional, cultural, noncommercial, political, and official signs ~~shall~~ must not be transferred, but may be terminated by permit holder request or department action.

(10) and (11) remain the same.

AUTH: 75-15-121, MCA
IMP: 75-15-122, MCA

REASON: The proposed amendment to (5) is necessary to clarify the prohibition on lease of a permit plate from a permit holder to any other party. The proposed amendment to (9) is necessary to set a 30-day requirement for receipt of the required permit transfer form. The department has not been receiving transfer forms in a timely manner, and thus must impose a deadline and penalty to ensure compliance with the transfer rule.

18.6.212 PERMIT APPLICATIONS - NEW SIGN SITES (1) through (4)(g) remain the same.

(h) a scale drawing with all details of the proposed sign structure, including accurate dimensions, and a photograph of the staked location, taken contemporaneously with the date of the application. All measurements must be from the outer edges of the regularly used buildings, parking lots, storage or processing and landscaped areas of the commercial or industrial activities, not from the property

lines of the activities, and must be along or parallel to the edge of the pavement of the highway.

(5) through (5)(b) remain the same.

(c) a business license issued by a local, county, or state government authorizing the business to operate at the qualifying location, when the application is for a site located in an unzoned commercial or industrial area. If no business license is required for the location, a government-issued authority for the business operation (e.g., State DEQ permit or Secretary of State business registration), which establishes the length of time for the business operation, may be substituted with department approval.

(6) and (7) remain the same.

(8) Each application must be complete and accompanied by all required supplemental materials. The department reserves the right to reject ineligible, incomplete, or otherwise improper applications. Rejected applications will be returned to the applicant for correction of identified deficiencies by the applicant.

AUTH: 75-15-121, MCA
IMP: 75-15-122, MCA

REASON: The proposed amendments are necessary to inform permit applicants of application processes including: insertion of a photograph requirement for use in evaluating permit applications; reiterating the business license requirement and exception language to be consistent with ARM 18.6.203 and 18.6 206; and imposing a procedure for rejection and return of incomplete applications.

18.6.215 FEES (1) and (2) remain the same.

(3) The fees shall be as follows:

(a) Inspection fee (must accompany the sign permit application) ~~$100.00~~ 150.00

(b) through (d) remain the same.

AUTH: 75-15-121, MCA
IMP: 75-15-122, MCA

REASON: The proposed amendment will increase the inspection fee from $100.00 to $150.00. The fee increase is necessary to cover the department's increased costs of staff and travel time to travel to often-distant sign locations and complete the necessary inspection. The proposed fee increase will impact approximately 30 permit applicants, based on the 30 applications in 2013, resulting in a revenue increase of approximately $1500 annually.

18.6.231 OFF-PREMISE SIGN STANDARDS (1) remains the same.

(2) Off-premise permitted signs on controlled routes must comply with the following spacing requirements:

(a) signs adjacent to an interstate highway or ~~limited-access primary highway~~ a full access control route must be a minimum of 500 feet apart on the same side of the roadway;

(b) signs adjacent to primary highways must be a minimum of 300 feet apart on the same side of the roadway;

~~(c) signs, whether or not visible to the main traveled way of the interstate system or other controlled route, must not be located within the limits of a grade separated interchange, including its entrance or exit roadways. The limits of an interchange shall include 500 feet beyond the beginning or ending of the gore, or pavement widening, for each entrance or exit roadway, along the controlled route and all interconnecting roadways;~~

~~(d) signs, whether or not visible to the main traveled way of a controlled route, must not be located within 500 feet of any of an intersection, intersecting roadway, junction, property driveway, or connecting roadways with approaching or merging traffic in rural areas, or within 140 feet of an intersection, intersecting roadway, junction, property driveway, or connecting roadways with approaching or merging traffic in cities or towns;~~

(c) signs must not be located on an interstate highway or full access control route within 500 feet of an interchange or intersection at grade, or a rest area, including all entrance or exit roads. Five hundred feet must be measured from the sign to the nearest point of the beginning or ending of the gore, or pavement widening, at the exit from or entrance to the main traveled way. In an area where two interchanges are in such close proximity that the acceleration or deceleration lane or ramps merge or overlap, or where there are continuous acceleration or deceleration lanes, or auxiliary lanes between interchanges, the area will be treated as one continuous interchange, and no signs are allowed;

(d) signs must not be located on primary highways or roads within 300 feet of an intersection or intersecting roadway when the distance between centerlines of intersecting streets or highways is greater than 1,000 feet between the intersecting streets or highways;

(e) signs must not be located on primary highways or roads within 150 feet or an intersection or intersecting roadway when the distance between the centerlines of intersection streets or highways is less than 1,000 feet between the intersecting streets or highways;

(f) sign spacing measurements must be measured along a line parallel to the centerline of the highway between points directly opposite the sign structure or advertising device;

(e) through (i) remain the same, but are renumbered (g) through (k).

(3) Off-premise permitted signs on controlled routes must comply with the following size requirements:

(a) ~~signs, including the total number of~~ a sign ~~faces facing the same direction,~~ face must not exceed 672 square feet in area, a height of 14 feet, and a length of 48 feet, including border and trim, but excluding base or apron, supports, or other structural members, or any embellishment on or cut-out extension of the sign face;

~~(b) signs must not exceed 48 feet in length;~~

~~(c)~~(b) ~~signs~~ sign structures must not exceed 30 feet in height, as measured from a right angle from the surface of the roadway at the centerline of the controlled route, or from a point on the sign structure which is at the same elevation as the crown of the roadway to the top of the highest sign face;

~~(d)~~ (c) ~~signs~~ sign structures within 500 feet of any intersection, intersecting roadway, junction, ~~property driveways,~~ approaching or merging traffic must be erected with the height above ground level (HAGL) of not less than 8 feet.

(4) remains the same.

AUTH: 75-15-121, MCA
IMP: 75-15-113, 75-15-121, MCA

REASON: The proposed amendments are necessary to: expand the definition of sign spacing to include rest areas and scales; clarify sign spacing on "diamond" interchanges; clarify measurement procedures for intersecting roadways; clarify maximum sign face dimensions; clarify sign structure heights; and remove references to sign spacing from intersecting driveways. The clarifications will aid sign permittees in complying with off-premise sign standards.

18.6.239 MOBILE ADVERTISING DEVICES - SIGNS ON VEHICLES

(1) remains the same.

(2) Vehicles, trailers, or other portable objects displaying off-premise mobile advertising devices ~~being used for outdoor advertising purposes~~ must not be parked on public or private land visible to the traveling public from any place on a controlled route, whether the display is permanent or portable, regardless of the length of time the vehicle is parked in any one or more locations, when the primary intended reason for the parked location is to advertise to the traveling public.

(3) remains the same.

AUTH: 75-15-121, MCA
IMP: 75-15-111, 75-15-113, MCA

REASON: The proposed amendment is necessary to include trailers and other portable objects within the prohibited type of mobile advertising devices, to clarify to the public when mobile devices may not display off-premise advertising. The proposed amendment will also clarify the rule language to better convey the circumstances under which a vehicle may not be parked with the primary intention of advertising to the traveling public.

18.6.251 REPAIR OF NONCONFORMING SIGNS (1) Permittees must complete a notification report detailing proposed allowable maintenance or repair of nonconforming signs, on a form provided by the department, prior to commencement of allowable work. Department approval is not required prior to commencement of allowable work.

(2) The department will review all notification reports, and may notify a permittee that maintenance or repair work is not in compliance with statute or rule. Noncompliant work identified by the department in advance of completion must not be commenced or completed by permittee. Noncompliant work identified by the department after completion must be restored to its original status within 90 days of department notification. Failure to complete a notification report may result in revocation of the permit.

~~(1)~~(3) As per 75-15-111, MCA, nonconforming signs lawfully in existence prior to April 21, 1995, may be maintained or replaced each year under the following requirements:

(a) a sign structure may be maintained each year if the value of the materials used in the maintenance does not exceed 75 percent of the value of the materials required to replace the sign new;

(b) the sign structure may be replaced, if damaged by vandalism, criminal acts, or tortious acts, at up to and including 100 percent of its replacement cost;

(c) the sign structure replacement must not result in an increase in the area used to display advertising copy nor an increase of height, width, or area over the current dimensions;

(d) the sign structure ~~may~~ must not be illuminated, unless already illuminated before the repair or maintenance. Illumination not physically attached to the sign structure must not be added;

(e) the sign structure to be repaired or replaced ~~may~~ must not replace wood poles with steel poles. Steel must not be used to support wooden poles. Poles must not be wrapped with any other materials or encased in tubes.

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

(a) a sign structure may be maintained and repaired if the value of new materials used in the maintenance of a sign during one calendar year does not exceed 30 percent of the value of all the materials which would be required to replace the sign new;

(b) the sign structure may be replaced if damaged by vandalism, criminal acts, or tortious acts, at up to and including 100 percent of its replacement cost;

(c) the sign structure replacement ~~may~~ must not result in an increase in the area used to display advertising copy nor an increase of height, width, or area over the current dimensions;

(d) the sign structure ~~may~~ must not be illuminated, unless already illuminated before the repair or maintenance. Illumination not physically attached to the sign structure must not be added;

(e) the sign structure to be repaired or replaced ~~may~~ must not replace wood poles with steel poles. Steel must not be used to support wooden poles. Poles must not be wrapped with any other materials or encased in tubes.

(3) through (10) remain the same, but are renumbered (5) through (12).

AUTH: 75-15-121, MCA
IMP: 75-15-111, 75-15-121, MCA

REASON: The proposed amendment will add a requirement of notification for maintenance or repair of nonconforming signs, so the department may review work to ensure compliance with the appropriate statutory requirements for maintenance and repair of nonconforming signs. The proposed amendment will also clarify language on maintenance or repair of the entire sign structure, clarify the prohibition on adding illumination which is not physically attached to the sign structure, and clarify the prohibition on use of steel or other materials to support existing wooden poles. The proposed amendments will create a new process to allow the department to oversee nonconforming sign maintenance and repair, and will lessen

any confusion by permittees over existing processes for repair or maintenance of nonconforming signs.

18.6.252 UPGRADE OR RELOCATION OF CONFORMING SIGNS

(1) through (4) remain the same.

(5) Approved upgrade or relocation work must be completed within 90 days of department approval.

AUTH: 75-15-121, MCA
IMP: 75-15-111, 75-15-121, MCA

REASON: The proposed amendment is necessary to impose a deadline for completion of approved work. This deadline will allow the department to monitor compliance with statutes and rules on outdoor advertising.

4. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Patrick J. Hurley, Department of Transportation, Outdoor Advertising Control, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-6068; fax (406) 444-7254; or e-mail phurley@mt.gov, and must be received no later than 5:00 p.m., January 8, 2015.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Patrick J. Hurley at the above address no later than 5:00 p.m., January 8, 2015.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 310 persons based on 3098 permit holders in Montana.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department. An Administrative Rules Notice Interested Person's List Request Form is located at the Department of Transportation's web site at the following address:

http://www.mdt.mt.gov/publications/docs/forms/mdt-leg-003_interested-persons-list.pdf.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sos.mt.gov/ARM/Register. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

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

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

/s/ Michael T. Tooley
Michael T. Tooley
Director
Department of Transportation

/s/ Kevin Howlett
Kevin Howlett
Chair
Transportation Commission

Certified to the Secretary of State, December 1, 2014.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the the amendment of ARM 24.21.415 and 24.21.1003, pertaining to apprenticeship training ratios	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On January 5, 2015, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing in the auditorium of the DPHHS Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on December 29, 2014, to advise us of the nature of the accommodation that you need. Please contact the Workforce Services Division, Department of Labor and Industry, Attn: Darrell Holzer, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-3556; fax (406) 444-3037; Relay Service for persons needing TTY or voice assistance, 711; or e-mail dholzer@mt.gov.

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

24.21.415 RATIO WAIVER PROCESS (1) The registration agency may consider waiver of ratio standards only if the registered apprenticeship sponsor is in full compliance with registered standards and there are no outstanding complaints directly related to the specific registered apprenticeship program. The registration agency may waive ratio standards for a registered apprenticeship sponsor who demonstrates the need for a waiver by documented proof of all of the following:

(a) the registered apprenticeship sponsor's existing apprentices are current with the required related instruction, including apprentices that have been granted credit;

(b) the registered apprenticeship sponsor's existing apprentices have a documented ~~80~~ 75 percent or higher accumulated grade average in related instruction;

~~(c) the registered apprenticeship sponsor must be registered for a minimum of two years to be eligible to apply for a ratio waiver;~~

~~(d)~~ (c) the registered apprenticeship sponsor must notify and document attempts to seek qualified ~~journeyworkers~~ journeymen from internal trade associations, area employers in like occupations ~~and~~ , or by posting a ~~statewide~~ confidential job order through the ~~nearest~~ local job service office that is nearest to the shop where the apprentice is to be employed; and

~~(e)~~ (d) the registered apprenticeship sponsor must have an established completion rate that is ~~no less than 80~~ at least 60 percent, based on the total number of all past and current apprentices. That number does not include:

(i) apprentices who have rolled over to other programs registered with the sponsor; and

(ii) cancellations by apprentices, either through noncompliance or cancellations that have occurred during the probation period stated in the registered apprenticeship sponsor's registered standards.

AUTH: 39-6-101, MCA
IMP: 39-6-101, 39-6-106, MCA

24.21.1003 APPRENTICE-TO- ~~JOURNEYWORKER~~ JOURNEYMAN RATIO

(1) The apprentice-to-journeyman ratio may not exceed the following criteria:

(a) The first journeyman employed by a sponsor may supervise one apprentice.

(b) Two additional journeymen employed by the sponsor are required to supervise each additional apprentice.

~~(1)~~(2) An ~~apprentice that meets the following criteria is not counted when computing the apprentice to journeyworker ratio:~~

~~(a) an~~ apprentice that has completed ~~80~~ 60 percent or more of the on-the-job training hours and 60 percent or more of the related instruction in an apprenticeship program ~~lasting more than 8,000 hours; or~~

~~(b) an apprentice that has completed 75 percent or more of the on-the-job training and related instruction for apprenticeship programs lasting less than 8,000 hours~~ is not counted for purposes of the apprentice-to-journeyman ratio provided for in (1).

~~(2)~~(3) The apprentice- to- ~~journeyworker~~ journeyman ratio applies to individual work sites as well as the entire firm or operation of the registered apprenticeship sponsor.

AUTH: 39-6-101, MCA
IMP: 39-6-102, 39-6-106, MCA

STATEMENT OF REASONABLE NECESSITY: There is reasonable necessity to amend ARM 24.21.415 and 24.21.1003, in response to requests from apprenticeship sponsors regarding changing apprenticeship ratios. In the licensed occupations of plumbers and electricians, only qualified registered apprentices are allowed by law to take the tests required to obtain a journeyman's license. With respect to those occupations, there is an increasing need for journeyman plumbers and electricians, both due to improving economic conditions and the fact that the existing workforce is aging.

The department met on several occasions during fall of 2014 with a number of stakeholders from apprenticeship sponsors (both union-affiliated and independent) and from organized labor associations to discuss the issues facing those industries. The stakeholders reached consensus that Montana's historical 1:3

apprentice-to-journeyman ratio was not necessary to ensure that apprentices were being adequately supervised, and that a 1:2 ratio would balance adequate supervision with the need of participating sponsors to train more apprentices. While a number of possible alternatives were explored with the stakeholders group, the department concludes that the consensus agreement that is reflected in the proposed amendments is reasonable and appropriate.

There is reasonable necessity to amend the rules to replace the term "journeyworker" with the more accepted term "journeyman" while otherwise amending the rules.

4. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Darrell Holzer, Apprenticeship Program, Workforce Services Division, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728; by facsimile to (406) 444-3037; or by e-mail to dholzer@mt.gov, and must be received no later than 5:00 p.m., January 12, 2015.

5. An electronic copy of this notice of public hearing is available through the department's web site at http://dli.mt.gov, under the events section, as well as the Secretary of State's web site. The department strives to make the electronic copy of this notice of public hearing conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices, and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1327 Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

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

8. Pursuant to 2-4-111, MCA, the department has determined that the rule changes proposed in this notice may have a significant and direct impact upon certain small businesses. The classes of small businesses which may be affected

are licensed plumbing contractors and licensed electrical contractors that have established a registered apprenticeship program with the department. Based on the department's records of registered apprenticeship sponsors in November 2014, the department estimates that 235 plumbing firms and 385 electrical firms could be affected by the proposed rule change.

The expected effect of the rule is to allow those establishments to increase the number of apprenticeship positions that the business is allowed to have with a given number of licensees (master or journeyman level) available for supervision of the apprentices. Whether or not such businesses would be directly affected depends on a number of factors, including economic conditions and workload for the business.

The department concludes that because the proposed rule changes are permissive (in that they merely allow plumbing and electrical contractors to increase the number of apprentices if the firm so desires), there are no anticipated adverse effects or impacts due to the rule changes being proposed, and thus there are no adverse effects to minimize or eliminate.

The documentation supporting this small business impact analysis is available on request from the department.

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

/s/ MARK CADWALLADER	/s/ PAM BUCY
Mark Cadwallader	Pam Bucy, Commissioner
Alternate Rule Reviewer	DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State December 1, 2014

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the repeal of ARM 24.131.301, 24.131.401, and 24.131.506 construction blasters, 24.135.401, 24.135.404, 24.135.412, 24.135.545, and 24.135.2101 crane and hoisting operating engineers, and 24.142.2101 elevator licensing program renewals	)	NOTICE OF PROPOSED REPEAL NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On January 12, 2015, the Department of Labor and Industry proposes to repeal the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Building Codes Bureau no later than 5:00 p.m., on December 26, 2014, to advise us of the nature of the accommodation that you need. Please contact Dave Cook, Building Codes Bureau, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2053; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2050; or dlibsdbcb@mt.gov (bureau's e-mail).

3. The rules proposed to be repealed are as follows:

24.131.301 DEFINITIONS located at ARM page 24-10961.

AUTH: 37-72-201, 37-72-202, MCA
IMP: 37-72-101, et seq., MCA

REASON: The department is repealing this rule as unnecessary, since the relevant terms are defined elsewhere in statute. Additionally, this rule references the Business and Occupational Licensing Bureau, which no longer exists following the reorganization of the Business Standards Division.

24.131.401 PURPOSE located at ARM page 24-10967.

AUTH: 37-72-201, 37-72-202, MCA
IMP: 37-72-101, et seq., MCA

REASON: The department determined it is reasonably necessary to repeal this rule as unnecessary, as it describes the purpose of the Business and Occupational Licensing Bureau which no longer exists after a reorganization of the Business

Standards Division.

24.131.506 SUSPENSION, REVOCATION, OR REFUSAL TO RENEW CONSTRUCTION BLASTER'S LICENSE located at ARM page 24-10995.

AUTH: 37-72-202, MCA
IMP: 37-72-203, MCA

REASON: The department is repealing this rule as unnecessary, since the provisions regarding reprimand, suspension, and revocation of construction blaster licenses are addressed in statute at 37-72-203, MCA.

24.135.401 PURPOSE located at ARM page 24-11519.

AUTH: 50-71-301, MCA
IMP: 50-71-301, 50-76-102, 50-76-103, MCA

REASON: The department determined it is reasonably necessary to repeal this rule as unnecessary, as it describes the purpose of the Business and Occupational Licensing Bureau which no longer exists after a reorganization of the Business Standards Division.

24.135.404 CITATIONS AND FINES located at ARM page 24-11519.

AUTH: 50-76-112, MCA
IMP: 50-76-102, 50-76-103, 50-76-114, MCA

REASON: The department is repealing this rule as unnecessary, as the provisions regarding citations and waiver of the accompanying fine are adequately addressed in statute at 50-76-114, MCA.

24.135.412 FAILED EXAMINATIONS located at ARM page 24-11526.

AUTH: 50-76-112, MCA
IMP: 50-76-103, 50-76-108, MCA

REASON: The department is repealing this rule as unnecessary, as the waiting period before reexamination is clearly set forth in 50-74-311, MCA.

24.135.545 NATIONAL COMMISSION CERTIFICATION located at ARM page 24-11573.

AUTH: 50-76-112, MCA
IMP: 50-76-113, MCA

REASON: The department is repealing this rule as unnecessary, since its provisions are adequately addressed in statute at 50-76-113, MCA.

24.135.2101 RENEWALS located at ARM page 24-11651.

AUTH: 50-76-112, MCA
IMP: 37-1-141, 50-76-103, MCA

REASON: The department determined it is reasonably necessary to repeal this rule since it merely references department rules on the standardized renewal process. Additionally, the biennial physical examination requirement is adequately addressed in 50-76-103, MCA.

24.142.2101 RENEWALS located at ARM page 24-12889.

AUTH: 37-73-102, MCA
IMP: 37-1-403, 37-73-220, MCA

REASON: The department is repealing this rule as unnecessary, since the department administers a standardized renewal process for all division programs and boards.

4. Concerned persons may submit their data, views, or arguments concerning the proposed repeal in writing to the Building Codes Bureau, Department of Labor and Industry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2050, or e-mail to dlibsdbcb@mt.gov, to be received no later than 5:00 p.m., January 9, 2015.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Dave Cook at the above address no later than 5:00 p.m., January 9, 2015.

6. If the board receives requests for a public hearing on the proposed repeals from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed rules; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 183 persons based on current program licensees.

7. An electronic copy of this notice is available at www.buildingcodes.mt.gov (bureau's web site). The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although

the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

8. The program maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this program. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all program administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Building Codes Bureau, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2050, e-mailed to dlibsdbcb@mt.gov, or made by completing a request form at any rules hearing held by the agency.

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

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the repeal of ARM 24.131.301, 24.131.401, 24.131.506, 24.135.401, 24.135.404, 24.135.412, 24.135.545, 24.135.2101, and 24.142.2101 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination(s) is available upon request to the Building Codes Bureau, Department of Labor and Industry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; facsimile (406) 841-2050; or e-mail dlibsdbcb@mt.gov.

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ PAM BUCY
Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State December 1, 2014

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.3.502 pertaining to official trichomoniasis testing and certification requirements	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On January 12, 2015, the Department of Livestock proposes to amend the above-stated rule.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. January 5, 2015, to advise us of the nature of the accommodation that you need. Please contact Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-4316; e-mail: cmackay@mt.gov.

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

32.3.502 OFFICIAL TRICHOMONIASIS TESTING AND CERTIFICATION REQUIREMENTS (1) Except as provided in ~~ARM 32.2.212,~~ ARM 32.3.212, the following test-eligible bovines must be negative T. foetus bulls:

(a) through (2) remain the same.

AUTH: 81-2-102, 81-2-103, 81-2-707, MCA
IMP: 81-2-102, 81-2-703, MCA

REASON: The reference in (1) of this rule to ARM 32.2.212 should be to ARM 32.3.212. We are proposing to correct this error.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov and must be received no later than 5:00 p.m. January 8, 2015.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written

comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m. January 8, 2015.

6. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be approximately 8 persons based on a total of 76 veterinarians.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this department. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sos.mt.gov/ARM/Register. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

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

/s/ Christian Mackay
Christian Mackay
Executive Officer
Board of Livestock
Department of Livestock

BY: */s/ Cinda Young-Eichenfels*
Cinda Young-Eichenfels
Rule Reviewer

Certified to the Secretary of State December 1, 2014.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment and repeal of rules in ARM Title 10, chapter 57 pertaining to K-12 educator/specialist licensing	))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On October 9, 2014, the Board of Public Education published MAR Notice No. 10-57-267 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 2211 of the 2014 Montana Administrative Register, Issue Number 19.

2. The board has amended the following rules as proposed:

ARM	10.57.101	REVIEW OF POLICY
	10.57.107	EMERGENCY AUTHORIZATION OF EMPLOYMENT
	10.57.109	UNUSUAL CASES
	10.57.112	LICENSE OF EXCHANGE TEACHERS
	10.57.201	GENERAL PROVISIONS TO ISSUE LICENSES
	10.57.201A	CRIMINAL HISTORY BACKGROUND CHECK
	10.57.209	EXTENSION OF LICENSES FOR MILITARY SERVICE
	10.57.215	RENEWAL REQUIREMENTS
	10.57.216	APPROVED RENEWAL ACTIVITY
	10.57.217	APPEAL PROCESS FOR RENEWAL ACTIVITY
	10.57.218	RENEWAL UNIT VERIFICATION
	10.57.301	ENDORSEMENT INFORMATION
	10.57.410	CLASS 2 STANDARD TEACHER'S LICENSE
	10.57.411	CLASS 1 PROFESSIONAL TEACHER'S LICENSE
	10.57.413	CLASS 3 ADMINISTRATIVE LICENSE
	10.57.414	CLASS 3 ADMINISTRATIVE LICENSE – SUPERINTENDENT ENDORSEMENT
	10.57.415	CLASS 3 ADMINISTRATIVE LICENSE – ELEMENTARY PRINCIPAL ENDORSEMENT
	10.57.416	CLASS 3 ADMINISTRATIVE LICENSE – SECONDARY PRINCIPAL ENDORSEMENT
	10.57.417	CLASS 3 ADMINISTRATIVE LICENSE – K-12 PRINCIPAL ENDORSEMENT
	10.57.418	CLASS 3 ADMINISTRATIVE LICENSE – SUPERVISOR ENDORSEMENT
	10.57.419	CLASS 3 ADMINISTRATIVE LICENSE – SPECIAL EDUCATION SUPERVISOR ENDORSEMENT
	10.57.424	CLASS 5 PROVISIONAL LICENSE
	10.57.425	CLASS 5 PROVISIONAL LICENSE – ELEMENTARY LEVEL

10.57.426	CLASS 5 PROVISIONAL LICENSE – SECONDARY, K-12, AND P-12 SPECIAL EDUCATION LEVELS
10.57.427	CLASS 5 PROVISIONAL LICENSE – SUPERINTENDENT ENDORSEMENT
10.57.428	CLASS 5 PROVISIONAL LICENSE - ELEMENTARY PRINCIPAL ENDORSEMENT
10.57.430	CLASS 5 PROVISIONAL LICENSE – K-12 PRINCIPAL ENDORSEMENT
10.57.431	CLASS 5 PROVISIONAL LICENSE – SUPERVISOR ENDORSEMENT
10.57.432	CLASS 5 PROVISIONAL LICENSE - SPECIALIST ENDORSEMENT
10.57.433	CLASS 6 SPECIALIST LICENSE
10.57.434	CLASS 6 SPECIALIST LICENSE – SCHOOL PSYCHOLOGIST
10.57.435	CLASS 6 SPECIALIST LICENSE – SCHOOL COUNSELOR
10.57.436	CLASS 7 AMERICAN INDIAN LANGUAGE AND CULTURE SPECIALIST
10.57.437	CLASS 8 DUAL CREDIT POSTSECONDARY FACULTY LICENSE
10.57.438	CLASS 8 DUAL CREDIT POSTSECONDARY FACULTY LICENSE ENDORSEMENTS
10.57.501	SOCIAL WORKERS, NURSES, AND SPEECH AND HEARING THERAPISTS
10.57.601	REQUEST FOR DISCIPLINE AGAINST THE LICENSE OF AN EDUCATOR/SPECIALIST: PRELIMINARY ACTION
10.57.601A	DEFINITION OF "IMMORAL CONDUCT"
10.57.601B	REVIEW
10.57.602	NOTICE OF HEARING
10.57.603	HEARING IN CONTESTED CASES
10.57.604	POST HEARING PROCEDURE
10.57.605	SURRENDER OF AN EDUCATOR/SPECIALIST LICENSE
10.57.606	REPORTING OF THE SURRENDER, DENIAL, REVOCATION, OR SUSPENSION OF A LICENSE
10.57.607	APPEAL FROM DENIAL OF AN EDUCATOR/ SPECIALIST LICENSE
10.57.608	CONSIDERATIONS GOVERNING ACCEPTANCE OF APPEAL IN CASES ARISING UNDER 20-4-104, MCA
10.57.611	SUBSTANTIAL AND MATERIAL NONPERFORMANCE

3. The following rules were amended as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

10.57.102 DEFINITIONS The following definitions apply to this chapter.

(1) through (12) remain as proposed.

(13) "Year of administrative experience" means employment at any level within a state accredited K-12 school system, or in an educational institution specified in 20-9-707, MCA, as a licensed administrator of at least .5 full-time employee (FTE) for at least 1080 hours or 180 school days or a 1.0 FTE for at least 540 hours or 90 school days. Experience gained prior to eligibility for initial licensure is not considered. Experience as a County Superintendent may be considered as "administrative" experience with evidence of the following:

(a) and (b) remain as proposed

(14) "Year of teaching experience" means employment at any level within a state accredited K-12 school system, or in an educational institution specified in 20-9-707, MCA, as licensed instructional staff of at least .5 FTE during a school fiscal year for at least 1080 hours or 180 school days or a 1.0 FTE for at least 540 hours or 90 school days. Experience gained prior to eligibility for initial licensure is not considered.

10.57.412 CLASS 1 AND 2 ENDORSEMENTS (1) through (5) remain as proposed.

(a) completion of an NCATE or CAEP accredited professional educator preparation program at the grade level(s) identified by the program, including supervised teaching experience; and

(b) for those applicants completing ~~programs which are not an accredited professional educator preparation program~~ an educator preparation program at a regionally accredited college or university approved or accredited by a state board of education or a state agency:

(i) through (9) remain as proposed.

10.57.420 CLASS 4 CAREER AND TECHNICAL EDUCATION LICENSE

(1) through (4) remain as proposed.

(a) Class 4A licenses shall be renewable by earning 60 renewal units. Endorsement related ~~to~~ technical studies may be accepted. The first renewal must show evidence of renewal units earned in the following content areas:

(i) ~~principles and/or philosophy of~~ curriculum and instruction in career and technical education; ~~or~~ and

(ii) remains as proposed.

(b) Class 4B or 4C licenses shall be renewable by earning 60 renewal units. The first renewal must show evidence of renewal units earned in the following content areas:

(i) curriculum and instruction in career and technical education; and

(ii) safety and teacher liability.

(c) Other p~~P~~rofessional development appropriate to renew a Class 4B or 4C license includes the following:

(i) through (viii) remain as proposed.

(5) A lapsed Class 4 license may be reinstated by showing verification of~~:~~

~~(a) for Class 4A licenses,~~ 60 renewal units earned during the five-year period preceding the validation date of the new license~~;~~,

~~(b) for Class 4B and 4C licenses, 60 renewal units earned during the five-~~

~~year period preceding the validation date of the new license in the following areas~~ including renewal units in:

~~(i) principles and/or philosophy of career and technical education;~~

~~(ii)~~ (a) curriculum and instruction in career and technical education;

~~(iii) learning styles/teaching styles; including serving students with special needs;~~

~~(iv)~~ (b) safety and teacher liability; and

~~(v) classroom management;~~

~~(vi) teaching methods;~~

~~(vii) career guidance in career and technical education; or~~

~~(viii)~~ (c) endorsement related technical studies or industry validated training~~, with prior approval~~.

10.57.421 CLASS 4 ENDORSEMENTS (1) and (2) remain as proposed.

(3) To obtain an endorsement on a Class 4 license, an applicant must provide verification of a minimum of 10,000 hours of documented, relevant work experience which may include apprenticeship training, documenting the knowledge and skills required in the specific trade in which they are to teach. Acceptable documentation of relevant work experience is determined by the Superintendent of Public Instruction and may include, but is not limited to:

(a) through (5) remain as proposed.

10.57.429 CLASS 5 PROVISIONAL LICENSE - SECONDARY PRINCIPAL ENDORSEMENT (1) remains as proposed.

(a) a master's degree from an accredited professional educator preparation program ~~and nine graduate semester credits in school administration~~;

(b) through (2) remain as proposed.

4. The board has repealed ARM 10.57.609, Hearing on Appeal as proposed.

5. The following comments were received.

COMMENT 1: The School Administrators of Montana, Montana Quality Education Coalition, MEA-MFT, Certification Standards and Practices Advisory Council (CSPAC), Great Falls Public Schools and four other commenters submitted oral and written comments in support of the proposed changes to the rule.

RESPONSE: The Board of Public Education thanks each of the commenters for their comments and appreciates their support of these rules.

COMMENT 2: Ann Gilkey, Chief Legal Counsel from the Office of Public Instruction, submitted a comment stating there were errors in the draft changes submitted to the board and requested changes as follows:

1. In 10.57.412(5)(a) after "completion of an" insert "NCATE or CAEP."

2. In 10.57.412(5)(b) after "completing" add "an educator preparation program at a regionally accredited college or university approved or accredited by a

state board of education or a state agency" and striking the proposed language "programs which are not an accredited professional educator preparation program. "

The intent was to require verification of content coursework for applicants who have completed programs not accredited by NCATE or CAEP, but are accredited by another state board or state agency. The current proposed language does not make that distinction clear and could open a much wider path to endorsement from non-accredited programs than originally intended.

3. In 10.57.429(1)(a) strike "and nine graduate semester credits in school administration."

The intent is for any Class 5 applicant to have a plan of study with a university or college which assures the OPI that the applicant can meet the requirements for licensure in three years. The other Class 5 principal endorsement rules had this language stricken and it was an oversight to leave the language in this rule.

RESPONSE: The board thanks Ms. Gilkey for her comment, concurs, and has amended the rules accordingly.

COMMENT 3: T.J. Eyer, OPI Division Administrator for the Career, Technology, and Adult Education Division commented that in order to be consistent with renewal requirements for other classes of licensure, he suggested amending ARM 10.57.420 to require first round renewal units in curriculum and instruction and safety for all Class 4 licenses. These courses are the most critical for safe and effective CTAE classrooms.

RESPONSE: The board thanks Mr. Eyer for his comment, concurs, and has amended the rule accordingly.

COMMENT 4: Marco Ferro from MEA-MFT testified in support of the rule changes and requested that the phrase "or in an educational institution specified in MCA 20-9-707" be added to ARM 10.57.102 (13) and (14) so that administrative and teaching experience at the Montana Youth Challenge Academy and Montana Job Corp can be included. The Governor's office, Youth Challenge Academy, and Tammy Lacey, chair of CSPAC, concurred with Mr. Ferro's requested change.

RESPONSE: The board thanks the commenters for their comments, concurs with the suggested changes, and has amended the rules accordingly.

COMMENT 5: Ms. Constance Dratz of Yellowstone Montessori testified in opposition to the rules and requested that the board consider alternative pathways to licensure for early education for existing Montessori preschool teachers who have already had many hours of training through the Montessori program. Several other commenters also had concerns about the pathway to licensure for preschool teachers.

RESPONSE: The board thanks Ms. Dratz and the other commenters who expressed their concerns about licensure issues. The Office of Public Instruction together with the Montana University System through the Chapter 58 educator preparation program stakeholders are working on procedures for pathways to licensure for preschool educators which are intended to include pathways to initial early childhood endorsement based on training and experience.

COMMENT 6: Some commenters expressed concerns about the three year time period in which current preschool teachers would have to obtain licensure.

RESPONSE: The board thanks the commenters for their comments and states that the new licensure requirements will only apply to public preschool teachers. Private preschool teachers will not be affected. The stakeholders who worked on the amendments to the rules believe three years will be adequate; however, the timeline can be reviewed by the board and amended if necessary.

6. The effective date of these rules is July 1, 2015.

/s/ Peter Donovan
Peter Donovan
Rule Reviewer

/s/ Sharon Carroll
Sharon Carroll, Chair
Board of Public Education

Certified to the Secretary of State December 1, 2014.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through XIV; the amendment of ARM 10.58.102 through 10.58.104, 10.58.501 through 10.58.503, 10.58.505, 10.58.507, 10.58.509 through 10.58.511, 10.58.513 through 10.58.524, 10.58.526, 10.58.528, 10.58.705, 10.58.707, and 10.58.802; the amendment and transfer of ARM 10.58.508 and 10.58.512; and the repeal of ARM 10.58.210, 10.58.304 through 10.58.309, 10.58.525, 10.58.527, 10.58.601 through 10.58.603, 10.58.801, and 10.58.901 all pertaining to educator preparation programs	)	NOTICE OF ADOPTION, AMENDMENT, AMENDMENT AND TRANSFER, AND REPEAL

TO: All Concerned Persons

1. On October 9, 2014, the Board of Public Education published MAR Notice No. 10-58-271 pertaining to the public hearing on the proposed adoption, amendment, amendment and transfer, and repeal of the above-stated rules at page 2250 of the 2014 Montana Administrative Register, Issue Number 19.

2. The board has adopted the following rules as proposed:

NEW RULE VIII	ARM 10.58.604	ADVANCED PROGRAMS
NEW RULE XIV	ARM 10.58.706	SUPERINTENDENTS

3. The board has amended the following rules as proposed:

ARM 10.58.102	PROCESS LEADING TO ACCREDITATION OF EDUCATOR PREPARATION PROVIDERS
ARM 10.58.103	ACCREDITATION SITE REVIEWS
ARM 10.58.104	ACCREDITED PROGRAMS
ARM 10.58.502	AGRICULTURAL EDUCATION
ARM 10.58.503	ART K-12
ARM 10.58.505	BUSINESS EDUCATION
ARM 10.58.507	THEATRE
ARM 10.58.509	ENGLISH/LANGUAGE ARTS
ARM 10.58.510	STUDENTS WITH DISABILITIES P-12
ARM 10.58.511	WORLD LANGUAGES
ARM 10.58.513	HEALTH
ARM 10.58.514	FAMILY AND CONSUMER SCIENCES

ARM 10.58.515	INDUSTRIAL TRADES AND TECHNOLOGY EDUCATION
ARM 10.58.516	JOURNALISM
ARM 10.58.517	LIBRARY MEDIA K-12
ARM 10.58.518	MATHEMATICS
ARM 10.58.519	MUSIC K-12
ARM 10.58.520	PHYSICAL EDUCATION
ARM 10.58.521	READING SPECIALISTS K-12
ARM 10.58.522	SCIENCE
ARM 10.58.523	SOCIAL STUDIES
ARM 10.58.524	COMMUNICATION
ARM 10.58.526	TRAFFIC EDUCATION
ARM 10.58.528	COMPUTER SCIENCE
ARM 10.58.705	SCHOOL PRINCIPALS, SUPERVISORS, AND CURRICULUM DIRECTORS
ARM 10.58.707	SCHOOL PSYCHOLOGISTS
ARM 10.58.802	APPROVAL OF NEW CURRICULAR PROGRAMS

4. The board has amended and transferred the following rules as proposed:

ARM 10.58.508	to	ARM 10.58.532	ELEMENTARY
ARM 10.58.512	to	ARM 10.58.610	SCHOOL COUNSELING K-12

5. The board has repealed the following rules as proposed.

ARM 10.58.210	CONCEPTUAL FRAMEWORK(S)
ARM 10.58.304	CANDIDATE KNOWLEDGE, SKILLS, AND DISPOSITIONS
ARM 10.58.305	ASSESSMENT SYSTEM AND UNIT EVALUATION
ARM 10.58.306	FIELD EXPERIENCES AND CLINICAL PRACTICES
ARM 10.58.307	DIVERSITY
ARM 10.58.308	FACULTY QUALIFICATIONS, PERFORMANCE, AND DEVELOPMENT
ARM 10.58.309	UNIT GOVERNANCE AND RESOURCES
ARM 10.58.525	TRADES AND INDUSTRY
ARM 10.58.527	AREAS OF PERMISSIVE SPECIAL COMPETENCY
ARM 10.58.601	PROGRAM PLANNING AND DEVELOPMENT
ARM 10.58.602	TEACHING AREAS: ADVANCED PROGRAMS
ARM 10.58.603	ASSESSMENT OF ADVANCED PROGRAMS
ARM 10.58.801	TYPES OF PROGRAMS
ARM 10.58.901	STANDARDS FOR APPROVING COMPETENCY-BASED OR PERFORMANCE-BASED PROGRAMS

6. The board has adopted the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted mater interlined:

NEW RULE I (10.58.311) INITIAL CONTENT AND PEDAGOGICAL KNOWLEDGE (1) remains as proposed.

NEW RULE II (10.58.312) INITIAL CLINICAL PARTNERSHIPS AND PRACTICE (1) remains as proposed.

NEW RULE III (10.58.313) INITIAL CANDIDATE QUALITY, RECRUITMENT, AND SELECTIVITY (1) and (1)(a) remain as proposed.

(b) presents plans and goals to recruit and support completion of high-quality initial candidates from a broad range of backgrounds and diverse populations to accomplish its mission:

(i) admitted candidates reflect the diversity of Montana's P-12 students; and

(ii) the provider demonstrates efforts to know and address local, community, tribal, Montana, national, or regional needs for hard-to-staff schools and current shortage fields;

(c) through (g) remain as proposed.

NEW RULE IV (10.58.314) INITIAL PROGRAM IMPACT (1) remains as proposed.

NEW RULE V (10.58.315) INITIAL PROVIDER QUALITY ASSURANCE AND CONTINUOUS IMPROVEMENT (1) remains as proposed.

NEW RULE VI (10.58.531) EARLY CHILDHOOD EDUCATION (1) through (1)(e) remain as proposed.

(f) know about, understand, and value the complex characteristics and importance of children's families and communities including home language, cultural values, ethnicity, socioeconomic conditions, family structures, relationships, stresses, childhood trauma and adverse childhood experiences, supports, and community resources;

(i) understand the effects of childhood trauma on social, emotional, physical, and behavioral development and be able to demonstrate trauma-informed classroom management strategies; and

(ii) demonstrate a knowledge of the implications of secondary trauma;

(g) remains as proposed.

(h) promote and encourage family involvement in all aspects of children's development and learning including assisting families to find and refer resources concerning parenting, mental health, health care, and financial assistance;

(i) through (q)(vi) remain as proposed.

(vii) demonstrating knowledge, understanding, and use of human movement and physical activity as central elements to foster active, healthy life styles, including health nutrition, and enhanced quality of life for all students;

(r) base curriculum planning on the understanding of the particular significance of social, ~~and~~ emotional, and behavioral development as the foundation for young children's school readiness and future achievements;

(s) through (x)(ii) remain as proposed.

NEW RULE VII (10.58.533) MIDDLE GRADES (4-8) (1) and (1)(a) remain as proposed.

(b) knowledge of young adolescents in the areas of intellectual, physical,

nutritional, social, emotional, behavioral, and moral characteristics, individual needs, and interests, and apply this knowledge to create healthy, respectful, supportive, and challenging learning environments for all young adolescents, including those whose language and cultures are different from their own;

(i) understand the effects of childhood trauma on social, emotional, physical, and behavioral development and be able to demonstrate trauma-informed classroom management strategies;

(ii) demonstrate a knowledge of the implications of secondary trauma;

(c) through (2)(e) remain as proposed.

(f) knowledge, understanding, and use of health education to create opportunities for middle grades student development and practice of skills that contribute to good physical, social, emotional, and behavioral health for all young adolescents; and

(g) knowledge, understanding, and use of human movement and physical activity as central elements to foster active, healthy life styles, including health nutrition, and enhanced quality of life for all young adolescent students.

(3) through (4)(f) remain as proposed.

(g) knowledge and understanding of formative and summative assessment strategies and use this knowledge and understanding to evaluate and ensure the continuous intellectual, social-emotional, behavioral, and physical development of middle grades students.

NEW RULE IX (10.58.605) ADVANCED CONTENT AND PEDAGOGICAL KNOWLEDGE (1) remains as proposed.

NEW RULE X (10.58.606) ADVANCED CLINICAL PARTNERSHIPS AND PRACTICE (1) remains as proposed.

NEW RULE XI (10.58.607) ADVANCED CANDIDATE QUALITY, RECRUITMENT, AND SELECTIVITY (1) and (2) remain as proposed.

NEW RULE XII (10.58.608) ADVANCED PROGRAM IMPACT (1) remains as proposed.

NEW RULE XIII (10.58.609) ADVANCED PROVIDER QUALITY ASSURANCE AND CONTINUOUS IMPROVEMENT (1) remains as proposed.

7. The board has amended the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

10.58.501 TEACHING STANDARDS (1) All programs require that successful candidates:

(a) demonstrate understanding of how learners grow and develop, recognizing that patterns of learning and development vary individually within and across the cognitive, linguistic, social, emotional, behavioral health continuum, and physical areas, and individualize developmentally appropriate and challenging

learning experiences for learners of all cognitive abilities;

(b) through (l) remain as proposed.

8. The board has thoroughly considered the comments and testimony received. A summary of the comments received and the board's responses are as follows.

COMMENT 1: Eric Burke from MEA-MFT testified in support of the changes and stated that the changes incorporate what is absolutely necessary for a comprehensive, world class system.

COMMENT 2: Dr. Kirk Miller from School Administrators of Montana testified in support of the amendments and acknowledged all of the stakeholders who participated in drafting the proposed rule amendments.

RESPONSE: The board thanks Mr. Burke and Dr. Miller for their comments and appreciates the support of their agencies for these rules.

COMMENT 3: Dr. Tim Laurent of the University of Great Falls testified in opposition to the rules stating that his concerns were that the rules contained misplaced authority, imposed cooperation, a burdensome assurance system and complex standards.

RESPONSE: The board thanks Dr. Laurent for his comments and states that the new CAEP standards are embedded in these rules as the national accreditation standards have always been. The board believes that the national standards should be reflected in the Montana rules. The Office of Public Instruction and the Montana Council of Deans are working together to develop a strong implementation process to support the university systems' compliance with these rules.

COMMENT 4: The Montana Arts Council, Dr. Karen Kaufmann of the University of Montana-Missoula, Dr. Alex Apostle from the Missoula County Public Schools, and many other individuals testified in opposition to the removal of the Area of Special Permissive Competency for dance. They stated that dance was an important tool that could be used in teaching specific curriculum concepts. Some commenters felt that this would mean that dance education would be removed from Montana schools.

RESPONSE: The board thanks the commenters for their comments; however, the board believes that removing the special competency areas will not adversely affect educators or school districts. If a school district wants to hire an educator in a specialty area such as dance, the district may continue to do so. A district may determine if a person is competent in an area by reviewing the courses completed on an individual's transcript. Also, there are several other specialty areas for which advocates are asking for special competency designation which is not necessary for obtaining expertise in an area of study, or for subsequent licensure or hiring.

COMMENT 5: Leonard Orth, Director of the Eastern Yellowstone Special Services Cooperative, recommended that the acronym PLAAFP which stands for present level of academic achievement and functional performance be added to ARM 10.58.510.

RESPONSE: The board thanks Mr. Orth for his comment and believes that ARM 10.58.510(1)(d) as proposed addresses his concerns.

COMMENT 6: Dr. Jayne Downey from the Montana State University Department of Education provided written comments on the new rules and asked that the word "initial" be added at the beginning of the catchphrases for New Rules I-V and that the word "advanced" be added at the beginning of the catchphrases for New Rules IX through XIII to provide clarification between the two sets of rules. She also requested that the language in New Rule III be amended to be consistent with the wording in New Rule XI.

RESPONSE: The board thanks Dr. Downey for her comments, concurs, and has amended the rules accordingly.

COMMENT 7: Dr. Ann Dutton Ewbank, from the School Library Media Certification Program at MSU-Bozeman, submitted a written comment supporting the changes to Chapter 58 and specifically to ARM 10.58.517. She believes the revisions more accurately reflect the preparation library media students need to be 21st century educators.

RESPONSE: The board thanks Dr. Ewbank for her comment and appreciates her support of the amendments to the rules.

COMMENT 8: Director Richard Opper from the Department of Public Health and Human Services submitted a written comment and recommended that changes be made to the rules to address training in childhood trauma and adverse childhood experiences (ACEs).

RESPONSE: The board thanks Director Opper for his comments, concurs, and has amended the new rules for early childhood education and middle grades to address his concerns.

COMMENT 9: Dr. Claudette Morton submitted testimony opposing the repeal of ARM 10.58.527 regarding special permissive competency standards (SPCS). She feels the SPCS are necessary and that the groups affected may not have sufficient notice of the intent to repeal the rule. She requests that the board not repeal the rule and postpone the action until after the affected constituencies have been made aware of the proposal.

RESPONSE: The board thanks Dr. Morton for her comments but feels this rule should be repealed for the reasons stated in the response to Comment 4 above.

The board feels adequate time has been given in that the board has exceeded or met all of the rulemaking requirements in the Montana Administrative Procedure Act.

9. The effective date of these rules is July 1, 2015.

/s/ Peter Donovan	/s/ Sharon Carroll
Peter Donovan	Sharon Carroll, Chair
Rule Reviewer	Board of Public Education

Certified to the Secretary of State December 1, 2014.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULES I through XV pertaining to preschool programming for public schools	))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On October 9, 2014, the Board of Public Education published MAR Notice No. 10-63-269 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 2318 of the 2014 Montana Administrative Register, Issue Number 19.

2. The board has adopted the following rules as proposed:

NEW RULE III	ARM	10.63.103	LEADERSHIP
NEW RULE IV	ARM	10.63.104	TEACHER ASSIGNMENTS AND QUALIFICATIONS
NEW RULE V	ARM	10.63.105	EARLY CHILDHOOD PARAPROFESSIONAL QUALIFICATIONS
NEW RULE VI	ARM	10.63.106	EARLY CHILDHOOD PARAPROFESSIONAL SUPERVISION
NEW RULE VII	ARM	10.63.107	CLASS SIZE
NEW RULE VIII	ARM	10.63.108	AGGREGATE HOURS
NEW RULE IX	ARM	10.63.109	ENROLLMENT ELIGIBILITY
NEW RULE XIV	ARM	10.63.114	CHILD GUIDANCE

3. The board has adopted the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (ARM 10.63.101) PROCEDURES (1) and (2) remain as proposed.

(3) Montana's preschool standards shall be reviewed and revised on a five-year cycle beginning July 1, 2017.

NEW RULE II (ARM 10.63.102) DEFINITIONS (1) through (1)(b) remain as proposed.

~~(c) "Collaborative inquiry" means a teaching strategy in which teachers and students engage in joint learning, discovery, or intellectual effort, or when groups of students work together to search for understanding, meaning, or solutions.~~

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

~~(f) "Experiential learning" means to engage in learning through exploration, experimentation, and discovery.~~

(e) "Learning center" means a self-contained area of the classroom featuring a wide variety of hands-on materials that children can choose and use independently which are organized around a curriculum area (science, math, art, music, dramatic play, literacy) or a specific kind of play material (blocks, sensory, manipulative).

(g) and (h) remain as proposed but are renumbered (f) and (g).

NEW RULE X (ARM 10.63.110) EARLY LEARNING CONTENT STANDARDS DEVELOPMENTAL DOMAINS (1) through (2)(a)(ii) remain as proposed.

(iii) use of ~~their~~ the senses to explore the environment and develop skills through sight, smell, touch, taste, and sound.

(b) through (3)(a) remain as proposed.

(i) receptive communication, wherein students use listening and observation skills to make sense of and respond to spoken language and other forms of communication; enter into the exchange of information around what is seen, heard, and experienced; and ~~they~~ begin to acquire an understanding of the concepts of language that contribute to learning;

(ii) through (4)(e) remain as proposed.

(i) engage in scientific thinking and the use of the scientific method~~s~~ through investigation using their senses to observe, manipulate objects, ask questions, make predictions, and develop conclusions and generalizations;

(ii) through (f)(iv) remain as proposed.

NEW RULE XI (ARM 10.63.111) CURRICULUM AND ASSESSMENT

(1) through (2)(a) remain as proposed.

(b) informing instruction through observation and documentation of children's strengths, interests, and needs in their play, work, and behavior;

(b) through (e) remain as proposed but are renumbered (c) through (f).

NEW RULE XII (ARM 10.63.112) INSTRUCTION (1) through (2)(b) remain as proposed.

(c) support children's development by providing opportunities for all children to play with and learn from each other;

(c) through (g) remain as proposed but are renumbered (d) through (h).

NEW RULE XIII (ARM 10.63.113) PHYSICAL AND LEARNING ENVIRONMENT (1) through (2)(b) remain as proposed.

(i) planned learning center time where students have individual choice of activities;

(ii) daily opportunities to learn and play individually, in small groups, and as a whole group; and

(iii) remains as proposed.

NEW RULE XV (ARM 10.63.115) FAMILY AND COMMUNITY ENGAGEMENT (1) through (2)(b) remain as proposed.

(c) support the child and the family through regular, ongoing, two-way communication;

(c) through (h) remain as proposed but are renumbered (d) through (i).

4. The following comments were received.

COMMENT 1: Over 400 commenters (total of 481) provided oral and written testimony in support of the proposed rules for early childhood education. Organizations in support of the standards include: School Administrators of Montana, MEA-MFT, the Department of Public Health and Human Services, Head Start, Quality Education Coalition, Rocky Mountain Development Council, and Montana School Boards Association.

RESPONSE: The Board of Public Education appreciates the support of the commenters for these rules.

COMMENT 2: Tammy Lacey, Superintendent of the Great Falls Public Schools and chair of the Certification Standards and Practices Advisory Council (CSPAC), stated the district supported the standards and that Great Falls has a public preschool which has a waiting list and private preschools are still in operation.

COMMENT 3: Mary Meehan from Evergreen Public Schools in Kalispell testified in support of the standards. She stated that 75% of the children in their area qualify for free and reduced lunch and would benefit from a district-sponsored preschool.

COMMENT 4: Several preschool instructors testified in support of the standards. One instructor stated that 60% of Montana children don't attend any preschool.

RESPONSE: The board thanks commenters referred to in 2-4 above and appreciates their support of early childhood education.

COMMENT 5: The Montana Montessori Educators' Association submitted a comment requesting that the board give thoughtful consideration for an alternative path of certification for preschool teachers. Several other commenters felt that the requirements for licensed preschool teachers was restrictive and would prohibit them from continuing to operate private preschools.

RESPONSE: The board thanks the Montana Montessori Educators' Association and the other commenters who expressed their concerns about licensure issues. The Office of Public Instruction together with the Montana University System through the Chapter 58 educator preparation program stakeholders are working on procedures for pathways to licensure for preschool educators which are intended to include pathways to initial early childhood endorsement based on training and experience.

COMMENT 6: The Education and Local Government (ELG) Interim Committee adopted a resolution to oppose the proposed rules on a 6-5 vote.

RESPONSE: The board has reviewed the ELG resolution and appreciates the consideration the legislators have given to the early childhood standards. However, the board would like to point out a misconception in the ELG's resolution. The accreditation standards will apply only to public preschool programs operated by school districts in the state. Private preschools will not be required to follow these accreditation standards. The board concurs that the decision to utilize a preschool program rests exclusively with the parents and/or guardians of the children. The proposed rules provide that establishing a public preschool program is at the discretion of the locally elected board of trustees. The rules also provide that attendance at a public preschool is voluntary – not required.

COMMENT 7: Several commenters opposed the rules based on their belief that the rules would "put private preschools out of business."

RESPONSE: The board thanks the commenters for their interest and understands their concerns. There are currently some districts which do operate preschools. The board feels it is necessary to adopt these rules to ensure consistent high-quality preschool standards across the state. These standards are for public preschools which can only be established at the discretion of locally elected boards of trustees. It is anticipated that some school districts may wish to collaborate with established private preschools to provide preschool services.

COMMENT 8: A commenter testified that schools are already overcrowded and that the standards would take away the parent's right to educate their children.

RESPONSE: The board thanks the commenter for her comment, but under these rules the decision to operate a public preschool is at the discretion of the local board of trustees and all parents continue to have the right to determine whether to educate their children at home or send them to a preschool of their choice.

COMMENT 9: A commenter expressed a concern about the studies used to draft the standards feeling that they focused only on extremely disadvantaged children. She also stressed the importance of the family and the child being home with the mother.

RESPONSE: The board thanks the commenter for her comment and states that the studies used were nationwide studies that included all children, not just disadvantaged children. Again, enrolling a child in a public preschool is voluntary and is the parent's decision.

COMMENT 10: A commenter stated that she felt the amount of time the standards require a child to attend preschool will be stressful and the commenter referred to a study that says "chronic stress predisposes the brain to mental illness."

RESPONSE: The board thanks the commenter for her comment and states that the board is not aware of any research-based evidence to support her contention.

COMMENT 11: Several persons stated their concerns for the time frame in which the rules were drafted.

RESPONSE: The board thanks the commenters for their comments and states that the board has followed and in many cases exceeded the Montana Administrative Procedure Act in providing notice of the intended rulemaking action.

COMMENT 12: A commenter stated that a voluntary preschool would offer less wealthy families a valuable opportunity and requested that the standards include time outside in nature and world languages.

RESPONSE: The board thanks the commenter and states that New Rule X (ARM 10.63.110) in (3) addresses language development. Although the rules do not require offering world languages, this does not preclude schools from offering age-appropriate language instruction. This is a local decision. In (4)(e) of that rule the standards provide for students to develop an understanding for the physical world, nature, and properties of energy and nonliving matter. It is up to each local school board to determine the specific curriculum.

COMMENT 13: A commenter provided written testimony that a high number of Montana children have had four or more adverse childhood experiences (ACEs). He recommends that the standards require child care providers to attend training on the Adverse Childhood Experiences Study.

RESPONSE: The board thanks the commenter for his concern. The commenter refers to child care providers however; these rules do not apply to child care. The standards provide that the preschool classes be taught by highly qualified preschool teachers. Districts with a high number of children experiencing ACEs can provide such training for their teachers.

5. The following comments refer to specific rules which are noted above the comment.

New Rule II (ARM 10.63.102) DEFINITIONS

COMMENT 14: The Montana Early Childhood Higher Education Consortium (MECHEC) commented that the definitions should include a definition of "learning center" and provided a suggested definition.

RESPONSE: The board thanks the consortium for its comment, concurs, and has amended the rule accordingly.

COMMENT 15: A commenter stated that as a director of a private, nonprofit child care center she applauded the Governor's recent emphasis and commitment to early childhood education and was pleased that the proposed standards included much of the language from the Montana Early Learning Standards (MELS). She requested that the following definitions be added to the standards:

1. what a learning center looks like;
2. developmentally appropriate practice;
3. what play looks like (and expand this concept in the rules);
4. collaborative inquiry; and
5. experiential learning.

RESPONSE: The board thanks the commenter for her comment. A definition for "learning center" has been added; however, the "collaborative inquiry" and "experiential learning" definitions have been removed because these terms are not used in the rules. The concept of "play" has been included in the rules and the board does not feel it needs to be specifically defined. The board declines to define in rule the term "developmentally appropriate practice" because it feels it would be too prescriptive and interfere with local control of schools.

New Rule X (ARM 10.63.110) EARLY LEARNING CONTENT STANDARDS DEVELOPMENTAL DOMAINS

COMMENT 16: The MECHEC commented that grammatical changes needed to be made to New Rule X (2)(a)(iii), (3)(i), and (4)(e)(i). They also requested that the term "receive support" in (3)(a)(iv) be deleted and replaced with "gain proficiency."

RESPONSE: The board thanks the consortium for its comments, concurs with the grammatical changes, and has amended the rule accordingly. The board respectfully disagrees with the requested change to (3)(a)(iv) and believes proficiency is an issue that should be left to the local board of trustees.

New Rule XI (ARM 10.63.111) CURRICULUM AND ASSESSMENT

COMMENT 17: The MECHEC recommended that the rules integrate a provision for observing and documenting children's strengths, interests, and needs in their play, work, and behavior to inform instruction.

RESPONSE: The board thanks the consortium for its comment, concurs, and has amended the rule as set forth above.

New Rule XII (ARM 10.63.112) INSTRUCTION

COMMENT 18: The MECHEC recommended that the rules provide more support for children's development of friendships and opportunities for children to play and learn from each other.

RESPONSE: The board thanks the consortium for its comment and has adopted language to support children's development by providing opportunities for all children to play with and learn from each other.

New Rule XIII (ARM 10.63.113) PHYSICAL AND LEARNING ENVIRONMENT

COMMENT 19: The Office of Public Instruction submitted a comment stating that language was inadvertently omitted from the proposed rule and requests that the words "learning center" be added after "planned" in New Rule XIII (2)(b)(i) and the word "daily" be added before "opportunities" in New Rule XIII (2)(b)(ii).

RESPONSE: The board thanks the OPI for its comment, concurs with the amended language, and has amended the rule accordingly.

New Rule XV (ARM 10.63.115) FAMILY AND COMMUNITY ENGAGEMENT

COMMENT 20: The MECHEC submitted a recommendation that the board include the following language:

1. at the end of New Rule XV(1):
"…and to recognize and respect the primacy of families through planning for family engagement that includes decision-making, addressing family needs, and accessing comprehensive services."

2. a new (2)(c):
"(c) support the child and family through regular, ongoing, two-way communication that includes a variety of strategies such as home visits and family teacher conferences; "

RESPONSE: The board thanks the MECHEC for its comments, but believes that the suggested language for (1) is substantially covered elsewhere in the rule and has amended the rule by adding some of the suggested language for (c) but will leave the determination of how and what methods to use to implement the rule to the discretion of the local boards of trustees.

6. The effective date of these rules is July 1, 2015.

/s/ Peter Donovan
Peter Donovan
Rule Reviewer

/s/ Sharon Carroll
Sharon Carroll, Chair
Board of Public Education

Certified to the Secretary of State December 1, 2014.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 18.2.261 pertaining to Montana Environmental Policy Act categorical exclusions	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 23, 2014, the Department of Transportation published MAR Notice No. 18-152 pertaining to the proposed amendment of the above-stated rule at page 2492 of the 2014 Montana Administrative Register, Issue Number 20.

2. The department has amended the above-stated rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

18.2.261 ACTIONS THAT QUALIFY FOR A CATEGORICAL EXCLUSION

(1) through (5)(f) remain as proposed.

AUTH: 2-3-103, 2-4-201, 75-1-103, 75-1-201, MCA
IMP: 75-1-103, 75-1-201, MCA

3. 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: MDT staff received a suggestion from Legislative Services Division that the authority citation include the citations to 2-3-103 and 2-4-201, MCA, to clarify the department's general rulemaking authority in implementing the Montana Environmental Policy Act.

RESPONSE #1: MDT agrees with the comment and will amend the authority citation as noted above.

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

/s/ Michael T. Tooley
Michael T. Tooley
Director
Department of Transportation

Certified to the Secretary of State December 1, 2014.

BEFORE THE PUBLIC SAFETY OFFICER
STANDARDS AND TRAINING COUNCIL
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through XIV; the amendment of ARM 23.13.101, 23.13.201, 23.13.203, 23.13.204, 23.13.205, 23.13.206, 23.13.207, 23.13.208, 23.13.209, 23.13.210, 23.13.211, 23.13.301, 23.13.304, 23.13.702, 23.13.703, 23.13.704, and 23.13.711; the transfer and amendment of ARM 23.13.401, 23.13.501, 23.13.701, 23.13.710, and 23.13.712; and the repeal of ARM 23.13.202 pertaining to the certification of public safety officers	)	NOTICE OF ADOPTION, AMENDMENT, TRANSFER AND AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On August 7, 2014, the Public Safety Officer Standards and Training Council (POST Council) published MAR Notice No. 23-13-240 pertaining to the public hearing on the proposed adoption, amendment, transfer and amendment, and repeal of the above-stated rules at page 1698 of the 2014 Montana Administrative Register, Issue Number 15.

2. The POST Council has adopted New Rules I (23.13.214), III (23.13.103), IV (23.13.705), V (23.13.707), VI (23.13.709), VII (23.13.713), VIII (23.13.714), IX (23.13.715), X (23.13.716), XI (23.13.706) XII (23.13.720), XIII (23.13.104), and XIV (23.13.216); amended ARM 23.13.101, 23.13.201, 23.13.203, 23.13.204, 23.13.205, 23.13.206, 23.13.207, 23.13.208, 23.13.209, 23.13.210, 23.13.211, 23.13.301, 23.13.702, 23.13.703, 23.13.704, and 23.13.711; transferred and amended ARM 23.13.401 (23.13.212), 23.13.501 (23.13.213), and 23.13.701 (23.13.102); and repealed ARM 23.13.202 as proposed.

3. The POST Council has adopted New Rule II (23.13.215), amended ARM 23.13.304, and transferred and amended ARM 23.13.710 (23.13.719) and 23.13.712 (23.13.721) as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE II FIREARMS PROFICIENCY STANDARDS (1) through (2)(c) remain as proposed.

(d) Patrol rifle – a minimum of 20 rounds fired at a distance ranging from point-blank to ~~100~~ 50 yards;

(e) through (4) remain as proposed.

23.13.304 THE BASIC COURSES (1) and (2) remain as proposed.

(3) The council will review and approve the curriculum for all basic public safety officers' courses. The review may consist of ~~by~~ examining and approving the course syllabus and/or a thorough review of individual course performance objectives and lesson plans which have been established for each designated training block within the prescribed subject areas.

~~(a) All lesson plans submitted to the POST Council for accreditation must contain, at a minimum:~~

~~(i) the title of the lesson plan;~~

~~(ii) the training goal of the lesson plan;~~

~~(iii) application level performance objectives;~~

~~(iv) the method of evaluation;~~

~~(v) the student materials and handouts;~~

~~(vi) course content references.~~

(4) remains as proposed.

23.13.710 (~~23.13.706~~ 23.13.719) DECISION AND ORDER, STAYS (1) through (6) remain as proposed.

23.13.712 (~~23.13.718~~ 23.13.721) APPEALS (1) remains as proposed.

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

COMMENTS 1-3: These comments were submitted by Mike McCarthy, Montana Law Enforcement Academy; Jesse Slaughter, Great Falls Police Department; and Clint Pullman, Lewis and Clark County Sheriff's Office. All three take issue with the appropriateness of Proposed New Rule II (23.13.215), which requires peace officers to qualify with the patrol rifle at a distance of 100 yards. Deputy Pullman testified that the LCCSO range does not extend to a distance of 100 yards and that he is aware that most agencies in Montana do not have rifle ranges that will allow qualification at a distance of 100 yards. Deputy Pullman provided a copy of the LCCSO training regimen and testified that in the opinion of the LCCSO training at a range of 50 yards provides an appropriate standard for this weapon. The other comments were to similar effect.

RESPONSE: The council agrees that qualification at 100 yards with a patrol rifle is unnecessary and could be burdensome to agencies throughout the state. The proposed rule has been amended to reflect a change from 100 yards to 50 yards for the patrol rifle.

COMMENT 4: Comment from Roger Thompson, Madison County Undersheriff. Undersheriff Thompson states that his agency and many others around the state occasionally hire POST-certified officers on a part-time basis and pay them by the hour. This creates a problem for the agencies because the statutes do not address the status of a part-time certified officer compensated in this way. These officers

cannot be considered reserve officers because by definition reserve officers are volunteers who are unpaid. They cannot be considered a "law enforcement officer" under 7-32-201, MCA, because under that section a "law enforcement officer" is a full-time employee. Undersheriff Thompson proposes an amendment to the proposed rules to define a "peace officer" under 44-4-401, MCA, to include a POST-certified officer employed on a part-time basis.

RESPONSE: The council found that this issue is outside of the scope of its rulemaking authority and declines to make the suggested change.

COMMENT 5: Comment from Kevin Olson, Administrator, Montana Law Enforcement Academy. Mr. Olson supports review of the Basic Course curriculum as proposed in amended ARM 23.13.304. He questions, however, the ability of the POST Council and its staff to conduct the review to the depth provided in the rule as proposed to be amended. Mr. Olson proposes amendments to the rule that would make the degree of review discretionary and eliminate the list in (3) of mandatory components of lesson plans submitted to the council for approval.

RESPONSE: The council agrees with Mr. Olson's comment. It adopted Mr. Olson's proposed changes.

/s/ Matt Cochenour
Matt Cochenour
Rule Reviewer

/s/ Tony Harbaugh
Tony Harbaugh
Chairman
Public Safety Officer Standards and Training Council

Certified to the Secretary of State December 1, 2014.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the repeal of ARM 24.117.101 board organization, 24.117.401 general information, 24.117.1001, 24.117.1002, 24.117.1005 through 24.117.1007 club boxing, 24.117.1101 through 24.117.1108 kickboxing, 24.117.1202 through 24.117.1208 wrestling, 24.117.1301 Australian tag team wrestling, 24.117.1501, 24.117.1504, 24.117.1507, 24.117.1510, 24.117.1513, 24.117.1516, 24.117.1519, 24.117.1522, and 24.117.1525 mixed martial arts, and 24.117.2303 license suspension and revocation	)))))))))))))))))))	NOTICE OF REPEAL

TO: All Concerned Persons

1. On October 9, 2014, the Department of Labor and Industry (department) published MAR Notice No. 24-117-31 regarding the proposed repeal of the above-stated rules, at page 2339 of the 2014 Montana Administrative Register, Issue No. 19.

2. No comments were received by the November 7, 2014, deadline.

3. The board has repealed ARM 24.117.101, 24.117.401, 24.117.1001, 24.117.1002, 24.117.1005, 24.117.1006, 24.117.1007, 24.117.1101, 24.117.1102, 24.117.1103, 24.117.1104, 24.117.1105, 24.117.1106, 24.117.1107, 24.117.1108, 24.117.1202, 24.117.1203, 24.117.1204, 24.117.1205, 24.117.1206, 24.117.1207, 24.117.1208, 24.117.1301, 24.117.1501, 24.117.1504, 24.117.1507, 24.117.1510, 24.117.1513, 24.117.1516, 24.117.1519, 24.117.1522, 24.117.1525, and 24.117.2303 exactly as proposed.

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ PAM BUCY
Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State December 1, 2014

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.3.221, special requirements for alternative livestock as defined in 87-4-406, MCA; 32.3.227 elephants; 32.3.602A change of ownership test; 32.3.1001 handling of live animals; and 32.3.1002 handling of carcasses and carcass parts of anthrax-infected animals	)	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 9, 2014, the Department of Livestock published MAR Notice No. 32-14-255 regarding the proposed amendment of the above-stated rules at page 2376 of the 2014 Montana Administrative Register, Issue Number 19.

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

3. No comments or testimony were received.

DEPARTMENT OF LIVESTOCK

BY: /s/ Christian Mackay
Christian Mackay
Executive Officer
Board of Livestock
Department of Livestock

BY: /s/ Cinda Young-Eichenfels
Cinda Young-Eichenfels
Rule Reviewer

Certified to the Secretary of State December 1, 2014.

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

In the matter of the amendment of ARM 36.12.101, 36.12.201, 36.12.203, 36.12.204, 36.12.206, 36.12.207, 36.12.209, 36.12.210, 36.12.212 through 36.12.216, 36.12.220, 36.12.223, 36.12.225 through 36.12.228, 36.12.234; the adoption of New Rule I; and the repeal of ARM 36.12.202, 36.12.205, 36.12.211, 36.12.219, and 36.12.229 regarding definitions and the procedural rules for hearings	)))))))))))))	NOTICE OF AMENDMENT, ADOPTION, AND REPEAL

To: All Concerned Persons

1. On October 23, 2014, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-170 pertaining to the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules at page 2525 of the 2014 Montana Administrative Register, Issue Number 20.

2. The department has amended ARM 36.12.101, 36.12.201, 36.12.203, 36.12.204, 36.12.206, 36.12.207, 36.12.209, 36.12.210, 36.12.212 through 36.12.216, 36.12.220, 36.12.223, 36.12.225 through 36.12.228, and 36.12.234 as proposed.

3. The department has adopted New Rule I (36.12.235) as proposed.

4. The department has repealed ARM 36.12.202, 36.12.205, 36.12.211, 36.12.219, and 36.12.229 as proposed.

5. No comments or testimony were received.

/s/ John E. Tubbs
JOHN E. TUBBS
Director
Natural Resources and Conservation

/s/ Brian Bramblett
BRIAN BRAMBLETT
Rule Reviewer

Certified to the Secretary of State on December 1, 2014.

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

In the matter of the adoption of New Rules I through IX, the amendment of ARM 37.110.201, 37.110.238, 37.110.239, 37.110.243, and the repeal of ARM 37.110.202, 37.110.203, 37.110.204, 37.110.206, 37.110.207, 37.110.208, 37.110.209, 37.110.210, 37.110.212, 37.110.213, 37.110.214, 37.110.215, 37.110.216, 37.110.217, 37.110.218, 37.110.219, 37.110.220, 37.110.221, 37.110.222, 37.110.223, 37.110.225, 37.110.226, 37.110.227, 37.110.228, 37.110.229, 37.110.230, 37.110.231, 37.110.232, 37.110.236, 37.110.240, 37.110.241, 37.110.242, 37.110.252, 37.110.253, 37.110.254, 37.110.255, 37.110.256, 37.110.257, 37.110.258, and 37.110.259 pertaining to updating the Montana retail food establishment rules	)	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On June 26, 2014, the Department of Public Health and Human Services published MAR Notice No. 37-680 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 1364 of the 2014 Montana Administrative Register, Issue Number 12.

2. The department has adopted New Rule VIII (37.110.269) and New Rule IX (37.110.272) as proposed.

3. The department has amended ARM 37.110.201, 37.110.238, 37.110.239, and 37.110.243 and repealed ARM 37.110.202, 37.110.203, 37.110.204, 37.110.206, 37.110.207, 37.110.208, 37.110.209, 37.110.210, 37.110.212, 37.110.213, 37.110.214, 37.110.215, 37.110.216, 37.110.217, 37.110.218, 37.110.219, 37.110.220, 37.110.221, 37.110.222, 37.110.223, 37.110.225, 37.110.226, 37.110.227, 37.110.228, 37.110.229, 37.110.230, 37.110.231, 37.110.232, 37.110.236, 37.110.240, 37.110.241, 37.110.242, 37.110.252, 37.110.253, 37.110.254, 37.110.255, 37.110.256, 37.110.257, 37.110.258, and 37.110.259 as proposed.

4. The department has adopted the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

NEW RULE I (37.110.260) INCORPORATION BY REFERENCE (1) The Department of Public Health and Human Services (department), except as otherwise provided in this chapter, adopts and incorporates by reference the following publication: "Food Code, 2013, Recommendations of the United States Public Health Service, Food and Drug Administration" published by National Technical Information Service, Publication PB2013-110462, ISBN 978-1-935239-02-4, November 3, 2013. This publication may be reviewed online at: http://www.fda.gov/Food/GuidanceRegulation/RetailFoodProtection/FoodCode/ucm374275.htm; or by contacting DPHHS-FCSS, 1400 Broadway Street, Helena, MT 59620. This publication is being adopted with modifications and additions as described in [New Rule I through IX].

(a) and (b) remain as proposed.

(c) Chapter 3: Food. ~~This chapter has been adopted with no modifications.~~ Modifications have been made to this chapter as described in [New Rule IV].

(d) Chapter 4: Equipment, Utensils, and Linens. ~~This chapter has been adopted with no modifications.~~ An addition has been made to this chapter as described in [New Rule V].

(e) through (2) remain as proposed.

AUTH: 50-50-103, MCA
IMP: 50-50-102, 50-50-103, 50-50-105, 50-50-107, 50-50-201, 50-50-301, 50-50-302, 50-50-304, MCA

NEW RULE II (37.110.261) CHAPTER 1: PURPOSE AND DEFINITIONS

The terms defined in this section are modifications or additions to the definitions described in this chapter of the 2013 Food Code:

(1) and (2) remain as proposed.

(3) "Catering kitchen" means the activity of providing food wholly or in part owned by the caterer for a specific event at a location other than the ~~licensed~~ food establishment ~~or food service establishment~~, as defined in 50-50-102~~(7)~~(4)(a) ~~and (b)~~, MCA, on a contractual, prearranged basis to a specific subset of the public, such as invited guests to a wedding or similar celebration, or to participants in an organized group or activity. A catering kitchen is not the same activity as a contract cook.

(4) through (6) remain as proposed.

(7) "Food establishment" means the following:

(a) includes in section 1-201.10~~(1)~~(B) of the Food Code, any and all licensable establishments stated in Title 50, chapter 50, MCA;

(b) does not include in section 1-201.10~~(3)~~(B) of the Food Code, any and all food provider exclusions stated in Title 50, chapter 50, MCA;

(c) in section 1-201.10~~(3)(f)~~(B) of the Food Code, the term "small family day-care provider" actually means a day-care provider not required to be licensed by the department as a day-care center, under 52-2-721(1)(a), MCA; and

(d) in section 1-201.10~~(3)(f)~~(B) of the Food Code; a bed-and-breakfast operation actually means a bed-and-breakfast establishment that meets the definition in 50-51-102(1), MCA. Bed-and-breakfast establishments must meet food safety rules required in ARM 37.111.312 through 37.111.334.

(8) through (13) remain as proposed.

(14) "Meat ~~shop~~ market" means the same as 50-50-102(10), MCA, but is the processing or packaging of meat or poultry for sales or service to the public.

(15) "Mobile food establishment" means:

(a) A food establishment where food is served or sold from a motor vehicle, ~~portable structure,~~ nonmotorized cart, movable vehicle such as a push cart, trailer, or boat that periodically or continuously changes location and requires a servicing area to accommodate the unit for cleaning, inspection, and maintenance, as specified in ~~paragraphs~~ sections 5-402.14, 6-101.11, and 6-202.18.

(b) remains as proposed.

(16) "Perishable food" means ~~fruits, vegetables, and~~ foods that require time/temperature control for safety (formerly known as potentially hazardous foods).

(17) "Perishable food dealer" means the same as 50-50-102(12), MCA, which is an operation that is in the business of purchasing and selling ~~fruits, vegetables, and~~ foods that require time/temperature control for safety (formerly known as potentially hazardous foods).

(18) and (19) remain as proposed.

(20) "Produce" means fruits, vegetables, or grains sold directly to consumers in their natural or ~~processed~~ unprocessed states.

(21) remains as proposed.

(22) "School" means a building or structure or portion thereof occupied or used at least 180 days per year for the teaching of individuals, the curriculum of which satisfies the basic instructional program approved by the board of public education for pupils in any combination of kindergarten through grade 12~~,~~. ~~but excludes home schools as that term is defined in 20-5-102(2)(e), MCA~~ This term does not include home schools. For purposes of this licensing subtype, in general, a school is also a learning institution that participates in the federal National School Lunch Program, under 7 CFR 210 of the Code of Federal Regulations.

(23) remains as proposed.

(24) "Temporary food establishment" means a food establishment that operates at a fixed location for a period of no more than ~~14 consecutive~~ 21 days in a licensing year in conjunction with a single event or celebration, instead of the "Temporary food establishment" definition in section 1-201.10 of the Food Code.

(25) remains as proposed.

AUTH: 50-50-103, MCA
IMP: 20-5-102, 50-50-102, 50-50-103, 50-50-104, 50-50-201, MCA

NEW RULE III (37.110.262) CHAPTER 2: MANAGEMENT AND PERSONNEL (1) The following additions have been made to section 2-102.12 of Chapter 2.

(a) and (b) remain as proposed.

(c) After the one-year, phase-in period, existing legal licensees required to have a Certified Food Protection Manager must have a Certified Food Protection Manager within ~~30~~ 45 days of losing their Certified Food Protection Manager.

(2) The following additions have been made to 2-102.12(B) of Chapter 2.

(a) Temporary food establishments engaged in the following activities are exempt from having a certified food protection manager:

(i) serving non-TCS (time/temperature controlled for safety) foods;

(ii) serving nonalcoholic or alcoholic beverages with or without beverage ice;

(iii) serving commercially pre-cooked, pre-packaged ready-to-eat, TCS foods, such as hot dogs, sausages, FDA and United States Department of Agriculture (USDA) registered canned food products, frozen pizzas;

(3) The regulatory authority may require or exempt additional food safety training for temporary food establishments under the authority granted in 8-102.10 of Chapter 8.

(4) The following additions have been made to subpart 2-201 Responsibilities of Permit Holder, Person in Charge, Food Employees, and Conditional Employees of Chapter 2.

(5) Specific communicable disease control measures, outlined in the Food Code, should be followed unless more stringent rules are provided in ARM 37.114.501.

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

NEW RULE IV (37.110.265) CHAPTER 3: FOOD (1) This chapter has been adopted with ~~no~~ the following modifications~~.~~:

(a) section 3-201.17(A2) will not be adopted;

(b) section 3-201.17(A3) will not be adopted;

(c) section 3-201.17(A4) will not be adopted; and

(d) section 3-201.17(A1cii) will be replaced with the requirements of 81-9-230, 87-4-702, and 87-6-106(1), MCA.

AUTH: 50-50-103, MCA
IMP: 50-50-102, 50-50-103, 50-50-301, 50-50-302, 50-50-303, 50-50-304, MCA

NEW RULE V (37.110.266) CHAPTER 4: EQUIPMENT, UTENSILS, AND LINENS (1) This chapter has been adopted with ~~no modifications.~~ the addition of the following paragraph: 4-301.12(F) A food preparation sink must be provided if food is placed into a sink or sink compartment for the purposes of thawing or cleaning. A food preparation sink must meet the requirements specified in Sections 4-205.10, 5-202.13, and 5-402.11 of the Food Code.

AUTH: 50-50-103, MCA

IMP: 50-50-102, 50-50-103, 50-50-301, 50-50-302, MCA

NEW RULE VI (37.110.267) CHAPTER 5: WATER, PLUMBING, AND WASTE (1) Additions have been made to ~~section~~ paragraph 5-101.11(B) through section 5-103.12 of this chapter for public and nonpublic water systems.

(2) through (4) remain as proposed.

(5) After shock disinfection of the system, ~~and the disinfectant is no longer detected in the system,~~ a sample for coliform bacteria must be collected for analysis ~~at least~~ three to five days after the disinfectant is no longer detected in the system.

(6) through (11) remain as proposed.

(12) If an establishment with a public or nonpublic water supply fails to take the required samples following the detection of coliform bacteria, or the laboratory fails to test for fecal coliform bacteria or Escherichia coli in coliform positive samples, the establishment must follow corrective actions as specified in (13).

(13) For nonpublic water systems, appropriate corrective actions must be implemented in a timely manner to eliminate the condition or conditions that resulted in the positive test result(s), which may include~~, but not be limited to:~~ shock disinfection of the entire water system and replacement or repair of the water system by a date set by the local regulatory authority when:

(a) ~~A~~ a water sample exceeds a maximum contaminant level as specified in ARM Title 17, chapter 38, subchapter 2;

(b) ~~T~~ the water system does not have the capacity to provide the quantity needed for drinking, food processing, personal hygiene, or cleaning;

(c) ~~A~~ after examination of the water system, the local regulatory authority provides a written report to the operator or person-in-charge that the water system is at high risk of contamination;

(d) ~~A~~ a pathogenic microorganism is detected in a sample; or

(e) ~~A~~ a confirmed disease outbreak is linked with the water system.

(14) remains as proposed.

(15) The local regulatory authority ~~shall~~ will issue a restricted-use order to an establishment using a nonpublic water supply when:

(a) ~~F~~ fecal coliform or Escherichia coli is detected in a nonpublic water system sample;

(b) ~~T~~ total nitrate level is greater than 10 milligrams per liter in a nonpublic water system sample;

(c) ~~M~~ maximum contaminant levels exceed parameters specified in ARM Title 17, chapter 38, subchapter 2;

(d) ~~A~~ a pathogenic microorganism is detected; or

(e) ~~A~~ a confirmed disease outbreak is linked with the water system.

(16) An establishment with a public or nonpublic water supply subject to a restricted-use order must provide and use a temporary source of potable water as described in (17) for consumers and staff for drinking, food processing, personal hygiene and cleaning, or immediately discontinue operations.

(17) With approval from the local regulatory authority, an establishment with a public or nonpublic water supply may provide potable water on a temporary basis using one or more of the following:

(a) ~~B~~ bottled or packaged potable water from a department-licensed wholesale or retail food establishment, if the water is dispensed directly from the original container;

(b) ~~W~~ water from a Department of Environmental Quality (DEQ)-approved public water supply that meets the requirements of ARM Title 17, chapter 38, subchapters 1, 2, 3, and 5, stored in a clean, sanitized, and covered potable water container or holding tank;

(c) ~~W~~ water delivered by a department-licensed potable water hauler;

(d) ~~I~~ if the water is contaminated with fecal coliform bacteria or Escherichia coli, water that has been boiled for at least one minute, and stored and served from a clean, sanitized, and covered container; or

(e) ~~O~~ other source approved by the local regulatory authority.

(18) If the local regulatory authority determines that boiling water will not provide adequate potable water, it may require an establishment with a public or nonpublic water supply to use another approved method for supplying water.

(19) An establishment with a public or nonpublic water supply that is subject to a restricted-use order must post an advisory sign or placard regarding the restricted-use order in a conspicuous place for public viewing at each point of entry, or as directed by the local regulatory authority.

(20) A public or nonpublic water supply under a restricted-use order may not be used to make ice for food or beverages.

(21) An establishment with a public or nonpublic water supply that is subject to a restricted-use order may wash, rinse, and sanitize dishes, utensils, and equipment using the affected water system, if using an approved chemical disinfectant or dish machine that reaches 180 degrees Fahrenheit (82 degrees Celsius) during the final rinse cycle, or as directed by the local regulatory authority.

(22) A restricted-use order on a public or nonpublic water supply may be cancelled by the local regulatory authority after:

(a) through (c) remain as proposed.

(23) Additions have been made to section 5-303 of this chapter that may apply to public or nonpublic water supplies.

(24) remains as proposed.

(25) The water storage tank, or tanks, in a mobile food establishment must be of adequate capacity, as required in section 5-103.11 (A), but no smaller than the following:

(a) a mobile food establishment that serves beverages or food or reheats processed foods must have a water storage tank, or tanks, with a capacity of at least 38 liters (10 gallons) for food employee handwashing;

(b) a food pushcart must have a water storage tank, or tanks, with a minimum capacity of 19 liters (5 gallons) for handwashing; and

(c) a mobile food establishment that processes food or beverages must have a water storage tank, or tanks, with a capacity of at least 151 liters (40 gallons) for handwashing, utensil washing, and sanitizing purposes.

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

NEW RULE VII (37.110.268) CHAPTER 6: PHYSICAL FACILITIES (1) The following ~~A~~additions ~~have~~ has been made to section 6-301.14 of this chapter.

~~(2)~~ (a) Food establishment operators may create and post their own signs or posters for the posting requirement.

~~(3) Signs or posters may also be obtained through the regulatory authority.~~

AUTH: 50-50-103, MCA
IMP: 50-50-103, 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: One commenter requested the school definition in New Rule II be clarified.

Response #1: The department agrees with the comment. The adopted rule has been revised and refers to 20-1-101(20), MCA.

Comment #2: One commenter requested clarifications to indirect wastewater plumbing requirements for food equipment.

Response #2: Wastewater plumbing is addressed in Section 5-402.11.

Comment #3: A commenter requested a self-service sneeze shield exemption for elementary schools.

Response #3: The department disagrees. There is no public health justification for eliminating the sneeze shields in elementary schools.

Comment #4: A commenter requested that welding requirements be specified for food contact surfaces.

Response #4: Construction requirements for food contact surfaces are addressed in Part 4-1 of the Food Code.

Comment #5: Two commenters requested that New Rule III(1)(c), grace period for replacing a certified food manager, be changed from 30 to 45 days.

Response #5: The department agrees that additional time would be helpful to the licensee without posing a public health concern. The adopted rule has been revised to reflect this change.

Comment #6: Three commenters requested that the complexity categories be altered to reflect a point system.

Response #6: Such a substantial change would require sending the rule out for public comment and unnecessarily delay implementation of the rule.

Comment #7: Three commenters requested an effective date of January 1, 2015 to allow sufficient time for compliance with the new rules.

Response #7: The department agrees and will add an effective date of January 1, 2015 to the final notice of adoption.

Comment #8: Two commenters requested specific language be added requiring food preparation sinks, in addition to Section 3-304.11 of the Food Code.

Response #8: The department agrees. Additional language has been added in New Rule V regarding food preparation sinks specified in Paragraph 4-301-12(F).

Comment #9: Twenty-one commenters requested that a change be made to the rule to allow the sale of honey at farmers' markets without a retail license.

Response #9: Such a change is unnecessary. No retail license is needed under 50-50-102(7)(b)(i), MCA for any packaged, nonperishable foods in original containers at any retail venue, not just farmers' markets. Any other restriction related to the sale of honey is in Montana statute and not modifiable in rule.

Comment #10: One commenter requested the certified food manager for schools be a staff member or supervisor.

Response #10: Staff may be certified managers in Section 2-102.12 of the Food Code, if the person has management and supervisory authority over food preparation and service.

Comment #11: One commenter requested that all rulemaking be done by elected officials.

Response #11: Rulemaking authority for retail food is granted to the department by the Montana Legislature in 50-50-103, MCA.

Comment #12: Eight commenters requested that bare-hand contact be explicitly allowed with ready to eat foods.

Response #12: Paragraph 3-301.11(E) specifically addresses this situation and allows bare-hand contact where approval is received from the regulatory authority.

Comment #13: A commenter supports requiring a certified food protection manager for certain establishments.

Response #13: The department agrees and thanks the commenter for the input.

Comment #14: A commenter requested increasing the phase-in period for the certified food protection managers from one to two years.

Response #14: The department disagrees. The department does not anticipate an access problem to certified manager course availability.

Comment #15: A commenter supports the 41 degree Fahrenheit requirement for refrigeration equipment.

Response #15: The department agrees.

Comment #16: A commenter requested that, if an establishment has a refrigerator that can maintain the internal air temperature of the refrigerator at or below 45 degrees Fahrenheit, they not be required to have a refrigerator that can maintain an internal temperature of 41 degrees Fahrenheit for five years after the adoption of the proposed Food Rule.

Response #16: The department disagrees. In 2006 the Conference for Food Protection, a conference where industry, regulatory, academia, consumer, and professional organizations are afforded equal input in the development and modification of food safety guidance, determined that an option for maintaining refrigerators at 45 degrees Fahrenheit was no longer necessary. This recommendation was then adopted by the FDA into the Food Code.

This determination was made based on updates to engineering standards made by NSF International and the American National Standards Institute (ANSI) in 1997 and 1999 that improved compressing unit capacities ensuring refrigerators built to the new NSF International and ANSI standards are able to maintain an internal air temperature of 41 degrees Fahrenheit or less. Additionally, refrigerators with internal air temperatures above 41 degrees Fahrenheit result in increased growth rates of Listeria monocytogenes, and are therefore a public health hazard.

Comment #17: A commenter supports the handwashing guidelines and requirements.

Response #17: The department appreciates the comment.

Comment #18: A commenter requested that we specify public events in the catering kitchen definition.

Response #18: The department believes that the proposed wording is sufficient.

Comment #19: Two commenters requested that the definition of "Food Establishment" be clarified.

Response #19: The department agrees. The published citation of Sections 1-201.10(1) and (3)(f) should be Paragraph 1-201.10(B) and has been corrected.

Comment #20: Three commenters requested that the definition of a temporary food establishment be changed as follows: the number of days that a temporary establishment may operate in a calendar year be changed from 14 to 21 and the word "continuous" to be removed.

Response #20: The department agrees with the comment and has changed the definition to 21 days. The term "continuous" has been removed. These two changes were needed to address the commenters' concerns. Then changes were also needed to address comments from the public during implementation of House Bill 630. House Bill 630 mandated the department research ways to eliminate inconsistencies and inefficiencies in Montana food laws.

The department found that temporary establishments often need to be able to operate at events such as Farmer’s Markets. Events such as Farmer’s Markets are not continuous in that they do not operate every day for ten days. Instead they operate every Sunday for a certain number of Sundays, and they may occur more than 14 days in a calendar year. Under the current rule this required relicensure of the establishment even though none of the parameters pertinent to public health, such as the event, the location, the operator, or the menu had changed. This created an undue burden on the operator to pay for the license and the health departments to spend the time to process the new license applications.

Comment #21: A commenter requested that the department not omit from ARM 37.110.238 the language reflecting that a license is not transferable.

Response #21: Section 50-50-206, MCA provides that a license is not transferrable. Keeping the language in rule is unnecessarily duplicative.

Comment #22: A commenter requested that there be a requirement for the health department to reinstate food workers that have Salmonella.

Response #22: The department agrees. Reinstatement of restricted or excluded food workers with Salmonella already requires such approval in Paragraphs 2-201.13(F) and (G).

Comment #23: A commenter stated that asymptomatic food worker stool sample collection is not advisable.

Response #23: The department disagrees. Public health reasoning for Section 2-201.13 may be found in Annex 3, page 385, of the Food Code. The commenter's citations in Subparagraph 2-102(E)(3), (F)(3), and (G)(3) refer to reinstatement of asymptomatic food workers diagnosed with specific pathogens and when they may return to work.

Comment #24: A commenter asked that the rule not restrict asymptomatic food workers who may have been exposed to an illness in Paragraph 2-201.13(J).

Response #24: The department disagrees. Paragraph 2-201.13(J), cited by the commenter, addresses food workers working in establishments serving highly susceptible populations who are at much greater risk of contracting foodborne illnesses.

Comment #25: A commenter stated that three-compartment sinks should be allowed for handwashing under certain conditions in Section 2-301.15.

Response #25: The department agrees. Sections 5-203.11, 5-204.11, and 5-205.11 require a designated handwashing sink, which already could be part of a three-compartment sink, provided the conditions in Sections 5-203.11, 5-204.11 and 5-205.11 are met.

Comment #26: A commenter asked the department to allow unpasteurized juices at the retail level as found in Section 3-202.110.

Response #26: Unpasteurized juices are allowed at the retail level for nonpre-packaged service, but are subject to warning regulations under ARM 37.110.101(1)(j) and 21 CFR 101.17(g). Pre-packaged juices must be pasteurized in accordance with Section 3-202.110.

Comment #27: A commenter is in support of nonbare-hand contact as the standard in Paragraph 3-301.11(B) in the Food Code.

Response #27: The department appreciates the comment.

Comment #28: A commenter requested that the cooking temperature for shelled eggs should be the same as poultry for killing Salmonella.

Response #28: The department disagrees. Cooking temperatures are also based on presumed numbers of bacteria on or in the product, not just the type of bacteria. Public health reasoning for Section 3-401.11 may be found in Annex 3, pages 429-430, of the Food Code.

Comment #29: A commenter requested Section 2-301.15 should allow handwashing at any sink, not just a designated sink. There needs to be a phase-in period.

Response #29: The department disagrees. There are many public health reasons for requiring handwashing to occur at a designated handwashing sink. Among the reasons is the likely probability of recontamination of hands after the handwashing process. The department will work closely with local health jurisdictions to ensure fair application of the new rule.

Comment #30: A commenter requested that an identification process must be provided for wild mushrooms in Section 3-201.16.

Response #30: The department agrees and will work closely with local health jurisdictions to ensure fair application of the new rule.

Comment #31: A commenter needs a guidance document for food processing chemicals stated in Section 7-204.12.

Response #31: Chemicals safe for use on foods have container labels marked with a United States Environmental Protection Agency (USEPA) registration number.

Comment #32: A commenter requested a change to the definition of "Restrict" in Food Code to allow for exceptions for small businesses.

Response #32: The department disagrees. Paragraphs 2-201.12(A) through (J) address when to apply work restrictions. The size of the firm is irrelevant to protecting consumers from ill or contagious food workers.

Comment #33: A commenter requested the department change Section 3-201.17 for game animals to correspond with specific Montana statute and rules.

Response #33: The department added new text to New Rule IV indicating the modifications to Section 3-201.17 of the Food Code deferring to Montana state law regarding game animals.

Comment #34: A commenter requested the department clarify the definition of "Food service" in New Rule II.

Response #34: The department disagrees and will work with local health jurisdictions to ensure fair application of the new rule.

Comment #35: One commenter recommended that the definition of mobile food omit servicing area requirement.

Response #35: The department disagrees because the servicing area is needed to ensure the ability of sanitarians to routinely inspect the establishment for compliance with the rules.

Comment #36: Two commenters requested that the definition of "Perishable Food" be changed to omit the words "fruits and vegetables" in New Rule II.

Response #36: The department agrees. The definition has been changed to omit the words "fruits and vegetables" because "fruits and vegetables" used in this context are not a TCS food.

Comment #37: A commenter requested that the definition of produce be changed from "processed" to "unprocessed state" in New Rule II.

Response #37: The department agrees and has changed the definition of produce to include the term "unprocessed state" because processing food may be a licensable activity.

Comment #38: A commenter requested that the definition of tavern be clarified.

Response #38: The department disagrees because the definition of tavern is clear in the Food Code. The department will work with local health jurisdictions to ensure fair application of the new rule.

Comment #39: One commenter requested that the 90-day period for certified food managers for new establishments in New Rule III be omitted.

Response #39: The department disagrees. The advisory council required in 50-50-103, MCA indicated 90 days was fair and prudent. Other states have similar time allowances.

Comment #40: One commenter requested that the rule be modified to clarify which establishments need a certified food protection manager.

Response #40: The department agrees. The rule has been modified to specify which temporary establishments need a certified food protection manager. The department will work with local health jurisdictions to ensure fair application of the new rule.

Comment #41: One commenter requested that New Rule VI(3)(b) for nonpublic water requirements regarding sampling schedules be omitted.

Response #41: The department disagrees. Proposed water sampling schedules correspond with existing ARM 37.111.111(1)(b).

Comment #42: One commenter recommended that the rule allow the regulatory agency to proscribe the sampling schedule in New Rule VI(3)(c) for nonpublic water.

Response #42: The department disagrees. Proposed water sampling schedules correspond with existing ARM 37.111.111(1)(b).

Comment #43: One commenter recommended that the rule require plan reviews for failure to renew a license in New Rule IX to enable violation corrections.

Response #43: The department disagrees. 50-50-214 and 50-50-250, MCA already provide authority for the local authority to not validate a license if an applicant has failed to correct rule or statute violations.

Comment #44: A commenter stated that ARM 37.110.201(2) conflicts with ARM 37.110.238(11).

Response #44: The department disagrees because ARM 37.110.201(2) was omitted from the document so there cannot be a conflict.

Comment #45: One commenter recommended that the department retain the complexity categories as provided in the proposed rule.

Response #45: The complexity categories from the proposed rule have not been changed.

Comment #46: One commenter has requested the definition of "Catering Kitchen" be clarified.

Response #46: The department agrees and has altered the definition for clarification and will work with local health jurisdictions to ensure fair application of the new rule.

Comment #47: One commenter requested that the definition of "Food Manufacturing" be changed in New Rule II.

Response #47: The department disagrees because "retail food manufacturing establishment" is defined in 50-50-102(19), MCA.

Comment #48: One commenter requested that the definition of "food service" in New Rule II be changed.

Response #48: The department disagrees because the definition of "food service establishment" is defined in 50-50-102(7), MCA.

Comment #49: One commenter requested that the definition of "Legal licensee" be clarified in rule.

Response #49: The department disagrees because the definition of "legal licensee" is already clear in the proposed rule.

Comment #50: One commenter has asked that the definition of "Meat Shop" be clarified.

Response #50: The department agrees and the rule has been changed to correspond with existing state law by changing the term "meat shop" to "meat market."

Comment #51: One commenter requested that the "Mobile Food Establishment" definition be changed to omit the term "portable structure."

Response #51: The department agrees and the proposed rule has been changed because of the need to clarify the difference between a "temporary food establishment" and a "mobile food establishment."

Comment #52: One commenter requested that (a) of the definition of "Mobile Food Establishment" in New Rule II be clarified.

Response #52: The department disagrees because the wording needs no further clarification.

Comment #53: One commenter requested that the definition of "perishable food dealer" be altered to omit the words "fruits and vegetables."

Response #53: The department agrees and the definition has been changed because unprocessed "fruits and vegetables" used in this context are not TCS foods.

Comment #54: One commenter requested that the applicability of New Rule VI(1) be changed to reflect Part 5-1, et seq, of the Food Code for nonpublic water supplies.

Response #54: The department agrees and the proposed rule has been changed to clarify which drinking water systems are subject to this section of the rules.

Comment #55: One commenter requested that New Rule VI(5) be clarified in regards to when to collect water samples after chemical treatment.

Response #55: The department agrees and has clarified this section of the proposed rule because the presence of chemicals after treatment may give false negative results.

Comment #56: One commenter requested that New Rule VI(5), (11), and (15) through (22) also be applied to public water supplies in addition to nonpublic water supplies.

Response #56: The department agrees and the proposed rule has been changed to clarify which drinking water systems are subject to this section of the rules.

Comment #57: One commenter requested that New Rule VI(23) reference Subpart 5-103 of the Food Code for water tanks in mobile establishments.

Response #57: The department disagrees. Water tanks in mobile establishments are already sufficiently covered by other sections of the code.

Comment #58: One commenter requested that New Rule VI(25) be altered to allow for multiple water tanks for mobile units.

Response #58: The department agrees and the proposed new rule has been changed because the installation of multiple potable water tanks will not result in adverse public health consequences.

Comment #59: One commenter requested that ARM 37.110.213(15) should be retained for grandfathering old equipment in Section 4-205.10.

Response #59: The department disagrees because the continued use of equipment that does not meet the requirements in Section 4-205.10 poses an unnecessary and preventable public health risk. The department will work with local health jurisdictions to ensure fair application of the new rule.

Comment #60: One commenter stated that New Rule VII(3) appears to obligate the local health department to provide signs and is unnecessary.

Response #60: The department has removed New Rule VII(3) from the rule because the department determined that this section was unnecessary.

Comment #61: One commenter stated that ARM 37.110.238(13) appears to apply to temporary establishments for complexity categories. The commenter stated this is unnecessary.

Response #61: The department agrees and has provided specific exemption language in the rule for temporary establishments.

Comment #62: One commenter stated that there are conflicts between the Control of Communicable Disease Manual (CCDM) and the proposed rule.

Response #62: The department agrees and has provided new wording to apply the more stringent Food Code or Minimal Control Measures rule to appropriately address specific adverse health conditions found in food workers.

Comment #63: One commenter requested that the department omit the term "fixed location" from the definition of a "temporary food establishment."

Response #63: The department disagrees because the commenter's recommendation conflicts with recommendation from the 2013 Food Study Group.

6. These rule adoptions, amendments, and repeals are effective January 1, 2015.

/s/ Shannon L. McDonald
Shannon L. McDonald, Attorney
Rule Reviewer

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

Certified to the Secretary of State December 1, 2014

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

In the matter of the amendment of ARM 37.106.514 pertaining to the removal of references to anesthesiologist assistants in outpatient centers for surgical services	))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On July 24, 2014, the Department of Public Health and Human Services published MAR Notice No. 37-681 pertaining to the proposed amendment of the above-stated rule at page 1572 of the 2014 Montana Administrative Register, Issue Number 14.

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

3. 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: The department received 11 comments regarding this proposed rule. In each case, the commenters opposed the amendment to ARM 37.106.514. There were three consistent issues in all 11 comments:

1. Commenters felt there was value in maintaining the rule as written as it serves to provide a description of the Anesthesiologist Assistants (AA) role as potential health care providers in Montana; and the rule as currently employed delineates the expectations and requirements and addresses supervision requirements.

2. With respect to (1), AAs can be seen as a vital part of the Anesthesia Care Team and, because of the supervision requirement, AA practice leads to higher quality outcomes than other current clinical nonphysician (licensed) anesthesia providers.

3. AAs can serve as physician extenders in the delivery of anesthesia and while acknowledging that AAs are not currently licensed in Montana, the proposed amendment (removing the reference to AAs as a health care provider), could negatively impact the future potential for AAs to become licensed and provide necessary services in Montana, especially in the most rural parts of the state.

For these reasons, the commenters request ARM 37.106.514 remain as originally written and the proposed amendment be reversed.

RESPONSE #1: The department disagrees.

As indicated in the statement of reasonable necessity, the department originally wrote the rule with respect to AAs, believing that all necessary legal thresholds had been met. However, shortly after the adoption of the rule, the department learned that AAs currently are not licensed to practice in Montana. After additional consultation and review, the department felt it necessary to propose the changes to ARM 37.106.514 because including AAs in the rule creates the impression that AAs can practice in Montana, and could create confusion.

Nothing has changed with respect to the licensure status of AAs in Montana; should that status change, the department will consider amending the rule to include AAs as providers of health care services operating within the scope of their license.

/s/ Susan Callaghan
Susan Callaghan, Attorney
Rule Reviewer

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

Certified to the Secretary of State December 1, 2014.

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 42.15.109, 42.15.110, 42.15.301, and 42.15.802 pertaining to the Montana family education savings program, income tax general provisions, and tax returns	)))))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On October 9, 2014, the Department of Revenue published MAR Notice No. 42-2-919 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 2403 of the 2014 Montana Administrative Register, Issue Number 19.

2. On November 5, 2014, a public hearing was held to consider the proposed adoption and amendment. Wiley Barker, Crowley Fleck PLLP, and Jaret Coles, Montana Legislative Services, attended the hearing. No oral testimony was received. The department received written comments from Amy Jo Fisher, Montana Association of Realtors; Patrick Dougherty Esq.; Glenn Oppel, Montana Chamber of Commerce; Thomas Danenhower; Clarice Gates; and Louise Roumagoux.

3. The department has adopted New Rule I (42.15.808) and amended ARM 42.15.110, 42.15.301, and 42.15.802 as proposed.

4. The department is not amending ARM 42.15.109 at this time, based on the comments received regarding the notification process for the proposed amendment of the rule.

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

COMMENT 1: Regarding the proposed amendments to the residency rule and/or the way it was presented, the department received comments from Amy Jo Fisher, Montana Association of Realtors; Patrick Dougherty, Esq.; Glenn Oppel, Montana Chamber of Commerce; Thomas Danenhower; Clarice Gates; and Louise Roumagoux.

The comments varied. There were statements that the proposed amendments are an invasion of privacy, that the department lacks legal authority to take the action, and/or that small businesses would be impacted. Some recommended the department propose the changes through legislation or reissue the notice of proposed amendments to the rule differently. Others provided alternative language for the department to consider using and some suggested that the department had attempted to bury or hide the proposed rule within other rules in

the notice to avoid public participation. In all, the commenters either opposed the content of the proposed amendments to the residency rule, questioned the way the proposed amendments were published, or both.

RESPONSE 1: The department appreciates the feedback from all the commenters. While the department disagrees with several of the substantive arguments raised regarding the proposed residency rule amendments, in light of the concerns regarding transparency and the brief summary title used in the header of the proposal notice, the department will not proceed with the proposed amendments to ARM 42.15.109 at this time.

The department assures the commenters there was not an effort to hide or bury anything in the notice. Numerous other amendments unrelated to the Montana Family Education Act and IRC 529 plan were proposed and the residency rule was specifically identified in the public notice. The residency rule amendments were proposed in large part due to taxpayers' requests that the department provide more detail about what information the taxpayer can use to prove, or disprove, a residency status. These proposed amendments were therefore included within the notice in an attempt to provide such guidance as expeditiously as possible.

The department prepared the notice for the rules in MAR Notice No. 42-2-919 as it does with all rule notices. Using a Secretary of State (SOS) template, notices are assembled listing new rules first and amendments to current rules, in numerical order, next. Individual rule numbers are provided in the header of the notice along with a brief summary of what the rules generally pertain to. The rule-by-rule details are then provided in the body of the notice. The proposed amendments to ARM 42.15.109, regarding residency, begin on page two of seven.

When multiple rules from a chapter are proposed in a single notice, which is common, the brief summary is often a composition of the titles of the chapter and subchapters corresponding with the location of the rules in the Administrative Rules of Montana (ARM). The rules in this notice are found in ARM Title 42, chapter 15, Income Tax; and subchapters (1) General Provisions, (3) Tax Returns, and (8) Family Education Savings Act. Following the order of the rules in the notice, the brief summary for the header became "the Montana family education savings program, income tax general provisions, and tax returns."

Given the concerns presented in the comments, the department will reevaluate the method it uses for its brief summary titles in future proposal notices to incorporate more detail.

The department strives for the greatest possible transparency regarding its rulemaking and always welcomes and appreciates public participation in the process. In fact, the department goes beyond the notification requirements of the Montana Administrative Procedure Act by voluntarily providing a public web page devoted to administrative rule activity and by routinely distributing notices of public hearings well in advance of the required amount of notice. The department electronically notified the registered interested parties regarding the proposed rulemaking actions in MAR Notice No. 42-2-919 on October 2, 2014, ten days sooner than 2-4-302(2), MCA, requires.

However, in the interests of transparency and to ensure public participation by making sure all interested parties have an opportunity to appear, the department is withdrawing the proposed amendments to ARM 42.15.109 for consideration in the future.

/s/ Laurie Logan	/s/ Mike Kadas
Laurie Logan	Mike Kadas
Rule Reviewer	Director of Revenue

Certified to the Secretary of State December 1, 2014.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to filing requirements for pass-through entities with more than 100 partners	))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On October 9, 2014, the Department of Revenue published MAR Notice No. 42-2-920 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 2410 of the 2014 Montana Administrative Register, Issue Number 19.

2. The department has adopted New Rule I (42.9.302) as proposed.

3. No comments or testimony were received.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State December 1, 2014.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I, the amendment of ARM 42.12.101, 42.12.106, 42.12.111, 42.12.118, 42.12.122, 42.12.132, 42.12.134, 42.12.135, 42.12.136, 42.12.139, 42.12.205, 42.12.208, 42.12.209, 42.12.301, 42.12.324, 42.13.101, 42.13.106, 42.13.107, 42.13.108, 42.13.111, and 42.13.401, and the repeal of ARM 42.12.103 and 42.13.105 pertaining to liquor licenses and permits, fees, and the regulation of licensees	))	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On October 9, 2014, the Department of Revenue published MAR Notice No. 42-2-921 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 2413 of the 2014 Montana Administrative Register, Issue Number 19.

2. On November 5, 2014, a public hearing was held to consider the proposed adoption, amendment, and repeal. John Iverson of the Montana Tavern Association; Brad Simshaw of Blackfoot River Brewing; Neil Peterson of the Gaming Industry Association; Joel Silverman of Silverman Law Office, PLLC; Tony Herbert of the Montana Brewers Association; Drew Geiger, licensee; and Paul Cartwright, all appeared and provided oral testimony at the hearing. Several of the attendees provided written comments as well. The department also received written comments from Senator Dee L. Brown and Michael Lawlor of the Reely Law Firm. The department appreciates all of the comments received.

3. The department has adopted New Rule I (42.13.112), amended ARM 42.12.101, 42.12.106, 42.12.111, 42.12.118, 42.12.132, 42.12.139, 42.12.205, 42.12.324, 42.13.101, 42.13.108, 42.13.111, and 42.13.401, and repealed ARM 42.12.103 and 42.13.105 exactly as proposed.

4. Based upon the comments received and after further review, the department has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

<u>42.12.122 SUITABILITY OF LICENSED PREMISES</u> (1) through (5) remain as proposed.

(6) The licensee must have possessory interest in the ~~entire~~ premises.

(7) through (9) remain as proposed.

42.12.134 CONDITIONS AND QUALIFICATIONS SPECIFIC FOR AN ALL-BEVERAGES LICENSE (1) remains as proposed.

AUTH: 16-1-303, MCA
IMP: 16-3-303, 16-3-304, 16-3-305, 16-3-311, 16-4-405, MCA

42.12.135 CONDITIONS AND QUALIFICATIONS SPECIFIC FOR A RESTAURANT BEER AND WINE LICENSE (1) In addition to the requirements in ARM 42.12.122, a restaurant beer and wine licensee:

(a) shall operate at premises clearly recognizable as a restaurant, as defined in ARM 42.12.401; and

(b) must not provide alcoholic beverages to any person for off-premises consumption~~; and~~

~~(c) shall prohibit on-premises consumption or possession of alcoholic beverages between the hours of 11 p.m. and 11 a.m., by removing all alcoholic beverages from individuals' possession by 11 p.m~~.

(2) remains as proposed.

42.12.136 CONDITIONS AND QUALIFICATIONS SPECIFIC FOR A BEER LICENSE AND A BEER LICENSE WITH WINE AMENDMENT FOR ON-PREMISES CONSUMPTION (1) remains as proposed.

AUTH: 16-1-303, MCA
IMP: 16-3-303, 16-3-304, 16-3-305, 16-3-311, 16-4-405, MCA

42.12.208 TEMPORARY OPERATING AUTHORITY (1) and (2) remain as proposed.

(3) Temporary operating authority will be issued for a 45-day period. If the application is not approved within this ~~45-day period:~~

~~(a) temporary operating authority will continue if the department caused the delay (the department will notify the applicant if this occurs); and~~

~~(b) temporary operating authority will cease if the department did not cause the delay, unless the applicant demonstrates to the department's satisfaction that the cause of the delay was beyond the applicant's control. The applicant must submit written documentation to the department seven days prior to the expiration of the temporary operating authority. The department will notify the applicant whether or not an additional 45-day period is granted~~ period, the department shall extend temporary operating authority for another 45-day period only upon determining that the cause of the delay was not attributable to the applicant. The department shall notify the applicant if it requires additional information to make this determination and the applicant shall have seven days to submit written verification documenting to the department's satisfaction how the delay was beyond the applicant's control. The department shall notify applicants whether temporary operating authority is extended beyond the initial 45-day window.

(4) through (6) remain as proposed.

42.12.209 TRANSFER OF A LICENSE TO ANOTHER PERSON (1) through (1)(b) remain as proposed.

(c) has a security interest in a license being foreclosed ~~pursuant to ARM 42.12.205~~;

(d) through (8) remain as proposed.

(9) Any ~~party~~ person or entity that is not a licensee is prohibited from controlling or participating in the licensed operation in any capacity reflecting an ownership interest. A licensee's allowance of an undisclosed ownership interest shall constitute a violation and may subject the licensee to administrative action, including revocation of the license.

(10) remains as proposed.

42.12.301 RESORT LICENSES (1) and (2) remain as proposed.

(3) ~~County all-beverages or county beer~~ Other non-resort licenses are allowed within a defined resort area and such licenses are not considered for purposes of determining the number of allowable resort all-beverages licenses.

(4) remains as proposed.

42.13.106 ALTERATION OF PREMISES (1) through (7) remain as proposed.

(8) ~~Once the Department of Justice has approved the premises~~ The department will review the Department of Justice's findings and, upon determining no issues are present, the department shall notify the licensee that the alteration is approved and any new addition is now part of the licensed premises. Prior to receiving this written approval, a licensee shall not operate in any area that has not been previously approved.

(9) remains as proposed.

42.13.107 NONUSE STATUS (1) The department shall grant nonuse status to a licensee that is not operating a going establishment if:

(a) the licensee submits a written ~~request verifying~~ verification documenting to the department's satisfaction how the nonuse is beyond the licensee's control; and

(b) through (6) remain as proposed.

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: Regarding the proposed adoption of New Rule I, pertaining to seasonal businesses, Senator Dee Brown commented that this makes sense and thanked the department for its work on the new rule. Senator Brown also stated that she would be interested in further information about the costs of the seasonal licenses and how it will affect the total for licensing in the state.

RESPONSE 1: The department's previous administrative rules afforded licensees meeting certain criteria the opportunity to operate their licenses

seasonally. The department determined, however, that relocating the existing content to its own rule would enable the public to better locate this content. As such, the department is not creating new rights for licensees; it is simply relocating content for improved transparency.

New Rule I does not create any additional licenses. It merely continues to allow any retail licensee to place their license on seasonal status if the requirements listed in New Rule I are met. The cost of the license is specific to the type of alcohol beverages that will be retailed at the premises. These fees are addressed in 16-4-501, MCA.

COMMENT 2: Regarding the proposed amendments to ARM 42.12.106(9), pertaining to concession agreements, John Iverson of the Montana Tavern Association (MTA), stated that there is concern that the proposed amendment to the definition may impact the way concession agreements are currently utilized or operated within the state. Specifically, MTA members raised concern with the addition of the "sales and service" language. The way concession agreements are currently utilized, concessionaire's employees can provide the service with an agreement as to how the employees are compensated. Mr. Iverson stated that the current system serves the public well and that they want to ensure that the proposed amendment to this definition would not change the current system.

Neil Peterson of the Gaming Industry Association stated that he echoes the comments of Mr. Iverson.

Joel Silverman of Silverman Law Office, PLLC, stated that he is also concerned about the proposed amendment to the definition of concession agreement in ARM 42.12.106(9). Along those same lines, in the proposed amendment to ARM 42.12.122(2)(d), Mr. Silverman asked whose employee the new phrase "the employee to control the preparation, sale, service, and distribution" is talking about. Is this the licensee's employee or the concessionaire's employee? He stated that he knows the department's current interpretation is that it can be the concessionaire's employee and he wants to make sure that is not changing.

Michael Lawlor of the Reely Law Firm, asked if the department intends any substantive change by removing the phrase "a business directly related to the liquor operation" from the definition of concession agreement in ARM 42.12.106(9). The reasonable necessity explanation states that this change is for purposes of striking information already provided in ARM 42.12.133, but the "directly related" language is not contained in that provision. Removing this language may affect how ARM 42.12.122(3)(b) is applied in terms of when walls are required between portions of a business. Mr. Lawlor asks that no substantive change be made in that regard.

RESPONSE 2: The proposed amendment to the definition of concession agreement in ARM 42.12.106(9) does not prevent a licensee and concessionaire from having a shared employee who serves alcohol. This arrangement is specifically provided for in ARM 42.12.133 and the department is not proposing any amendments to this provision.

Striking the phrase "a business directly related to the liquor operation" from the definition of concession agreement in ARM 42.12.106(9) does not impact

premises suitability requirements set forth in ARM 42.12.122(3)(b). That rule specifically lists examples of businesses that would and would not be directly related to the on-premises consumption of alcoholic beverage.

COMMENT 3: Mr. Silverman asked for clarification regarding the proposed new language in ARM 42.12.122(6), where the department is adding the new phrase "possessory interest." He commented that in the past the licensee had to have the area in which the alcohol was going to be served and stored identified on its floor plan. He stated he is unsure why the word "entire" needs to be in that new statement because premises is clearly defined and asked if there is some purpose behind that. He commented that he wants to ensure it is not taking away any rights that licensees currently have.

RESPONSE 3: The department agrees that the word "entire" is superfluous and has further amended the rule by removing it. Furthermore, current practices require that the floor plan cover the premises, including the concessionaire's area. There is no change to this practice.

COMMENT 4: Regarding the proposed amendments to ARM 42.12.135, the department received comments from Brad Simshaw, Blackfoot River Brewing, Drew Geiger, licensee, Tony Herbert, Montana Brewers Association, and Paul Cartwright, a private individual, opposing the proposed new language requiring restaurant beer and wine licensees to remove alcoholic beverages from individuals' possession at 11 p.m. to prevent further consumption.

Many commenters drew a comparison between legislation and administrative rules pertaining to service and consumption hours for small breweries. Section 16-3-213, MCA, provides that a small brewery may provide samples between 10 a.m. and 8 p.m. ARM 42.13.601(5), adopted following negotiated rulemaking, states that on-premises consumption may occur between 10 a.m. and 9 p.m. This scheme provides for a one-hour consumption window following the closure of service hours. Several commenters encouraged the department to proceed similarly with regard to restaurant beer and wine licensees by consulting with industry members and adopting an administrative rule that provides for a consumption window following the closure of service hours.

RESPONSE 4: The department considered all comments submitted regarding the requirement for restaurant beer and wine licensees to remove alcohol at 11 p.m. that was served to patrons during the statutorily provided service window. The department has determined that it would be best to strike the proposed language in ARM 42.12.135(1)(c), and to not add 16-4-422, MCA, as an implementing citation to the rule as was proposed at the hearing. The department believes it is best to take these comments under advisement and consider whether such content is necessary during future rule amendments.

COMMENT 5: Regarding the proposed amendments to ARM 42.12.136, Mr. Cartwright stated that the department's citation for ARM 42.12.136 says it is implementing 16-3-303, MCA, which addresses on-premises retailers selling beer for

off-premises consumption. Mr. Cartwright commented that he thinks the department meant instead to cite 16-3-304, MCA.

RESPONSE 5: The department has further amended ARM 42.12.136 by incorporating both 16-3-304 and 16-3-305, MCA, as implementing citations. Furthermore, the department is also amending ARM 42.12.134 to incorporate these citations as well.

COMMENT 6: Regarding the proposed amendments to ARM 42.12.139, Mr. Simshaw commented that he applauds the department's recognition and common sense approach to allowing for more than one building on a manufacturer's premises with its proposed new language. In proposing this change, the department recognizes the rapidly changing landscape of the manufacturers of beer, wine, and distilled spirits in Montana. This is a good, proactive move by the department. It should result in less confusion and paperwork for manufacturers and the department.

Mr. Herbert also stated that the MBA appreciates the department's proposal to allow for multiple buildings on a manufacturer's premises. He further stated that the Montana brewing industry is continuing to grow and the brewers will continue to expand their physical plants to accommodate demand for products. This proposed rule change clarifies the ability to add additional buildings and is sensible for business.

RESPONSE 6: The department appreciates the support of this rule amendment.

COMMENT 7: Mr. Lawlor stated that he believes the purpose and the effect of the proposed change to ARM 42.12.208(1) is to allow temporary operating authority to be utilized in situations where a license that is technically an original (i.e., new) license is issued for a previously licensed premises. For example, a non-transferrable off-premises license or golf course beer and wine license. This is a positive and helpful change, which confirms the department's practice of allowing for temporary operating authority in the case of the purchase of a business operating an off-premises beer and wine license and makes the logical extension of also allowing the same in cases such as the purchase of a golf course business when the license issued to the purchaser is technically a new, "original" license.

However, Mr. Lawlor further stated that he has serious concerns about the proposed new language in ARM 42.12.208(3)(b). This would be a significant departure from current department practice, which would have a serious adverse effect on many buyers and sellers of licensed businesses. Even with diligent work by the seller, the purchaser, the applicant, and the attorneys, the application process often takes more than 45 days from the issuance of temporary authority until final approval.

Mr. Lawlor stated that to have an unexpected delay result in loss of temporary operating authority would be very disruptive to the business, potentially made more difficult in situations where the purchase price was exchanged upon approval of temporary authority under ARM 42.12.209, and then must be returned. There will also be a lack of certainty by the applicant as to whether temporary authority will be

extended because no criteria are set forth to explain how the department will determine whether the delay was beyond the applicant's control in the very short (seven day) time period between when the extension request is made and the temporary authority period is set to end. Mr. Lawlor stated he is concerned that the parties to a purchase and sale would not know until the last minute whether the time would be extended and thus whether they needed to change who was operating the business the next day.

Mr. Lawlor respectfully requests that ARM 42.12.208(3) not be changed as proposed, or that if a change is made that the initial time period for temporary authority be longer, perhaps 90 days. He noted that 16-4-404(6), MCA, does not impose a time limit on temporary authority, so a longer time period could certainly be established by rule.

RESPONSE 7: The department has reviewed the concerns articulated by Mr. Lawlor and has further amended the rule for clarity. If processing may not be accomplished due to factors beyond the licensee's control, a 45-day extension shall be granted to the licensee pursuant to the process set forth in ARM 42.12.208(3).

COMMENT 8: Regarding the proposed amendments to ARM 42.12.209, Mr. Lawlor stated that he thinks it may be appropriate to cite 16-4-801, MCA, instead of or in addition to ARM 42.12.205 in (1).

Mr. Lawlor asked if the requirement in ARM 42.12.209(6) will apply to the seller of a business when the license itself is non-transferrable and the purchaser/applicant is applying for a new license to operate at the business it is purchasing. For example, when an applicant is purchasing a convenience store or similar business and applying for an off-premises beer/wine license, which is technically a new license, to operate there. He commented that it is his understanding that current practice is that the department requires the business seller to meet this requirement in such circumstances, but because the license itself is not being transferred, he does not understand why.

For clarification, with respect to ARM 42.12.209(7)(a), Mr. Lawlor asked if it remains true that a licensee is allowed to enter into a sale/purchase agreement for a license, and that such sale/purchase agreement itself is not impermissible "evidence of the proposed ownership interest."

Further, Mr. Lawlor wants to know if the word "party" in ARM 42.12.209(9) means "person," or is the definition of "parties" in ARM 42.12.106 intended to apply. He stated that it would be more clear to say "person or entity," or something similar.

RESPONSE 8: The department has reviewed the citation of ARM 42.12.205 in ARM 42.12.209(1)(c) and decided to remove that citation.

The department notes Mr. Lawlor's comment regarding the status of a seller's tax filings when a license is not being transferred. The requirement of having a current tax status is addressed in two administrative rules. ARM 42.12.101(3)(h) applies the requirement to applicants and ARM 42.12.209(6) applies the requirement to the current owner of a license being transferred. The department finds that these administrative rules speak for themselves and provide clear guidance for administration.

The department confirms that parties may still execute a buy-sell agreement for the purchase of a license and that this document does not constitute impermissible "evidence of the proposed ownership interest."

Furthermore, in response to Mr. Lawlor's comment pertaining to "party" in ARM 42.12.209(9), the department has further amended the rule to use "person or entity" in place of "party."

COMMENT 9: Mr. Lawlor stated he believes ARM 42.12.301(3) should be expanded to include a reference to city-quota all-beverages licenses being used in previously determined resort areas under the pre-1999 language of 16-4-202, MCA. Such resort areas may be within 5 miles of an incorporated city or town, which was and remains permissible for resort areas determined under the old statutory language.

RESPONSE 9: As the boundaries of incorporated cities continue to grow, it is possible that a city all-beverage license or city beer license may overlap onto an existing resort area. The department has further amended ARM 42.12.301 to allow non-resort licenses to be located in resort areas without impacting the quota for resort licenses.

COMMENT 10: Mr. Lawlor stated that the proposed language in ARM 42.13.101(4) appears to have been broadened to be applicable to any license owned by the same person or entity that owns the revoked license and asked if this is an intended change.

If so, Mr. Lawlor suggests clarifying that this only applies to applications from such persons for a new ownership interest in a license and would not prohibit things such as renewal applications, or any of the "abbreviated" applications in ARM 42.12.118 with respect to the non-revoked licenses owned by such persons. Mr. Lawlor asked if this is intended to affect any owner of a revoked license, or only an owner with 10 percent or more ownership of the revoked license.

Mr. Lawlor further commented that the current language of ARM 42.13.101(12) is proposed to be deleted in its entirety for the stated reason that the department is required by 16-4-406(3) and (4), MCA, to consider aggravating and mitigating circumstances for violations. He requested that rather than deleting this subsection that it be rephrased to provide greater transparency as to when and how the department will consider aggravating and mitigating circumstances, as well as how, when, and to whom evidence of such circumstances is to be offered. The statute is silent on those points.

RESPONSE 10: The one-year moratorium applies to any license application submitted by any owner (including those with less than 10 percent ownership interest) of a license that has been revoked. The department finds that the language as proposed is clear with regard to these issues and is proposing no further edits.

Furthermore, the department believes it is best to take Mr. Lawlor's comments regarding mitigating and aggravating circumstances under advisement and consider whether such content is necessary during future rule amendments.

COMMENT 11: Mr. Lawlor suggests the language in ARM 42.13.106(8) be rephrased to clarify that the department makes the determination whether to approve a proposed alteration of a licensed premises, based on the Department of Justice (DOJ) investigator's report. As proposed, the language seems to indicate the determination is made by the DOJ.

RESPONSE 11: The department is further editing ARM 42.13.106(8) to incorporate this suggestion.

COMMENT 12: Regarding the proposed amendments to ARM 42.13.107, Mr. Silverman stated that he understands that the department has had issues in the past with "flip-flopping," where a licensee would take one license and put it on a nonuse status while putting another license into action and then switch it back after a certain period of time to hold onto and never lose a license. Mr. Silverman wants to verify that the proposed amendment in ARM 42.13.107(6) is not dealing with a situation where it is a single switch because a licensee can now hold more than one license. Mr. Silverman stated that in the past, a licensee could put an all-beverages license into a nonuse status and then sell or move it to a new location. Mr. Silverman wants to ensure that the "one time" is not what this rule amendment is aiming for.

Mr. Silverman stated another concern he has with ARM 42.13.107 deals with the department's removal of the 90-day extension process. His concern is that there may be clients who will forget about their nonuse period and then get a notice of revocation because they have used up their entire nonuse process without any notice. Mr. Silverman did not have a recommendation to offer the department, but commented that if there is something the department can do, such as offer a 6 month review, it would be greatly appreciated.

Mr. Silverman stated that he is concerned about lapsing licenses based on nonuse due to economic changes. If a licensee goes on a nonuse status, moves the license to a new location, and then has to go on nonuse again due to economic changes, is it the department's stance that the licensee will automatically be given notice of revocation because that would potentially be a second nonuse in a 6 month period when they have been trying to do the right thing and keep the license active? Mr. Silverman added that he understood the purpose was to prevent someone from putting a license on active use for a day or two and then back to nonuse and claiming economic reasons, for example.

Mr. Silverman further stated that he wants to ensure that no matter the nonuse request, that those licensees will still have their rights to a hearing whether it's under ARM 42.13.107(6) or otherwise.

Mr. Lawlor asked for clarification about whether the proposed new language in ARM 42.13.107 provides for automatic approval of nonuse status upon the licensee's written request. Does the requesting licensee need to provide any explanation for how or why the nonuse is beyond its control, or is it adequate for the licensee to simply say the nonuse is for reasons beyond its control?

Mr. Lawlor stated that he is concerned about the proposed language in ARM 42.13.107(6) having a serious adverse effect on a business that is struggling economically. A licensee who has gone on nonuse status because of a poor

business situation and then attempts to operate again would not be able to put the license back on nonuse and sell it if the business continues to fail after the second effort. He suggests the language could be revised to provide that in such circumstances the licensee would have an opportunity to put the license back on nonuse and sell it.

Mr. Lawlor also commented that language proposed to be stricken from ARM 42.13.107(4) removes the reference to a secured party attempting to put the license into use. Mr. Lawlor requests that the department include language either in this rule or elsewhere, such as in ARM 42.12.110, to provide that a secured party be given notice by the department of a proposed lapse of the license, or a revocation of the license, so that the secured party can take action to protect its collateral under 16-4-801, MCA, before the license is lapsed.

RESPONSE 12: A single switch of a license, which includes putting one license on nonuse to allow another license to be used at the premises, is still permissible. However, rotating multiple licenses on and off nonuse would not be permitted. Again, this will help ensure licenses remain active to fulfill public necessity.

Mr. Silverman's concern that his clients may forget the expiration date of their nonuse period is noted. Eliminating the requirement to request a nonuse extension every 90 days removes a burden placed on both the licensee and department. The licensee is responsible for ensuring their license is put back into an active status within the time period.

The department also confirms that a licensee has the right to an administrative hearing with regard to the lapsing of a license for nonuse.

The process of requesting nonuse status does not provide for automatic approval. ARM 42.13.107(1)(a), as proposed, was not intended to require a signed verification by the licensee stating only that the nonuse was beyond the licensee's control. The department has further amended this section to make clear that the licensee needs to provide sufficient information to the department regarding the cause of the nonuse request in order for the department to verify that the nonuse was beyond the licensee's control.

The department wants to see each and every licensee's business succeed. However, as Mr. Lawlor alludes to, some businesses do fail even with the best intentions. However, placing a license on nonuse status within six months of a previous nonuse period is not permissible based on adverse economic conditions.

Furthermore, Mr. Lawlor's request that secured party holders be given notice of a proposed lapse of a license or revocation of a license is noted. The department believes it is best to take Mr. Lawlor's comments under advisement and consider whether such content is necessary during future rule amendments.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State December 1, 2014.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.18.121, 42.18.122, 42.18.124, 42.18.128, 42.18.134, 42.18.135, and 42.18.136 and the repeal of ARM 42.18.107, 42.18.110, 42.18.113, 42.18.116, 42.18.120, 42.18.130, and 42.18.131 pertaining to the Montana reappraisal plan	))))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On October 23, 2014, the Department of Revenue published MAR Notice No. 42-2-922 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 2582 of the 2014 Montana Administrative Register, Issue Number 20.

2. The department has amended and repealed the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State December 1, 2014.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.21.113, 42.21.123, 42.21.124, 42.21.131, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.21.151, 42.21.153, 42.21.155, 42.21.165, and 42.22.1311 pertaining to the trended depreciation schedules for valuing property	)))))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 23, 2014, the Department of Revenue published MAR Notice No. 42-2-923 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 2589 of the 2014 Montana Administrative Register, Issue Number 20.

2. On November 12, 2014, a public hearing was held to consider the proposed amendments. No members of the public attended the hearing and no written comments were received.

3. The department has amended ARM 42.21.113, 42.21.123, 42.21.124, 42.21.131, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.21.153, 42.21.155, 42.21.165, and 42.22.1311 exactly as proposed.

4. The department initially determined that the proposed amendments to the rules in the notice would not significantly and directly impact small businesses. However, after further consideration, the department wants to take a closer look at the potential impact from a portion of the proposed amendments to ARM 42.21.151. Therefore, the department is amending the rule as proposed, but reversing the proposed amendments that require further review, as follows, new matter underlined, deleted matter interlined:

42.21.151 LOCALLY ASSESSED CABLE TELEVISION SYSTEMS (1) The average market value ~~of central office or headend type equipment will be determined by using a ten-year trended depreciation schedule~~ for television cable systems is $2,000 per mile of coaxial cable (transmission line) and $25 per service drop.

~~(2) The market value of transmission and distribution type assets will be determined by using a twenty-year trended depreciation schedule.~~

~~(3) The percent good will be derived from the Marshall & Swift Valuation Service Guide furniture and fixtures depreciation tables, as published by the Marshall and Swift Publication Company, 915 Wilshire Boulevard, 8th Floor, P.O. Box 26307, Los Angeles, California 90026-0307.~~

~~(4) The trend factors shall be calculated using the most recent available "Producer Price Index for Commodities," Series Id WPU1178, "Electronic~~

~~Components and Accessories," published by the United States Department of Labor, Bureau of Labor Statistics.~~

~~(5)~~(2) The average market value ~~of~~ for the dishes and towers will be determined by using a five-year trended depreciation schedule ~~for~~ on dishes and ten-year trended depreciation schedule on ~~for~~ towers. Both the trend factors and the depreciation tables will be derived from the Marshall & Swift Valuation Service Guide, as published by the Marshall and Swift Publication Company, 915 Wilshire Boulevard, 8th Floor, P.O. Box 26307, Los Angeles, California 90026-0307. The trend factors shall be the most recent available from the "Average of all Indexes" listed in the above publication.

~~(6)~~(3) The trended depreciation schedules will be applied to the acquired cost ~~including installation~~ and year acquired of the ~~equipment~~ dish or tower.

~~(7)~~(4) The trended depreciation schedules referred to in ~~(1), (2), and (5)~~ (2) and (3) are listed below and shall be in effect for tax year 2015.

~~TEN-YEAR "HEADEND EQUIPMENT"~~

~~YEAR NEW/ ACQUIRED~~	~~% GOOD~~	~~TREND FACTOR~~	~~TRENDED % GOOD~~
~~2014~~	~~92%~~	~~1.000~~	~~92%~~
~~2013~~	~~84%~~	~~0.999~~	~~84%~~
~~2012~~	~~76%~~	~~0.983~~	~~75%~~
~~2011~~	~~67%~~	~~0.955~~	~~64%~~
~~2010~~	~~58%~~	~~0.921~~	~~53%~~
~~2009~~	~~49%~~	~~0.905~~	~~44%~~
~~2008~~	~~39%~~	~~0.874~~	~~34%~~
~~2007~~	~~30%~~	~~0.790~~	~~24%~~
~~2006~~	~~24%~~	~~0.793~~	~~19%~~
~~2005 and older~~	~~21%~~	~~0.783~~	~~16%~~

~~TWENTY-YEAR "TRANSMISSION & DISTRIBUTION ASSETS"~~

~~YEAR NEW/ ACQUIRED~~	~~% GOOD~~	~~TREND FACTOR~~	~~TRENDED % GOOD~~
~~2014~~	~~97%~~	~~1.000~~	~~97%~~
~~2013~~	~~93%~~	~~0.999~~	~~93%~~
~~2012~~	~~90%~~	~~0.983~~	~~89%~~
~~2011~~	~~86%~~	~~0.955~~	~~82%~~
~~2010~~	~~82%~~	~~0.921~~	~~76%~~
~~2009~~	~~78%~~	~~0.905~~	~~71%~~
~~2008~~	~~74%~~	~~0.874~~	~~65%~~
~~2007~~	~~70%~~	~~0.790~~	~~55%~~
~~2006~~	~~65%~~	~~0.793~~	~~52%~~
~~2005~~	~~60%~~	~~0.783~~	~~47%~~
~~2004~~	~~55%~~	~~0.767~~	~~42%~~
~~2003~~	~~50%~~	~~0.751~~	~~38%~~

~~2002~~	~~45%~~	~~0.742~~	~~33%~~
~~2001~~	~~40%~~	~~0.717~~	~~29%~~
~~2000~~	~~35%~~	~~0.706~~	~~25%~~
~~1999~~	~~31%~~	~~0.696~~	~~22%~~
~~1998~~	~~27%~~	~~0.678~~	~~18%~~
~~1997~~	~~24%~~	~~0.646~~	~~16%~~
~~1996~~	~~22%~~	~~0.617~~	~~14%~~
~~1995 and older~~	~~21%~~	~~0.598~~	~~13%~~

FIVE-YEAR "DISHES"

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
2014	85%	1.000	85%
2013	69%	1.010	70%
2012	52%	1.018	53%
2011	34%	1.047	36%
2010 and older	23%	1.080	25%

TEN-YEAR "TOWERS"

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
2014	92%	1.000	92%
2013	84%	1.010	85%
2012	76%	1.018	77%
2011	67%	1.047	70%
2010	58%	1.080	63%
2009	49%	1.072	53%
2008	39%	1.103	43%
2007	30%	1.146	34%
2006	24%	1.209	29%
2005 and older	21%	1.265	27%

(8) remains as proposed but is renumbered (5).

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State December 1, 2014.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through III, the amendment of ARM 42.20.102, 42.20.106, 42.20.118, 42.20.156, 42.20.173, 42.20.302, 42.20.454, 42.20.455, 42.20.501, 42.20.502, 42.20.503, 42.20.504, 42.20.509, 42.20.515, 42.20.601, 42.20.603, 42.20.604, 42.20.606, 42.20.620, 42.20.660, 42.20.665, 42.20.670, 42.20.675, 42.20.680, 42.20.705, 42.20.720, 42.20.725, 42.20.730, 42.20.735, 42.20.740, and 42.20.745, and the repeal of ARM 42.20.605, 42.20.607, and 42.20.625 pertaining to the valuation and classification of real property	))	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On October 23, 2014, the Department of Revenue published MAR Notice No. 42-2-924 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 2612 of the 2014 Montana Administrative Register, Issue Number 20.

2. On November 12, 2014, a public hearing was held to consider the proposed adoption, amendment, and repeal. Robert Story, President of the Montana Taxpayers Association (Montax), and Glenn Marx, Executive Director of the Montana Association of Land Trusts (MALT), appeared and testified at the hearing. Montax and MALT also provided written comments.

3. The department has adopted New Rule I (42.20.681), II (42.20.682), and III (42.20.683), amended ARM 42.20.102, 42.20.106, 42.20.118, 42.20.173, 42.20.302, 42.20.454, 42.20.455, 42.20.501, 42.20.502, 42.20.503, 42.20.504, 42.20.509, 42.20.515, 42.20.603, 42.20.660, 42.20.665, 42.20.670, 42.20.675, 42.20.680, 42.20.705, 42.20.720, 42.20.725, 42.20.730, 42.20.735, 42.20.740, and 42.20.745, and repealed ARM 42.20.605, 42.20.607, and 42.20.625 as proposed.

4. Based upon the comments received and after further review, the department has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

<u>42.20.156 AGRICULTURAL AND FOREST LAND USE CHANGE CRITERIA</u>

(1) The department will change the classification and valuation of land from class three, as defined in 15-6-133, MCA, or class ten, as defined in 15-6-143, MCA, to class four, as defined in 15-6-134, MCA, when any of the following criteria are met:

(a) ~~the agricultural land does not meet the eligibility requirements in 15-7-202, MCA~~ restrictive covenants, easements, deed restrictions, servitudes, conservation easements, or other legal encumbrances that exist and when enforced effectively prohibit agricultural use of the land;

(b) through (3) remain as proposed.

42.20.601 DEFINITIONS The following definitions apply to this subchapter:

(1) through (8) remain as proposed.

(9) "Classification" is the agricultural use of the land. The department classifies agricultural land into one of five agricultural use classes. The department's five agricultural uses are described in ARM 42.20.660 through 42.20.680.

(10) through (13) remain as proposed.

(14) "Effectively prohibit" means to result in the permanent cessation of a bona fide agricultural operation.

(14) remains as proposed, but is renumbered (15).

~~(15)~~(16) "Income from agricultural production" means the gross amount of income received from the sale of food, feed, fiber commodities, livestock, poultry, bees, biological control insects, fruits, vegetables, and also includes sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes, income from farm rental, the sale of draft, breeding, dairy, or sporting livestock, the share of partnership or family corporation gross income received from a farming or ranching business entity, or the taxpayer's share of distributable income from an estate or trust involved in an agricultural business. When the income from agricultural production is used to qualify land for agricultural classification, it must be reportable income for income tax purposes.

(a) remains as proposed.

(b) A bona fide agricultural operation may combine the income of more than one parcel to meet the income requirements. The parcels must be dependent upon each other in the agricultural operation as a whole. ~~For example, one parcel may be used to grow hay, which is fed to livestock raised on a different parcel.~~

(16) through (34) remain as proposed, but are renumbered (17) through (35).

42.20.604 STEPS IN DETERMINING THE PRODUCTIVITY OF AGRICULTURAL LAND (1) through (2)(d) remain as proposed.

(e) for nonirrigated hay land, the midpoint production of the amount of air-dry herbage grown between "unfavorable" condition years and "normal' condition years divided by 2,000 pounds is used to determine the land's productivity in tons per acre.

42.20.606 EXCEPTIONS TO AGRICULTURAL LAND ASSESSMENT

(1) and (1)(a) remain as proposed.

(b) land that has restrictive covenants, easements, deed restrictions, servitudes, conservations easements, or other legal encumbrances that when enforced effectively prohibit agricultural use;

(b) and (c) remain as proposed, but are renumbered (c) and (d).

(2) remains as proposed.

42.20.620 CRITERIA FOR AGRICULTURAL LAND VALUATION FOR LAND TOTALING LESS THAN 160 ACRES (1) through (10) remain as proposed.

(11) ~~Land used solely for summer~~ Summer fallow farmland must produce a minimum of $1,500 in agricultural crop income ~~every other growing season~~ in the year it is farmed to be valued as agricultural land.

(12) through (15) remain as proposed.

5. Based upon comments received and for consistency within the rules, the department is also amending ARM 42.20.640, which was not originally proposed to be amended, as shown below, new matter underlined, deleted matter interlined:

42.20.640 VALUATION OF LAND OWNERSHIPS 160 ACRES OR LARGER IN SIZE (1) and (2) remain the same.

(3) Any remaining acreage in the ownership parcel will be classified and assessed as agricultural land provided the land is not used for residential, commercial, or industrial purposes, and that the land doesn't have stated restrictive covenants, easements, deed restrictions, servitudes, conservations easements, or other ~~restrictions~~ legal encumbrances that when enforced effectively prohibit agricultural use. If the remaining acreage in the ownership parcel is either used for residential, commercial, or industrial purposes, or has stated covenants or other restrictions that effectively prohibit agricultural use, the remaining acreage will be classified and valued as class 4 land.

(4) and (5) remain the same.

AUTH: 15-1-201, MCA
IMP: 15-6-133, 15-7-201, 15-7-202, 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: Regarding the proposed adoption of New Rules I and II, the department received the following comments from Robert Story, President of the Montana Taxpayers Association (Montax).

Mr. Story commented that New Rule I, containing the prices and values used in the 2015 cycle, basically brings all the price and yield information for class three ag land into one rule, which is a good move. It makes it easy to find and will simplify the process. Montax thinks going to a ten year Olympic average will give a better average of commodity prices than the seven year average and consolidating this information in one rule will simplify the process.

Mr. Story further commented that New Rule II, which describes a family farm and deals with parcels between 20 and 160 acres, originally caused concern but after discussions with department staff, he understood that this rule is basically statutory language and a consolidation of old rules.

RESPONSE 1: The department appreciates Mr. Story's comments. New Rule I reorganizes several rules into one rule to allow the department to more easily update price and yield information in subsequent reappraisal cycles. Additionally, the expansion of the years in calculating the Olympic average mitigates increases and decreases in commodity prices. Reorganizing the rules pertaining to family farms seeks to decrease taxpayer confusion and to make the rules easier to understand.

COMMENT 2: Regarding the proposed amendments to ARM 42.20.156, the department received written comments from Andy Baur, President, Board of Directors, Montana Association of Land Trusts (MALT).

Mr. Baur proposes to amend the department's reasonable necessity to include the following sentence, "The department will determine the classification of agricultural land based upon the use of the land and not upon the terms of covenants, easements, deed restrictions, servitudes, conservation easements, and other land-use restrictions."

RESPONSE 2: The department appreciates Mr. Baur's suggestion, but is unable to revise a statement of reasonable necessity in a proposal notice that has already been published. However, including his suggested language in the comment section of this adoption notice incorporates it into the record for the rulemaking action.

COMMENT 3: Regarding the proposed amendments to ARM 42.20.502, Mr. Story commented that the value before reappraisal (VBR) section of the rule, which is updating dates, was of great concern for the Farm Bureau in the last reappraisal cycle. However, the department has issued a new rule notice governing VBR which the Farm Bureau appreciates. Mr. Story stated that they look forward to working with the department on a subsequent notice of amendment to the VBR rule that may work better for class three properties.

RESPONSE 3: Mr. Story is correct. The changes in ARM 42.20.502 are updates in preparation for the upcoming reappraisal cycle. The department welcomes Mr. Story's testimony and/or comments regarding the proposed and pending new VBR rule.

COMMENT 4: Regarding the proposed amendments to ARM 42.20.504, Mr. Story is concerned with the broad new language in (1)(e) pertaining to new construction. The department eliminated two fairly minor changes to property and replaced them with a very broad statement and that could be problematic. There is a catch-all phrase in (1)(e) that states properties with physical change will be treated as new construction. Montax is concerned that a very minor physical change could be considered new construction that would result in a revaluation of the property.

Mr. Story stated that he understands the department needs a way to deal with changes to property; however, this leaves a lot of discretion for an appraiser to consider something new construction which will create a new value. Mr. Story

further stated that while other groups under (1) are easily identifiable, (e) is subject to an appraiser's interpretation, which may result in many appeals. The elimination of the 100 square foot exemption may result in having small changes in a property causing a revaluation. One hundred square feet may be too large of a number, but there should be some allowance for small changes that probably do not make much difference in the value of a property. Mr. Story indicated he would be interested in learning the department's reasoning for going this route.

RESPONSE 4: The department thanks Mr. Story for his comments. ARM 42.20.505(1)(e) limits new construction to square footage only. Square footage is not the only type of physical change that may occur. Section (1)(g) recognizes finished basements as new construction only. Finished basements may be destruction as well as new construction. Because of these reasons, the department struck both subsections. Physical changes are not appraiser judgment but rather actual changes to the property. The impact on the property's value is dependent upon the type of physical change.

COMMENT 5: Regarding the proposed amendment to ARM 42.20.601(13), Mr. Baur commented that the department should revise, not remove, the statutory term "effectively prohibit" from the definitions. Mr. Baur stated that the purpose of MALT's comments is to seek clearer administrative rules interpreting 15-7-202(5), MCA, particularly with respect to properties protected by perpetual conservation easements pursuant to 76-6-101, MCA. Land may not be classified or valued as agricultural land or nonqualified agricultural land if it has stated covenants or other restrictions that effectively prohibit its use for agricultural purposes. Despite this clear statutory language, the department's proposed rules and statements of reasonable necessity indicate that the department plans to strike the definition of "effectively prohibit" and delete such references in ARM 42.20.156 and ARM 42.20.606 in response to a recent Montana Supreme Court case.

Mr. Baur proposes the following definition as a replacement for the current definition found at ARM 42.20.601(13): "Effectively prohibit" means that a complete cessation of all farming, ranching, grazing, or other agricultural activities on the land is required by the stated covenants or other restrictions and that the taxpayer's compliance with the covenants or other restrictions has actually brought about the complete cessation of agricultural use of the land in its entirety. "Effectively prohibit" does not include the temporary cessation of agricultural production (a) for land management purposes; (b) to improve the land's productivity; (c) to follow a farming, ranching, grazing, or other agricultural plan that includes taking land temporarily out of production; or (d) pursuant to any other practice that is not intended to permanently remove the land from farming, ranching, grazing, or other agricultural activities.

Mr. Baur further stated that in a recent case, the Montana Supreme Court was asked to interpret the statutory phrase "effectively prohibit" in 15-7-202(5), MCA, as applied to a residential subdivision's restrictive covenant that prohibited agricultural activities. In its opinion, the Court emphasized that lands must be classified and valued based upon their actual uses rather than according to the language of restrictive covenants attached to the land, particularly in instances

where restrictive covenants are not enforced or where the covenants have not brought about an actual cessation of the agricultural use of the land.

Mr. Baur stated that, in part, the opinion looked to 15-7-103(2), MCA, which provides that all lands must be classified according to their use or uses. In addition, the Court looked to the District Court's definition of "effectively prohibit," which was to "forbid an action in a way that accomplishes the purpose and brings about the expected result." The Court's ultimate analysis appears to combine these two concepts. It focused on the actual use of the land and whether the restrictive covenants were actually effective at bringing about a total cessation of the agricultural use of the land. The Court refused to constrain its analysis by focusing on the written language of the restrictive covenants, including whether those provisions were legally sufficient to effectively prohibit agricultural use. Ultimately, the Supreme Court concluded that the continued actual use of the land for hay and grain production belies any claim that the covenants effectively prohibit agricultural purposes.

Mr. Baur further stated that, as noted above, the department's proposed rule changes would strike the use of the term "effectively prohibit," including its definition, from the administrative rules implementing 15-7-202(5), MCA. MALT agrees with the department that the current rules implementing the term "effectively prohibit" should be revised in response to the Supreme Court case. However, because 15-7-202(5), MCA, will remain current law following this rulemaking, MALT disagrees with the department's proposal to remove the explanation of how it will administer the statutory term "effectively prohibit." The Supreme Court did not remove this term from Montana law. The department and the public are best served if the ARMs continue to provide a functional definition of the term.

Mr. Baur recommends the department: (1) adopt a new rule implementing 15-7-202(5), MCA, defining permanent and temporary cessations of farming, ranching, grazing, or other agricultural activities and when these activities result in a land reclassification; (2) adopt a new definition of "effectively prohibit" in ARM 42.20.601(13), as opposed to striking the language; and (3) revise language in ARM 42.20.640 for consistency.

RESPONSE 5: The department agrees with Mr. Baur's comments to the extent that a revised definition of the term "effectively prohibit" provides better direction to the public rather than striking the language altogether. In response to Mr. Baur's comments and suggestions, the department is further amending the language in ARM 42.20.156, 42.20.601, and 42.20.606, and adding ARM 42.20.640 to this adoption notice to also amend it for consistency.

COMMENT 6: Regarding the proposed amendment to ARM 42.20.601(15), Mr. Story commented that he has a concern with the proposed definition example in ARM 42.20.601(15)(b). He stated that the definition is fine, but the example is very narrow and asked if parcels used to produce cash crops would be excluded under this example. Parcel dependence may only be related to creating an economic size for the operation.

Mr. Story stated that he is concerned that there may be no direct connection as provided in the example causing a decision maker to disallow the aggregation.

Parcels may be interdependent as far as the operation goes, but don't have that direct link. The operator may be cash cropping all of them and the only interdependence is that they are helping to become an economic unit. Either the example or the language should indicate that.

Mr. Story further commented that he thinks the department already does that, but if the test becomes the need to be a direct vector between the two of them, such as raising crops and feeding it to livestock, the result may be that parcels operated by a bona fide agricultural operator cannot be aggregated. Mr. Story stated that he thinks the department's intent is good, but how it is carried out may be a problem.

RESPONSE 6: The department appreciates Mr. Story's insight and agrees that the example may be narrowly construed. The department is striking the example from the new definition.

COMMENT 7: Regarding the proposed amendments to ARM 42.20.603, Mr. Story commented that he agrees with the changes that attempt to treat owners of lands that do not have a published survey more fairly.

RESPONSE 7: The department agrees. The proposed changes more fairly consider the data that is provided to the department in valuing agricultural land.

COMMENT 8: Regarding the proposed amendments to ARM 42.20.604, Mr. Story stated that he agrees with the proposed amendments, but thinks (2)(e) could be worded better to make it more understandable. He commented that with regard to the statement "nonirrigated hay land, the production of the amount of air-dry herbage grown between unfavorable condition years and normal condition years divided by 2,000," that he doesn't know what that number is. Do you use the average of unfavorable and normal? Mr. Story commented that in committee discussions there was a chart with ranges on it to pick the mid-point between the two, but in the rule it's hard to understand where to find the number and what it actually is. Hopefully the department can clarify that and get it to an understandable description of whether you are using an unfavorable, or normal, or something mid-point between those two.

RESPONSE 8: The department appreciates Mr. Story's observation and agrees with the confusion in that section of the rule. The department is further amending the ARM 42.20.604(2)(e) for better clarity.

COMMENT 9: Regarding the proposed amendments to ARM 42.20.606, Mr. Baur proposes the department change its reasonable necessity statement to include the following sentence, "The department will determine the classification of agricultural land based upon the use of the land and not upon the terms of covenants, easements, deed restrictions, servitudes, conservation easements, and other land-use restrictions."

RESPONSE 9: The department appreciates Mr. Baur's suggestion, but is unable to revise a statement of reasonable necessity in a proposal notice that has

already been published. However, including his suggested language in the comment section of this adoption notice incorporates it into the record for the rulemaking action.

COMMENT 10: Regarding the proposed amendments to ARM 42.20.620, Mr. Story commented that the language in the department's proposed changes to (11) could be problematic even though the department's intent is right. It says "land used solely for summer fallow must produce a minimum of $1,500 in income every other year." That should be $1,500 in a two-year period. It's the same number but it's more achievable. The way this is worded, the only way you could actually qualify is to farm the whole block one year and summer fallow the whole block the next year and that might not be feasible.

RESPONSE 10: The department appreciates Mr. Story's comments. Statutory law requires the land to produce $1,500 in annual gross income for agricultural land classification. Summer fallow farm land is a crop grown every other year with no vegetative growth in idle years. The proposed changes would allow summer fallow farm land to qualify for agricultural land classification if the $1,500 in gross income was produced in the year it was farmed, even though the following year it may lay fallow. The department is further amending ARM 42.20.620 to make this clear.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State December 1, 2014.

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.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

Known Subject	1.	Consult ARM Topical Index. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.
Statute	2.	Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2014. This table includes those rules adopted during the period October 1, 2014, through December 31, 2014, 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 September 30, 2014, this table, and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2014 Montana Administrative Register.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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