

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF PUBLIC HEARING ON
Rules I through V, the amendment of)	PROPOSED ADOPTION,
ARM 42.12.104, 42.12.111,)	AMENDMENT, AND
42.12.124, 42.12.130, 42.12.131, and)	REPEAL
42.12.144, and the repeal of ARM)	
42.12.125, 42.12.202, 42.12.401,)	
42.12.404, 42.12.405, 42.12.406,)	
42.12.408, 42.12.412, 42.12.414, and)	
42.12.416 pertaining to quota areas)	
and the competitive bidding process)	
for alcoholic beverage licenses)	

TO: All Concerned Persons

1. On April 9, 2018, at 1:30 p.m., the Department of Revenue will hold a public hearing in the 3rd Floor Reception Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules. The hearing room is most readily accessed by entering through the east doors of the building facing Sanders Street.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5 p.m. on March 30, 2018, to advise us of the nature of the accommodation you need. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

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

NEW RULE I DEFINITIONS The following definitions apply to this subchapter:

- (1) "Bidder" means an individual or business entity.
- (2) "Competitive bid form" means an electronic form provided by the department and submitted by a bidder, to enter a competitive bidding process.
- (3) "Competitive bidding" means a process to select a bidder to submit an application for licensure.
- (4) "Irrevocable letter of credit" means a letter of credit in which the issuing bank guarantees the:
 - (a) bidder's ability to pay the bid amount;
 - (b) bank will not withdraw the credit or cancel the letter;
 - (c) bank will not modify or revoke the credit without the department's consent;
 - (d) department as the beneficiary; and

(e) bank's commitment to honor the line of credit for a minimum of one year from the date of the competitive bidding closing.

(5) "Minimum bid amount" means the lowest acceptable bid amount. The minimum bid amount shall be set at 75 percent of the market value of licenses of the same type and privileges that have sold within the quota area or similar quota area.

(6) "Pivotal straight line" means a line that is created from the center point of two overlapping incorporated cities' or incorporated towns' boundaries and extends outward in a manner that separates the two quota areas as close to equidistant as possible.

AUTH: 16-1-303, 16-4-105, 16-4-201, 16-4-204, 16-4-420, MCA

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

REASON: The department proposes adopting New Rule I to provide definitions for terms to be used in New Rules II, III, IV, and V, as proposed to be adopted in this same notice and ultimately located in ARM Title 42, chapter 12, [subchapter 5]. Definitions are necessary to add clarity and provide more detailed information for the industry and public regarding the subject matter.

NEW RULE II PUBLISHING OF ALCOHOLIC BEVERAGE LICENSE

AVAILABILITY (1) The department shall publish the availability of a retail alcoholic beverage license, that is subject to the quota limitations in 16-4-105, 16-4-201, or 16-4-420, MCA, when:

(a) a new license becomes available in a quota area in which a license of the same type is not currently available in the quota area;

(b) the opportunity to transfer a license into a quota area becomes available in which a license of the same type is not currently available in the quota area; and

(c) the lapse, revocation, or issuance of a license within the quota area in which the license is located has created the last remaining license for that license type in the quota area.

(2) No more than one license per license type per quota area may be published per calendar year until the quota has been reached for licenses that became available due to the separation of combined quota areas.

(3) The department shall publish the availability of the license once a week for four consecutive weeks in the newspaper of general circulation in the quota area. The publication notice shall include:

(a) the type of license(s) available;

(b) the reason for the availability;

(c) the instructions for submitting a competitive bid form;

(d) the processing fee;

(e) the minimum bid amount; and

(f) that the department will use a competitive bidding process for determining who is granted the opportunity to apply for licensure.

(4) The department has the right to cancel or amend a competitive bidding process at any time. If a competitive bidding process is cancelled, the department shall refund the form processing fee and notice the availability of the license, if applicable, in a future publication.

AUTH: 16-1-303, 16-4-105, 16-4-201, 16-4-204, 16-4-420, MCA
IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-420, MCA

REASON: The department proposes adopting New Rule II due to the enactment of Senate Bill 5, Sp. L. 2017, which requires the department to conduct a competitive bidding process when licenses become available or were created due to the separation of previously determined combined quota area. The department proposes the following content for the rule:

Section (1), to list the instances when the department shall publish the availability of licenses, for transparency. Requiring the department to publish the availability of licenses under these situations will ensure proper notice is provided so all interested parties have the opportunity to pursue the license.

Section (2), to limit the number of licenses that may be published in a quota area due to the separation of a combined quota area to no more than one license per license type per year per quota area. This creates continuity with 16-4-105, 16-4-201, and 16-4-420, MCA, and clarifies that this requirement is based on a calendar year.

Section (3), to provide how the department shall publish the availability of the licenses and what is required to be in each publication. The number of instances the publication must occur is similar to how the department previously published licenses available under the lottery process to ensure adequate notice is made. The list of items in the publication will provide direction to the public on the available licenses.

Section (4), to allow the department to cancel or amend a competitive bidding process for the unforeseen circumstance that the availability of the license was made in mistake or some portion of the process has been determined to be in error. This will allow the department to make the necessary corrections before the bidding process closes.

NEW RULE III RETAIL ALCOHOLIC BEVERAGE LICENSE COMPETITIVE BID FORMS (1) Competitive bid forms pursuant to [NEW RULE II] must be submitted electronically on a form provided by the department.

(2) The deadline to submit a bid is ten business days from the date of the last publication notice required in [NEW RULE II (3)].

(3) A bidder will be disqualified from the competitive bidding process if:

- (a) the competitive bid form is not received on or before the deadline;
- (b) the processing fee is not received on or before the deadline;
- (c) the competitive bid form is not signed;
- (d) any individual listed as an owner, partner, member, officer, or director is younger than 19 years of age at the time of the competitive bid closing;
- (e) the competitive bid form is incomplete;
- (f) the bidder's bid amount is less than the minimum bid amount;
- (g) the bidder fails to include an irrevocable letter of credit from a financial institution;
- (h) the irrevocable letter of credit fails to identify the department as the beneficiary;

- (i) the irrevocable letter of credit is not equal to or greater than the bidder's bid amount;
- (j) the irrevocable letter of credit fails to specify the license type and/or quota area; or
- (k) the department determines, for any other reason, the information provided is inaccurate or incomplete.

AUTH: 16-1-303, 16-4-105, 16-4-201, 16-4-204, 16-4-420, MCA
IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-401, 16-4-420, MCA

REASON: The department proposes adopting New Rule III due to the enactment of Senate Bill 5, Sp. L. 2017, which requires the department to conduct a competitive bidding process when licenses become available. The department proposes the following content for the rule:

Section (1), to require the competitive bid form to be filed electronically. The department is proposing this to promote the use of the department's safe and efficient online system and to enable the department to more efficiently receive and process the forms.

Section (2), to establish a deadline for when the competitive bid process closes. Establishing a date is necessary to provide guidance to the department and public notice for when forms are due.

Section (3), to provide a non-exhaustive list of reasons why a form will be removed from the process. As proposed, (3)(a) and (b) disqualify a bidder if the form or fees are received after the deadline, because the bidder will have failed to comply with the filing requirements; (3)(c) disqualifies a bidder if they failed to sign the form, because the signature attests that the bidder correctly stated the required information during the form process; (3)(d) disqualifies a bidder in which an owner, partner, member, officer, or director is younger than 19 years of age, to create continuity with 16-4-401, MCA, which prohibits someone under the age of 19 from possessing an alcoholic beverage license; (3)(e) disqualifies a bidder that submitted an incomplete form, as the department cannot process the form without all required fields accounted for; (3)(f) disqualifies a bidder in which their bid amount is less than the minimum bid amount, as the bidder failed to meet the requirement set out in the publication; (3)(g) and (3)(i) disqualify a bidder if the irrevocable letter of credit is missing, is not from a financial institution, or does not equal the bid amount, as required by 16-4-105, 16-4-204, and 16-4-420, MCA; (3)(j) disqualifies a bidder if the irrevocable letter of credit does not mention both the license type and quota area, to ensure the letter of credit was drafted for the license being bid on; (3)(h) reiterates the requirement that the department be identified as the beneficiary on the irrevocable letter of credit from the financial institution; and (3)(k) disqualifies a bidder who provides inaccurate or incomplete information, to remove any bids that failed to meet the minimum requirements of the form.

NEW RULE IV SUCCESSFUL RETAIL ALCOHOLIC BEVERAGE LICENSE COMPETITIVE BIDDER (1) The department shall rank all qualified bidders by bid amount.

(2) Regardless of the timing of bids, in the event a bidder places multiple bids, the department shall accept the highest bid placed by the bidder.

(3) In the event of the highest bid resulting in a tie, the department shall notify those bidders to request the bidders to submit a new bid and irrevocable letter of credit.

(4) The department shall notify the highest bidder.

(5) The highest bidder shall have 60 days to submit the application for licensure from the day the notification was received. Up to 60 additional days may be granted to the highest bidder upon the department receiving and approving a written request by the highest bidder that explains the need for additional time. If the highest bidder does not submit a completed application for licensure within the allotted time, the highest bidder will be disqualified. Once the application for licensure has been submitted, the highest bidder becomes an applicant.

(6) Failure to submit an application for licensure may result in a monetary penalty of no more than five percent of the bidder's bid amount.

(7) The information provided by the applicant on the application for licensure must match the information provided on the competitive bid form. Failure to provide identical information will result in disqualification and the application will be denied.

(8) The applicant must meet all other licensing and premises suitability requirements in order for a license to be issued by the department. Once the application has been approved by the department, the applicant becomes a licensee.

(9) Failure to pay the bid amount by the time the department is ready to approve the license will result in disqualification and the application for licensure will be denied.

(10) The licensee must commence business within one year of receiving the department's notification in (4) unless the department grants an extension.

(11) The licensee is subject to forfeiture of the license at the department's discretion if the licensee:

(a) transfers the license to another person unless the transfer is due to the death of the licensee;

(b) does not use the license within one year of receiving the license;

(c) places the license on nonuse within 5 years of receiving the license; or

(d) proposes to use the license in a location which has had the same license type within the previous 12 months.

(12) If the application for licensure is withdrawn, the license is forfeited, or if the department denies the application for licensure, the next highest bidder will be notified.

AUTH: 16-1-303, 16-4-105, 16-4-201, 16-4-204, 16-4-420, MCA

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

REASON: The department proposes adopting New Rule IV due to the enactment of Senate Bill 5, Sp. L. 2017, which requires the department to conduct a competitive bidding process when licenses become available. The department proposes the following content for the rule:

Section (1), to rank the bidders by bid amount. This is needed to establish the highest bid that was received.

Section (2), to use a bidder's highest bid, regardless of the timing of bids when the bidder submits multiple bids, to prevent any possible confusion from occurring on which bid should be used.

Section (3), to establish the process which will occur if two or more of the highest bids result in a tie. This is necessary to determine which of the tied bidders would be able to proceed forward with licensure.

Section (4), to require the department to notify the successful bidder. This will allow the successful bidder to actively start the application for licensure.

Section (5), to set a deadline on when an application for licensure must be submitted by the successful bidder. The proposal also allows for an extension if requested by the successful bidder and granted by the department. The time frame established is similar to what has been used in the past when the department was required to conduct alcoholic beverage lotteries and is a sufficient amount of time for the successful bidder to submit the application for licensure.

Section (6), to establish a monetary penalty for failing to submit an application for licensure to ensure only those bidders who are serious about licensure enter the competitive bidding process.

Section (7), to require the information on the competitive bid form to match the information on the application for licensure. This information must match because the opportunity to apply for the license was granted to the individual or business entity listed on the competitive bid form, not a different individual or entity.

Section (8), to require the applicant to meet all licensing and suitability requirements prior to a license being issued. This is included to remind the applicant that submitting an application is not the sole determination for issuing a license and that the applicant and proposed premises must meet all the requirements of the Montana Alcoholic Beverage Code.

Section (9), to set the deadline for when the bid amount must be paid to the department. This creates continuity with 16-4-105, 16-4-204, and 16-4-420, MCA, that requires the bid amount to be paid prior to approval of the license.

Sections (10) and (11), to require the licensee to commence business within one year of notification unless an extension is granted and the reasons for which a licensee may be subject to forfeiture of the license. This information is necessary to help educate licensees of the requirements that must be met pursuant to 16-4-105, 16-4-204, and 16-4-420, MCA.

Section (12), to clarify that in the event a successful bidder withdraws their application, forfeits the license, or if the department denies the application, the department will notify the next highest bidder rather than conducting another competitive bidding process.

NEW RULE V DETERMINATION OF BOUNDARIES FOR THE LOCATION OF PREMISES (1) The department shall separate two or more incorporated cities or incorporated towns, pursuant to 16-4-105, 16-4-201, and 16-4-420, MCA, by using a pivotal straight line.

(2) The department shall make available maps of any incorporated cities or incorporated towns that were previously part of a combined quota area whose boundaries were separated pursuant to (1).

(3) Under no circumstance may a license, restricted by the quota limitations in 16-4-105, 16-4-201, or 16-4-420, MCA, be located farther than:

(a) the county boundary within which the incorporated city or incorporated town is located; or

(b) the line that separates the incorporated city or incorporated town's boundary from another incorporated city or incorporated town as specified in (1).

AUTH: 16-1-303, 16-4-105, 16-4-201, 16-4-420, MCA

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

REASON: The department proposes adopting New Rule V due to the enactment of Senate Bill (SB) 5, Sp. L. 2017, which requires the department to separate previously determined combined quota areas into individual quota areas. The department proposes the following content for the rule:

Section (1), to require the department to separate previously combined quota areas using a pivotal straight line as defined in New Rule I. The department proposes using a pivotal straight line because the two incorporated cities or towns cannot be continuously separated by a straight-line equidistance from each other because of the contours of each incorporated city or town boundary. The department is proposing to determine the center point between the two incorporated cities or towns and create a straight point from that line that minimizes the impact on existing licensees while trying to stay as true as possible to being equidistant.

Section (2), to require the department to make available maps of any quota areas that were impacted with the enactment of SB 5. This will help ensure license applicants and existing licensees are well-informed of the boundaries for which a premises may be located.

Section (3), to prohibit licenses from being located in another county or incorporated city than what it is allowed for. Section (3)(a) includes language proposed to be removed from ARM 42.12.104, in this same notice, because that language is more relevant to this new rule pertaining to premises location boundaries, and (3)(b) ensures license applicants and licensees are well-informed of the boundary for where a proposed premises may be located.

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

42.12.104 ACTION TAKEN WITH CENSUS UPDATE (1) remains the same.

(2) In determining the availability of such licenses, the department will:

~~(a)~~ utilize only those boundaries that are recognized by the Bureau of the Census; and

~~(b) consider the distance measurement from an incorporated city to extend in a five-mile radius but, in no case, farther than the county boundary within which the incorporated city is located.~~

(3) remains the same.

~~(4) If more lottery applications are received than licenses available within a quota area, the procedure in ARM 42.12.412 is followed.~~

AUTH: 16-1-303, 16-4-105, 16-4-204, MCA

IMP: 16-4-105, 16-4-106, 16-4-201, 16-4-203, 16-4-204, 16-4-502, MCA

REASON: The department proposes amending ARM 42.12.104 due to the enactment of Senate Bill (SB) 5, Sp. L. 2017, which postpones the need for the department to conduct an alcoholic beverage lottery until at least January 1, 2024. During the interim, the department is required to conduct competitive bidding processes to determine which eligible individual or business entity will have the opportunity to apply for licensure. Therefore, the department proposes striking the content in (4) that is specific to alcoholic beverage lotteries, to avoid having multiple active rules that treat the selection of applicants for licensure differently because new rules are being adopted to cover the interim competitive bidding process.

Additionally, the department proposes striking the content in (2)(b) and relocating it in New Rule V, which pertains specifically to premises locations.

Furthermore, because 16-4-105, MCA, provides rulemaking authority and because SB 5 added rulemaking authority for 16-4-204, MCA, the department proposes adding these two statutes to the authorization section of the rule. The department also proposes updating the implementing section of the rule in support of the rule content as amended.

42.12.111 PROCESSING FEES (1) through (3) remain the same.

(4) The processing fee for a competitive bid form is \$100.

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

AUTH: 16-1-303, 16-4-105, 16-4-204, MCA

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

REASON: The department proposes amending ARM 42.12.111 to incorporate a processing fee for submitting a competitive bid form to offset the cost of processing the request. The department is required to conduct a competitive bidding process for licenses due to the enactment of Senate Bill (SB) 5, Sp. L. 2017.

The department estimates that 54 alcoholic beverage licenses will become available and subject to the competitive bidding process during years 2018 through 2021. Each individual or business entity that participates in the competitive bidding process will be required to pay the \$100 processing fee being proposed in new (4). The department anticipates that 600 competitive bids will be submitted for the 54 licenses during the years 2018 through 2021 for a combined amount of fees paid to be estimated at \$60,000.

Because 16-4-105, MCA, provides rulemaking authority and because SB 5 added rulemaking authority for 16-4-204, MCA, the department proposes adding these two statutes to the authorization section of the rule. The department also proposes updating the implementing section of the rule in support of the rule content as amended.

42.12.124 REJECTION OF APPLICATION BECAUSE OF NUMBER OF EXISTING LICENSES (1) Applicants shall be notified that the issuance of a new license or transfer will not be allowed by the department when:

~~(a) the issuance of an on-premises consumption alcoholic beverages license for premises located within any incorporated city or town or within a distance of five miles from the corporate limits or boundaries of an incorporated city or town and where~~

(a) the number of licenses of each class type already issued for the quota area is equal to or exceeds the limitations specified in 16-4-105, and 16-4-201, and 16-4-420, MCA; or

(b) remains the same.

AUTH: 16-1-303, 16-4-105, 16-4-204, 16-4-420, MCA

IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-405, 16-4-420, MCA

REASON: The department proposes amending ARM 42.12.124 to eliminate excess language that describes a quota area. Additionally, the department proposes adding the citation for 16-4-420, MCA, both in the rule content and the implementing section, to reflect that the rule also applies to restaurant beer and wine license applications since the number of restaurant beer and wine licenses that may be issued are determined by a quota.

Furthermore, because 16-4-105, MCA, provides rulemaking authority and because Senate Bill 5, Sp. L. 2017, added rulemaking authority for 16-4-204 and 16-4-420, MCA, the department proposes adding these three statutes to the authorization section of the rule. The department also proposes updating the implementing section of the rule in support of the rule content as amended.

42.12.130 DETERMINATION OF LICENSE QUOTA AREAS (1) remains the same.

(2) If the location of the proposed premises is not within the boundaries of an incorporated city or incorporated town, the surveyor must attest to the exact distance from the nearest corporate boundary to the proposed premises as measured from official city or county plats.

(a) The distance must be measured ~~by radial survey method~~ from the nearest corporate city boundary to the nearest entrance of the proposed premises.

(3) The sworn statement or affidavit must be substantially in the following form or on a form provided by the department entitled Certified Survey Affidavit:

(a) Legal description and/or street address of proposed premises:

I, (individual's name), (title), have the knowledge and the authority to attest to the location of the premises known as (trade or business name).

The location of this premises is within the incorporated boundaries of (name of city) or is ~~(less than) five miles from the (name of city) corporate boundary or is more than five miles from any incorporated city within (name) county~~ located (number) miles from the incorporated boundaries of (name of city).

(b) In the case of a location outside the corporate boundary include the

following:

The distance was measured by ~~radial survey method~~ from the nearest corporate city boundary to the nearest entrance of the proposed premises. Plat(s)/map(s) verifying the location that indicate the points between which the measurement was made and the distance can be provided upon request.

(c) and (d) remain the same.

AUTH: 16-1-303, 16-4-105, 16-4-420, MCA

IMP: 16-4-105, 16-4-201, 16-4-420, 16-4-501, MCA

REASON: The department proposes amending ARM 42.12.130 to insert missing commas into the sworn statement example in (3)(a). This proposed change is grammatical only and is unrelated to any legislative changes being proposed in this same rulemaking notice.

Additionally, the department proposes amending (2)(a) and (3)(b) to remove language prescribing how surveyors should measure the distance between the nearest corporate city boundary and the nearest entrance of the proposed premises. The department understands that radial survey methods are not the only way to determine the measurement and the proposal to strike the language will allow surveyors to utilize other surveying methods.

The department also proposes amending (3)(a) to provide surveyors with clearer example language for attesting to the distance the proposed premises is from an incorporated city or town when located outside the city or town's corporate boundaries.

Furthermore, because 16-4-105, MCA, provides rulemaking authority and because Senate Bill 5, Sp. L. 2017, added rulemaking authority for 16-4-420, MCA, the department proposes adding these two statutes to the authorization section of the rule.

42.12.131 APPLICATIONS FOR LICENSES AVAILABLE LICENSE(S) IN QUOTA AREAS, AND APPLICATION PROCESSING TIMES (1) When the department receives applications after the initial lottery application deadline for the is not required to conduct a competitive bidding process for an available license(s) in a quota area, the following procedures apply:

~~(a) When fewer applications than licenses available are received, the applications will be processed;~~

~~(b) If there are more applicants than licenses available in a quota area, then the licenses will be awarded on a first-come, first-served basis. The postmark on each application will establish which of the applications will be processed; and~~

~~(c) Those applications received by the department with the same postmark for an available license will be considered and will proceed to a lottery process.~~

(2) The number of restaurant beer and wine licenses with a seating capacity of 101 persons or more may not exceed 25 percent of the number of restaurant beer and wine licenses allowed in the quota area.

(3) As set forth in 16-4-420, MCA, the department must make a decision either granting or denying a completed restaurant beer and wine license application within four months of receipt of the application. However, if the investigation into the

application uncovers the necessity to analyze additional information not previously provided by the applicant, the four-month time period stops until the information is provided.

AUTH: 16-1-303, 16-4-105, 16-4-204, 16-4-420, MCA
IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-420, MCA

REASON: The department proposes amending ARM 42.12.131 due to the enactment of Senate Bill (SB) 5, Sp. L. 2017, which postponed the need for the department to conduct an alcoholic beverage lottery until at least January 1, 2024. During the interim, the department is required to conduct a competitive bidding process for determining the eligible individual or business entity to apply for licensure. The department proposes removing unnecessary language specific to alcoholic beverage lotteries and providing clearer direction for how applications will be processed when the competitive bidding process does not apply.

Due to the change in statute, the department is also proposing to repeal its rules covering the lottery process, in this same rulemaking notice. To retain portions of the language from three of those rules that remain applicable to licensees, the department proposes incorporating the relevant language into this rule. Specifically, the seating capacity language being proposed for new (2) was derived from language currently found in ARM 42.12.414(2)(f) and 42.12.416(1), and the application approval language being proposed for new (3) was derived from language currently found in ARM 42.12.405(2).

Furthermore, because 16-4-105, MCA, provides rulemaking authority and because SB 5 added rulemaking authority for 16-4-204 and 16-4-420, MCA, the department proposes adding these three statutes to the authorization section of the rule. The department also proposes updating the implementing section of the rule in support of the rule content as amended, and proposes revising the rule's catchphrase to better capture the content of the rule as amended.

42.12.144 TRANSFERS BETWEEN QUOTA AREAS - PROCEDURES AND DOCUMENTATION (1) An applicant applying to the department to transfer an all-beverages license under the provisions of 16-4-204, MCA, may negotiate a bona fide sale with the owner of a license, located in a quota area from which that license may be transferred, to purchase a license and, if no ~~lottery drawing~~ competitive bidding is required, shall submit;

(a) an application for transfer of ownership and location in compliance with ARM 42.12.209 and 42.12.210-;

~~(2) An applicant applying to the department to transfer an all-beverages license under the provisions of 16-4-204, MCA, whose lottery entry is successful in a lottery drawing, is required to have entered into an agreement to purchase a transferable license within 60 days after the lottery drawing and submit additional documents needed to effect a transfer of ownership and location. However, additional time can be requested and approved by the department when the applicant can demonstrate that the applicant is actively pursuing the purchase of a license, and that failure to purchase a license is through no fault of the applicant. The additional time is not to exceed 60 days. An additional fee is required to cover~~

~~the costs of republishing the transfer notice in a newspaper within the area from which the license is proposed to be transferred.~~

~~(3) Documentation required under (1) and (2) includes:~~

~~(a)(b) documents required for the application pursuant to ARM 42.12.101 to be considered a complete application as defined in ARM 42.12.106;~~

~~(b)(c) a request for termination of existing secured parties' interest, if applicable and the applicable fee (\$10 each);~~

~~(e)(d) other documents which may be needed or specified on the application form or during the license investigation process; and~~

~~(d)(e) other documents deemed necessary by the department or hearing examiner may require additional documentation as deemed necessary to reach a final decision.~~

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

~~(5) If an applicant is unable to enter into an agreement to purchase a transferable license within the time provided in (2) the application will be rejected and the application ranked next in the lottery drawing will be processed. This procedure is not constrained by 16-4-413, MCA.~~

AUTH: 16-1-303, 16-4-204, MCA

IMP: 16-4-204, 16-4-413, MCA

REASON: The department proposes amending ARM 42.12.144 due to the enactment of Senate Bill (SB) 5, Sp. L. 2017, which postpones the department from conducting alcoholic beverage lotteries until January 1, 2024. Instead, SB 5 requires the department to conduct competitive bids for licenses that become available.

The department proposes striking the term "lottery drawing" in (1) and replacing it with "competitive bidding" to reference the current process by which applicants are chosen to apply for licenses, as enacted by SB 5.

The department proposes striking the language in (2) and (5), as the time frame for submitting an application and what occurs for failure to submit a timely application are proposed to be provided for in New Rule IV, pertaining to the competitive bidding process, in this same notice. It is unnecessary to repeat the language in both rules.

Additionally, the department proposes listing the items that are needed to process a license transfer to improve the readability. This includes adding a citation to ARM 42.12.101, in (1)(b), to provide the public with the reference to where they can find the required documents for licensure.

The department further proposes striking the reference to the \$10 fee for removing secured parties, in (3)(b), because this fee is no longer applied in the manner stated in this rule. This change occurred when the department amended its rule pertaining to processing fees, ARM 42.12.111, in 2014. The corresponding reference in this rule should have been removed at that time, but was overlooked. Therefore, the department proposes removing it now.

Furthermore, because SB 5 added rulemaking authority for 16-4-204, MCA, the department proposes adding it to the authorization section of the rule.

5. The department proposes to repeal the following rules:

42.12.125 COMBINED AREA QUOTAS

AUTH: 16-1-303, MCA
IMP: 16-4-105, 16-4-201, MCA

REASON: The department proposes repealing ARM 42.12.125 due to the enactment of Senate Bill 5, Sp. L. 2017, which eliminated combined quota areas by drawing a straight line equidistant between the two cities or towns for determining boundaries, therefore rendering this rule no longer necessary.

42.12.202 TRANSFERS WITHIN COMBINED AREAS

AUTH: 16-1-303, MCA
IMP: 16-4-105, 16-4-201, MCA

REASON: The department proposes repealing ARM 42.12.202 due to the enactment of Senate Bill 5, Sp. L. 2017, which eliminated combined quota areas by drawing a straight line equidistant between the two cities or towns for determining boundaries, therefore rendering this rule no longer necessary.

42.12.401 DEFINITIONS

AUTH: 16-1-303, MCA
IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-420, 16-4-502, MCA

REASON: The department proposes repealing ARM 42.12.401 due to the enactment of Senate Bill 5, Sp. L. 2017, which postpones the need for the department to conduct an alcoholic beverage license lottery until at least January 1, 2024. During the interim, the department is required to conduct a competitive bidding process to determine which eligible individual or business entity will have the opportunity to apply for licensure. Therefore, the department proposes repealing its rules pertaining to alcoholic beverage license lotteries to avoid having multiple active rules that treat the selection of applicants for licensure differently, because new rules are being adopted to cover the interim competitive bidding process.

42.12.404 APPLICATION LIMITATION PER PREMISES

AUTH: 16-1-303, MCA
IMP: 16-4-420, MCA

REASON: The department proposes repealing ARM 42.12.404 due to the enactment of Senate Bill 5, Sp. L. 2017, which postpones the need for the department to conduct an alcoholic beverage license lottery until at least January 1, 2024. During the interim, the department is required to conduct a competitive bidding process to determine which eligible individual or business entity will have the

opportunity to apply for licensure. Therefore, the department proposes repealing its rules pertaining to alcoholic beverage license lotteries to avoid having multiple active rules that treat the selection of applicants for licensure differently, because new rules are being adopted to cover the interim competitive bidding process.

42.12.405 RESTAURANT BEER AND WINE LICENSE APPLICATION FEES

AUTH: 16-1-303, MCA
IMP: 16-4-420, MCA

REASON: The department proposes repealing ARM 42.12.405 due to the enactment of Senate Bill 5, Sp. L. 2017, which postpones the need for the department to conduct an alcoholic beverage license lottery until at least January 1, 2024. During the interim, the department is required to conduct a competitive bidding process to determine which eligible individual or business entity will have the opportunity to apply for licensure. Therefore, the department proposes repealing its rules pertaining to alcoholic beverage license lotteries to avoid having multiple active rules that treat the selection of applicants for licensure differently, because new rules are being adopted to cover the interim competitive bidding process.

The language in this rule regarding the timing of restaurant beer and wine license applications, which remains relevant for licensees, is proposed to be incorporated into ARM 42.12.131 in this same rulemaking notice.

42.12.406 LOTTERY APPLICATION PROCESS

AUTH: 16-1-303, MCA
IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-420, 16-4-502, MCA

REASON: The department proposes repealing ARM 42.12.406 due to the enactment of Senate Bill 5, Sp. L. 2017, which postpones the need for the department to conduct an alcoholic beverage license lottery until at least January 1, 2024. During the interim, the department is required to conduct a competitive bidding process to determine which eligible individual or business entity will have the opportunity to apply for licensure. Therefore, the department proposes repealing its rules pertaining to alcoholic beverage license lotteries to avoid having multiple active rules that treat the selection of applicants for licensure differently, because new rules are being adopted to cover the interim competitive bidding process.

42.12.408 FINAL APPLICATION PROCESS FOLLOWING SUCCESSFUL APPOINTMENT UNDER A LOTTERY

AUTH: 16-1-303, MCA
IMP: 16-4-420, MCA

REASON: The department proposes repealing ARM 42.12.408 due to the enactment of Senate Bill 5, Sp. L. 2017, which postpones the need for the department to conduct an alcoholic beverage license lottery until at least January 1,

2024. During the interim, the department is required to conduct a competitive bidding process to determine which eligible individual or business entity will have the opportunity to apply for licensure. Therefore, the department proposes repealing its rules pertaining to alcoholic beverage license lotteries to avoid having multiple active rules that treat the selection of applicants for licensure differently, because new rules are being adopted to cover the interim competitive bidding process.

42.12.412 WHEN LOTTERY WILL BE HELD

AUTH: 16-1-303, MCA

IMP: 16-4-420, MCA

REASON: The department proposes repealing ARM 42.12.412 due to the enactment of Senate Bill 5, Sp. L. 2017, which postpones the need for the department to conduct an alcoholic beverage license lottery until at least January 1, 2024. During the interim, the department is required to conduct a competitive bidding process to determine which eligible individual or business entity will have the opportunity to apply for licensure. Therefore, the department proposes repealing its rules pertaining to alcoholic beverage license lotteries to avoid having multiple active rules that treat the selection of applicants for licensure differently, because new rules are being adopted to cover the interim competitive bidding process.

42.12.414 HOW APPLICANTS WILL BE CHOSEN

AUTH: 16-1-303, MCA

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

REASON: The department proposes repealing ARM 42.12.414 due to the enactment of Senate Bill 5, Sp. L. 2017, which postpones the need for the department to conduct an alcoholic beverage license lottery until at least January 1, 2024. During the interim, the department is required to conduct a competitive bidding process to determine which eligible individual or business entity will have the opportunity to apply for licensure. Therefore, the department proposes repealing its rules pertaining to alcoholic beverage license lotteries to avoid having multiple active rules that treat the selection of applicants for licensure differently, because new rules are being adopted to cover the interim competitive bidding process.

The language in this rule regarding seating capacity and quota areas, which remains relevant for licensees, is proposed to be incorporated into ARM 42.12.131 in this same rulemaking notice.

42.12.416 ALTERATION OF PREMISES FOLLOWING RECEIPT OF RESTAURANT BEER/WINE LICENSE - SEATING CAPACITY

AUTH: 16-1-303, MCA

IMP: 16-4-420, MCA

REASON: The department proposes repealing ARM 42.12.416 to eliminate a

redundancy. The content of the rule, which covers altering the seating capacity of a restaurant beer and wine license, is sufficiently covered in 16-4-420, MCA, and ARM 42.13.103.

The language in this rule regarding seating capacity, which remains relevant for licensees, is proposed to be incorporated into ARM 42.12.131 in this same rulemaking notice.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than April 23, 2018.

7. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct this hearing.

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

9. An electronic copy of this notice is available through the Secretary of State's web site at sos.mt.gov/ARM/register.

10. The bill sponsor contact requirements of 2-4-302, MCA apply and have been fulfilled. The primary sponsor of House Bill 5, Sp. L. 2017, Senator Steve Fitzpatrick, was contacted by regular mail on November 16, 2017, and subsequently notified by regular and electronic mail on February 7, 2018.

11. Regarding the requirements of 2-4-111, MCA, the department has determined that the adoption, amendment, and repeal of the above-referenced rules will not significantly and directly impact small businesses. Documentation of this determination is available upon request from the person in 6.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State March 6, 2018.