

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

TO: All Concerned Persons

1. On June 4, 2024, at 10:00 a.m., the Department of Revenue will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana to consider the proposed adoption and amendment of the above-stated rules. The auditorium is most readily accessed by entering through the north (basement) or the west (main) doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on May 3, 2024. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

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

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

(2) An all-beverages licensee or resort all-beverages licensee may sell alcoholic beverages for consumption on the premises in:

(a) a building that constitutes the primary indoor lodging quarters of a hotel or other short-term lodging facility;

(b) a permanent, licensed alcohol service structure in a swimming area separate from the main licensed premises;

(c) up to two additional permanent structures on a ski hill separate from the main licensed premises; or

(d) an additional structure that constitutes the clubhouse or primary indoor recreational quarters of the golf course separate from the main licensed premises.

(3) The department may approve a licensee for storage of alcoholic beverages at an additional retail service building if adequate physical safeguards prevent access by individuals other than the licensee or its employees.

(4) A licensee must submit the following to the department via its online licensing portal for approval of an additional retail service building or structure:

(a) a completed additional retail service building request form;

(b) the application fee provided in 16-3-302, MCA, as applicable;

(c) the processing fee provided in ARM 42.12.111, as applicable;

(d) a copy of the floor plan for each proposed additional retail service building or structure;

(e) a plat-style map showing the location of each proposed additional retail service building or structure on the licensee's property;

(f) documentation of the licensee's possessory interest in the proposed additional retail service building or structure;

(g) evidence of approvals from state or local officials that the proposed additional retail service building or structure meets building, health, and fire code requirements, as required by state or local law; and

(h) any additional documentation the department deems reasonably necessary to approve the licensee's request.

(5) Upon its acceptance and review of a licensee's submissions in (4), the department will arrange an inspection of the proposed additional retail service building or structure and review the inspection findings.

(6) The department will notify the licensee, in writing, of its approval or denial of the additional retail service building or structure.

(7) Upon approval, an updated license will be issued and reflect the location of any additional retail service building or structure. The licensee must display a copy of the license in a prominent place at any additional retail service building or structure.

(8) No alcoholic beverages may be stored or served by a licensee at a proposed additional retail service building or structure prior to receiving department approval.

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

REASONABLE NECESSITY: The department proposes to adopt NEW RULE I which is necessary to implement House Bill 97 (2023) (HB 97) and House Bill 539 (2023) (HB 539) relative to the expansion of allowable service areas and storage in additional buildings and structures that may be contiguous or noncontiguous to a licensee's main licensed premises.

HB 97 allows a golf course beer and wine licensee or an all-beverages licensee who uses a license at a golf course the ability to sell and serve alcoholic beverages from additional buildings or structures on the golf course upon payment of a fee and approval by the department.

HB 539 allows an all-beverages licensee or a resort all-beverages licensee the ability to sell and serve alcoholic beverages from additional buildings, separate from the licensed premises, such as additional ski buildings, pool buildings, and golf clubhouses.

NEW RULE I proposes what the department believes are reasonably necessary requirements, such as those proposed in (4) through (8), for it to approve these additional buildings and are like other approval processes for additional alcoholic beverage service and storage areas.

The fiscal impact analysis for the processing fee described in (4)(c) is described below with the department's fee proposals for ARM 42.12.111.

NEW RULE II COLOCATED LICENSE – CONDITIONS FOR OPERATING

(1) In addition to the conditions for operating the license types provided in ARM 42.13.405, 42.13.601, 42.13.802, 42.13.1102, 42.13.1103, and 42.13.1104, a colocated licensee shall:

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

(b) store alcoholic beverages in compliance with applicable federal laws; and

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

(2) A manufacturing licensee is responsible for paying alcoholic beverage taxes and filing any required returns for any alcoholic beverages transferred from the manufacturing area to the retail area at the colocated license.

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

REASONABLE NECESSITY: The department proposes to adopt NEW RULE II which is necessary to implement HB 305. Because colocated licenses involve manufacturing and limited rights to distribute beer or wine under 16-3-214 and 16-3-411, MCA, respectively, it is necessary for the department to adopt NEW RULE II to

include operating conditions requirements for colocated licensees that are consistent with both manufacturing and retail license requirements provided in the Alcoholic Beverage Code, the administrative rules, and federal law.

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

- (a) a plat-style map that accurately describes the guest ranch property including all indoor and outdoor portions of the premises; the permanent building where alcoholic beverages will be served; all other temporary, mobile, or partial structures; and indicators of the property's boundaries;
- (b) a written description of the overnight lodging, dining, and onsite outdoor recreational activities offered at the guest ranch;
- (c) a written description of the property line if a perimeter barrier is not used to confine the service of alcoholic beverages only to those areas under control of the licensee; and
- (d) any other documents the department deems reasonably necessary to reach a final decision.

(2) In addition to the documents listed in (1), an applicant for a new license operating at a guest ranch must also comply with the applicable licensure requirements under the Alcoholic Beverage Code and ARM 42.12.101.

(3) If the documents required in (1) and (2), as applicable, are not provided, the department will notify the licensee or applicant, in writing, and provide an opportunity to correct any stated deficiencies.

(4) The department will notify the licensee or applicant, in writing, of the approval or denial of the guest ranch operation.

AUTH: 16-1-303, MCA

IMP: 16-4-401, MCA

REASONABLE NECESSITY: The department proposes to adopt NEW RULE III which is necessary to implement other statutory changes under HB 539. HB 539 adopted a statutory definition in 16-1-106, MCA, for "guest ranch," as it pertains to the operation of an alcoholic beverages license, and expanded the conditions for retail on-premises consumption in 16-3-302, MCA, to include a guest ranch. Based on these changes, it is necessary for the department to adopt NEW RULE III to provide licensee or applicant compliance requirements for guest ranch operations that are consistent with other retail license requirements provided in the Alcoholic Beverage Code and the administrative rules.

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

42.11.402 INVENTORY POLICY (1) Liquor products that can be obtained without substantial inventory investment to the department will be made available for sale to state agency liquor stores based on historical demand.

(2) Each product a vendor seeks to sell in Montana must be approved by the department. In order to consider the product for approval, the department must receive a picture copy of the product's primary packaging.

(3) Liquor products are a mature product category, restricted by law to only consumers age 21 or older and who are not intoxicated, and therefore should be marketed in a responsible and appropriate manner. The department, in its discretion and on a case-by-case basis, will not approve a liquor product that:

(a) blurs the distinction between an alcoholic and nonalcoholic product by utilizing labeling and/or primary packaging that emphasize features that are most commonly associated with nonalcoholic consumable products including, but not limited to:

- (i) aerosol cans; or
- ~~(ii) gelatin cups;~~
- ~~(iii) (ii) hollow candies; or~~
- ~~(iv) mason jars that contain fruit;~~

(b) uses flavors that are designed to target or particularly appeal to underage persons, such as:

- (i) bubble gum; or
- (ii) cotton candy;
- (c) contains graphics or elements that:
 - (i) are designed to target or particularly appeal to underage persons;
 - (ii) minimizes, fails to identify, or disguises that the product contains alcohol;

or

(iii) alludes to or suggests irresponsible, excessive, or underage consumption;

(d) requires specialized handling requirements such as frozen or refrigerated products; or

(e) is in powdered or crystalline form.

(4) Products will not be made available in the state of Montana through the state liquor warehouse if the container, flavor, label, or advertising contains inappropriate or illegal content.

AUTH: 16-1-303, MCA

IMP: 16-1-104, 16-1-302, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.11.402 to align the rule with the amendment of 16-1-303, MCA, by House Bill 455 (2023). Under the revised law, the department may not prohibit liquor product that is sold in gelatin cups that are shelf stable and liquid at room temperature.

The department also proposes to remove the prohibition of products in mason jars that contain fruit because this packaging variation has become more prevalent for suppliers, and other states that have allowed this packaging report little to no public harm from its use.

42.12.101 APPLICATION FOR LICENSE (1) All applications for licenses to sell, manufacture, or distribute alcoholic beverages shall be made to the department upon forms supplied by the department or through the department's licensing portal. An abbreviated application may be used for license modifications as specified in ARM 42.12.118. In all other cases, the application process specified below shall be followed.

(2) Applications for licenses shall be in the names of all persons who will have an ownership interest in the business to be operated under the license, as required in 16-4-401, MCA.

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

(a) any processing fees required by ARM 42.12.111 and the license fee required by 16-4-420 or 16-4-501, MCA;

(b) a copy of the proposed agreement to transfer an ownership interest;

(c) proof that the applicant has possessory interest in the premises;

(d) any source of funding documents including, but not limited to, loan documents, gifting statements, and finance institution statements;

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

(i) for a retail license, illustrates all service areas, stationary drink preparation areas, storage areas, patios/decks, doors, hallways, stairways, perimeter barriers, drive-through windows, and permanent floor-to-ceiling walls required between the premises and another business;

(ii) for a distributor license, illustrates one or more permanent floor-to-ceiling walls required between the premises and another licensed alcoholic beverage business;

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

(iv) for a colocated license, the respective manufacturing and retail areas are clearly marked with the floor plan criteria provided in (i) and (iii), as applicable, for both licenses.

(f) bank account authorization and signature documents;

(g) proof of assumed business name;

(h) proof that all filings and payments related to Montana income, corporation, withholding, business, and other taxes are current;

(i) two complete sets of fingerprints and a personal history statement for each person identified in 16-4-414, MCA, and ARM 42.12.212; and

(j) for any entity applicant:

(i) proof the business is registered in Montana formation documents such as articles of organization, articles of incorporation, or registration/certificate of partnership. Foreign (non-Montana) entities are also required to provide proof of registration or certificate of authority issued by the Montana Secretary of State;

- (ii) stock certificates or other unit ownership certificates that evidence underlying ownership of the entity;
 - (iii) stock ledger or ~~membership units~~ entity ownership register;
 - (iv) bylaws, operating agreement(s), partnership agreement(s), as applicable;
- and
- (v) organizational meeting minutes, initial resolutions of shareholders, members, partners, as applicable- ; and
 - (k) any other documents the department deems reasonably necessary to reach a final decision.

(4) At any time during the application process, an applicant must notify the department of any changes in the information and documents submitted under (3) and promptly provide the department with any corrected or updated information or documents. The department will toll the processing time of the applicant's license application in accordance with 16-4-402, MCA, until the corrected or updated documents are received.

(5) An applicant who does not have a premises ready to operate may apply for an available license pursuant to 16-4-417, MCA. The applicant must electronically apply for the license through the department's licensing portal and submit any applicable information under (3) for the department to review the application. A license issued without an approved premises will be automatically placed on nonuse status by the department.

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

~~(6)~~ (7) Failure of a licensee to fulfill the requirements of 16-4-417, MCA, shall subject the license to revocation.

~~(7)~~ (8) The department may waive an application requirement set forth in this rule in its sole discretion.

~~(8)~~ (9) The disqualification of any applicant to hold the license disqualifies all.

~~(9)~~ (10) The department may issue a license in its sole discretion. A licensee remains bound by all requirements in statute and rule that apply at the time an application for license or an application for renewal is approved.

AUTH: 16-1-303, MCA

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

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.101(3)(e) by relocating and revising pertinent text from the five suitability of premises rules - ARM 42.12.145(2)(m), 42.12.146(2)(l), 42.12.147(2)(m), 42.12.148(2), 42.12.149(2)(g), plus new colocated license premises requirements, to realign rule requirements because submission of a conforming floor plan is a license application, not a suitability of premises, issue. Amended (3)(e) also contains door, hallway, and stairway references for consistency with House Bill 705 (2021)

revisions to 16-3-311, MCA, which expanded allowances in suitability of premises for licensees operating in multi-tenant and/or private dwelling buildings.

The department proposes to amend (3)(j), to include the submission of relevant entity organizational and operating documents which is necessary for qualification of the entity for licensure, and add (3)(k) to include the general requirement that an applicant must provide any reasonably necessary documentation incidental to a license application so that the department may make its final determination. The requirement in proposed (3)(k) is provided in other department rules and its inclusion here promotes consistency across all of the alcoholic beverage rules.

The department proposes the addition of new (6) to provide license applicants with a more concise description of the licensing process than what is described in 16-4-402 and 16-4-404, MCA. New (6) is proposed as a response to feedback by license applicants who want a simplified explanation of Montana's alcoholic beverage licensing process.

42.12.106 DEFINITIONS The following definitions apply to this chapter:

(1) "Adjacent to," with regard to alcoholic beverage advertising limitations for premises suitability, means:

(a) the premises share a common internal or external wall with the building at issue; or

(b) there is an absence of another building between the premises and the building at issue; and

(c) the distance between the nearest exterior wall of the premises and the building at issue is equal to or less than 100 feet.

(2) "Affiliation" means relationships wherein:

(a) an entity owns or controls another entity;

(b) entities are under common ownership or control; or

(c) an individual has decision-making authority or influence over business decisions for another entity.

(3) "Alteration" means a structural change or modification to the premises other than a cosmetic change. Examples include adding a patio/deck or removing a half wall.

(4) "Associated business" means a business that is not licensed by the state to keep or sell alcoholic beverages, but has an alcoholic beverages licensed business located within or on the premises owned or controlled by the "associated business." Examples of associated businesses are:

(a) a hotel that is not licensed to keep or sell alcoholic beverages, but leases space in the hotel to a licensee to sell alcoholic beverages; or

(b) a shopping mall that is not licensed to keep or sell alcoholic beverages, but leases space in the mall to a licensee to sell alcoholic beverages.

(5) "Bona fide sale" means a transaction that completely transfers the property to a qualified purchaser for consideration.

(6) "Building" means an enclosed structure with external walls and a roof that meets the requirements of 16-3-311, MCA. ~~Separate structures or structures~~ Buildings connected by skyways are not considered one building for licensing purposes.

(7) "Business directly related to the on-premises consumption of alcoholic beverages" means a business that is readily associated with on-site alcoholic beverage consumption, such as a hotel, bowling alley, casino, or restaurant. It does not include alcoholic beverage manufacturers, grocery stores, or off-premises alcoholic beverage businesses, except as allowed under 16-3-311, MCA.

(8) "Catered event" means a special event where the sale and service of alcoholic beverages is conducted by a licensee who has obtained a catering endorsement.

(9) "Catered event service area" means the area in which the licensee with a catering endorsement may sell and serve alcoholic beverages at retail.

(10) "Colocated license" means the same as the term defined in 16-4-401, MCA.

(11) "Colocated premises" means the same as the term defined in 16-4-401, MCA.

~~(10)~~ (12) "Complete application" means that the applicant has supplied all information and documentation requested on the license application forms or required by statute or rule and the necessary supporting information and documentation requested by the department to complete the application ~~has been supplied in compliance with the law.~~

(14) (13) "Concession agreements" are agreements in which an on-premises consumption beer licensee or all-alcoholic beverages licensee provides the sale and service of alcoholic beverages for a non-licensed entity.

(12) (14) "Contiguous" means touching or sharing a common border.

(13) (15) "Cross collateralization" means collateral for one loan also serving as collateral for another loan.

(14) (16) "Drink preparation area" means the bar area on the premises where alcoholic beverages are stored and prepared for on-premises consumption and from which alcoholic beverages may be sold for off-premises consumption.

(15) (17) "Event barrier" means a barrier enclosing the perimeter of a catered event service area. The construction, installation, and use criteria of an event barrier is provided in ARM 42.12.128.

(16) (18) "Fair" means a county, state, or regional fair that occurs no more than once per year, is held on a publicly owned fairgrounds, and is officially sanctioned by a government entity.

(17) (19) "Family relationship" means a spouse, dependent children, or dependent parents.

(18) (20) "Floor plan" means a diagram with measurements of the premises as seen from above.

(19) (21) "Grocery store" means a self-service retail establishment where a variety of perishable and nonperishable food items and household goods are sold for use off the premises.

(20) (22) "Interior access" means entry that does not impede customer foot traffic from accessing any interior portion of the premises. Interior access is not found where a customer would be required to leave the interior portion of the premises.

(24) (23) "Licensee" means a person, partnership, association, or other entity holding a Montana retail alcoholic beverage license, a retail alcoholic beverage

operation located on a U.S. military installation, an alcoholic beverage manufacturer, a table wine distributor, or a beer wholesaler within Montana.

~~(22)~~ (24) "License fee" means a fee paid at the time a new license application is submitted and upon renewal of an existing license.

~~(23)~~ (25) "Loan" means a written contract by which one delivers a sum of money to another with the agreement that the money be returned with interest within a specified period of time.

~~(24)~~ (26) "Manufacturing area" means the portion of a manufacturing premises that is not designated as a sample room, or operating a retail license under 16-4-401(9), MCA.

~~(25)~~ (27) "Noninstitutional lender" means a person other than a state or federally regulated banking or financial institution, a credit union, an investment company, a development company, or other regulated lender as defined in 31-1-111, MCA, who loans money to the applicant for a license or to the licensee.

~~(26)~~ (28) "Ownership interest" means the involvement in the business operated under the license by someone who owns some or all of the assets of the business, shares any portion of the profits, or any portion of the losses or liabilities of the business. Someone with an ownership interest in a liquor license shares in the financial risks of the business and is entitled to the profits or suffers the losses. Ownership interest includes the right to control the location or ownership of a license. Examples of ownership interests would include the authority to participate in such business decisions as the sale of the license, relocation of the license, or change or creation of any financial arrangements for loan repayment or funding sources. Participation in business decisions does not include providing advice. A right of first refusal is not an ownership interest.

~~(27)~~ (29) "Parties" means a:

- (a) licensee;
- (b) applicant;
- (c) secured party;
- (d) protestor; or
- (e) attorney representing the licensee, applicant, secured party, protestor, or other interested party.

~~(28)~~ (30) "Patio/Deck" means an outdoor portion of the premises where the preparation, service, and consumption of alcoholic beverages is allowed.

~~(29)~~ (31) "Perimeter barrier" means a barrier enclosing the perimeter of the patio/deck. The barrier shall be constructed in a manner that impedes foot traffic and clearly defines the boundary of the exterior portion of the premises. The barrier shall be at least three feet high at all points and may have a single ~~six-foot-wide~~ entrance permitting public access from an unlicensed area to the patio/deck. Upon the department's determination that the barrier accomplishes its intended purpose, the barrier may:

- (a) be constructed of materials such as lattice or wrought iron that do not form a solid structure;
- (b) have a portion of it be water;
- (c) have additional entrances permitting public access to the patio/deck; and
- (d) be less than three feet in height.

(30) (32) "Permanent floor-to-ceiling wall" means a continuous structure spanning from floor to ceiling that remains in a fixed position and serves as a solid physical barrier. The wall may be constructed of brick, glass, stone, wood, and other materials as approved by the department. The wall may not be constructed of materials such as lattice or wrought iron that do not form a solid physical barrier.

(31) (33) "Premises" means the area identified in the floor plan approved by the department on which the activities authorized under the license may be conducted.

(32) (34) "Prepared serving" means the same as the term provided in 16-1-106, MCA.

(33) (35) "Registered vendor representative" means the same as provided in ARM 42.11.105.

(34) (36) "Retail alcoholic beverages license" means a license operated by an establishment for the retail sale of alcoholic beverage for either on- or off-premises consumption but does not include brewery, winery, or distillery licenses.

(35) (37) "Sacramental wine" means wine that is manufactured and sold exclusively for use as sacramental wine or for other religious purposes.

(36) (38) "Sample room" means the area of a manufacturer's premises where the service, sale, and on-premises consumption of alcoholic beverages are permitted.

(37) (39) "Self-service of alcoholic beverages" means allowing persons other than the licensee or its employees to have access to alcoholic beverages prior to the licensee or its employees providing the alcoholic beverage to the person for on-premises consumption.

(38) (40) "Service area" means the area on the premises where the service, sale, and on-premises consumption of alcoholic beverages are permitted. The service area includes any patio/deck and drink preparation area.

(39) (41) "Service bar" means an area on a restaurant beer and wine licensee's premises where alcoholic beverages are stored and prepared for on-premises consumption.

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

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

(41) (44) "Stand-alone beer and/or table wine business" means a business in which 95 percent of the business's annual gross income comes from the sale of beer, table wine, or both.

(42) (45) "Storage area" means any portion of the premises that is accessible only by the licensee or its employees and where alcoholic beverages are stored in original packaging.

(43) (46) "Substantially different use" means a change great enough to create a new type of business operation at a premises which is easily distinguishable from the business currently operated or previously planned to be operated at the same premises.

(44) ~~(47)~~ "Temporary operating authority" means the authority granted to an applicant to operate a business pending final approval of the application.

~~(45)~~ ~~(48)~~ "Undisclosed ownership interest" means a person with an ownership interest in a license who is not identified as an applicant, shareholder, or member of an applicant on an application for the license, or as a licensee on the face of the license.

AUTH: 16-1-303, MCA

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

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.106 primarily to revise definitions based on the passage of HB 97, HB 305, and HB 539; or to provide additional clarity of existing terms based on department experiences or feedback from licensees.

The amendment to (6) is necessary for clarity because structures are not necessarily a "building," but may have the capacity for licensure in certain statutorily permitted circumstances created under HB 97 and HB 539. The department also desires to incorporate 16-3-311, MCA, into (6) and (7) which is necessary to support the definitions or statutory exceptions to the definitions.

The department proposes the definitions in proposed (10), (11), and (26) to support HB 305 since the colocated definitions were not codified in the general definitions statute at 16-1-106, MCA, and are new terminology for the industry.

The amendment to the definition in proposed (12) is necessary because a complete application includes the submission, review, and approval of information and documentation, which may be required in statute or rule, and the amendments seek to provide substantive and procedural clarity.

The department proposes to remove "seasonal event" from the definition of "special event" in proposed (40) because seasonal event does not provide measurable guidance or clarification for licensees or the department. The department is satisfied that the examples of picnic, fair, festival, reception, or sporting contest provide the necessary level of clarity.

The department also proposes to add the definition of "ski hill" in proposed (42) because HB 539 amended 16-3-302, MCA, to allow for the licensure of ski hills. The proposed definition is necessary to ensure the proposed area meets the intent of the law to license a bona fide ski hill.

42.12.109 PROTESTS (1) A protest letter as described in 16-4-207, MCA, must:

- (a) contain statement(s) of the writer's intent that the letter be considered a protest;
- (b) describe the reason for protesting the granting of a license; and
- (c) identify the appropriate action by:
 - (i) providing the license number and accurate trade name or applicant name in a case of a transfer; or
 - (ii) the trade name and applicant name and stating that it is for a new application for an original Montana all-alcoholic beverages license; and
- (d) be received by the department by the published protest letter deadline.

(2) A protest letter containing multiple signatures is considered one protest letter.

(3) If the grounds stated in the ~~letter of protest~~ letter contain public convenience and necessity issues, the prerequisite number of protest letters required to initiate a public convenience and necessity hearing, as defined in 16-4-207, MCA, must be received.

(4) Pursuant to 16-4-203, MCA, protests are limited to the operation of the alcoholic beverage license only.

~~(4) (5) Any A protest letter which failing fails to meet the criteria in (1), (2), and (3) by the protest deadline through (4) will not be considered.~~

AUTH: 16-1-303, MCA

IMP: 16-4-203, 16-4-207, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.109 which is primarily necessary to implement Senate Bill 59 (2023) (SB 59) amendments to 16-4-203, MCA. SB 59 clarifies that valid license protests must be limited to the operation of the alcoholic beverage license only and that protests pertaining to gambling or other matters would not be considered by the department. The addition of new (4) implements this statutory change.

The department also proposes to amend (1) and proposed (5) through the reorganization and restatement of the requirement that a protest letter be received prior to the published deadline. Other changes to proposed (5) reflect grammatical improvements for improved clarity.

42.12.110 SERVICE OF NOTICES (1) A notice of proposed adverse action issued pursuant to 16-4-107, 16-4-406, 16-4-407, or 16-4-1008, MCA, shall be served upon the licensee or registrant of record or, in the case of an application for a new license, on the applicant, by sending a copy of the notice to the licensee, registrant, or applicant by ~~certified U.S.~~ certified U.S. mail to the mailing address on file with the department or by electronic means if the licensee, registrant, or applicant consents in writing.

(2) Service by mail shall be considered complete three days after upon mailing the notice. Service by electronic means shall be considered complete upon transmission but is not effective if the department learns that it did not reach the person to be served. Service shall not be considered incomplete because of refusal to accept delivery of the notice.

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

AUTH: 16-1-303, MCA

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

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.110(1) and (2) to incorporate more modern means of correspondence,

especially electronic delivery methods, conditioned upon the licensee, registrant, or applicant's consent. The department notes that certified mail costs have nearly tripled over the last 15 years and there are more economic and efficient ways of sending notices to licensees, registrants, and applicants. Further, the use of regular U.S. mail and electronic mail versus certified mail reflects how the department regularly corresponds with licensees, registrants, and applicants for business purposes. The proposed amendment to (2) is a similar service completion condition in other department rules and is a necessary addition when incomplete delivery is beyond any party's control.

42.12.111 APPLICATION FEES AND PROCESSING FEES FOR OTHER

REQUESTS (1) The fees to be charged for processing applications or other requests and submissions are as follows:

(a) All-beverages license	\$400
(b) Beer importer's license	\$200
(c) Beer <u>Combined beer</u> wholesaler and table wine distributor license.....	\$200
(d) Beer <u>Combined beer</u> wholesaler <u>and table wine distributor</u> subwarehouse license	\$100
(e) Beer wholesaler license.....	\$200
(f) <u>(e) Brewer's Brewery</u> license	\$200
(f) <u>Out of state brewery or beer importers registration.....</u>	<u>\$200</u>
(g) <u>Brewery, winery, or distillery</u> storage depot license	\$100
(h) Domestic distillery license	\$200
(i) Domestic distillery storage warehouse license	\$100
(j) (i) Resort all-beverages license	\$400
(k) (j) Restaurant beer and wine license	\$400
(l) (k) Retail off-premises beer and table wine license	\$200
(m) (l) Retail off-premises beer license	\$200
(n) (m) Retail off-premises table wine license	\$200
(o) (n) Retail on-premises beer <u>and wine</u> license <u>with wine amendment</u> ...	\$400
(p) Retail on-premises beer license	\$400
(q) (o) Sacramental wine license	\$50
(r) Table wine distributor license	\$200
(s) Table wine distributor subwarehouse license	\$100
(t) (p) Tour boat endorsement.....	\$100
(u) (q) Winery license.....	\$200

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

(a) Adding a catering endorsement.....	\$100
(b) Adding a wine amendment.....	\$100
(c) (b) Adding a concession agreement	\$100
(d) (c) Adding an additional manufacturing location	\$100
(e) (d) Adding or changing mortgages, secured interests, or liens.....	\$50
(f) (e) Transferring ownership as a result of a foreclosure	\$200
(g) (f) Transferring location	\$200
(h) (g) Increasing current ownership interest from less than 10 percent to 10 percent or more.....	\$200

(f) (h) Changing the business entity type.....	\$200
(f) (i) Changing the alcohol beverage type	\$200
(k) (j) Adding a delivery endorsement.....	\$100
(k) Adding an additional golf course building.....	\$100

(3) The processing fee for determination of resort area is \$500.

(4) Processing fees are not refundable.

(5) A fingerprint processing fee, in the amount indicated on the application form, must accompany each application.

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

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

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.111 based on the passage of several pieces of legislation during the 68th Montana Legislature as follows:

- House Bill 127 (HB 127) eliminated the individual beer wholesaler and table wine distributor licenses and created a combined beer wholesaler and table wine distributor license. The department proposes to amend (1)(c) and (d) to reflect the license combination and strike (1)(r) and (s) which applied to wine distributors. HB 127 is effective July 1, 2024.
- House Bill 48 (HB 48) created two new license types: a winery storage depot license and a distillery storage depot license, which are like brewery storage depot licenses. The department proposes to amend (1)(g) and strike (1)(i) which will consolidate the common depot license types and proposes a processing fee of \$100 for consistency with the other storage depot licenses.
- House Bill 68 (HB 68) removed the option to add a wine amendment to a retail on-premises consumption beer license. The ability to sell wine is inclusive with the license and is now referred to as an on-premises consumption retail beer and wine license. To effectuate this license change, the department proposes to amend proposed (1)(n) and strike current (2)(b). HB 68 is effective July 1, 2024.
- House Bill 75 requires that out-of-state breweries and beer importers register with the department instead of obtaining a license. The department's proposal in (1)(f) is necessary to effectuate this change.
- As described above for NEW RULE I, HB 97 allows golf course beer and wine licensees and all-beverage licensees that use the license at a golf course the ability to sell and serve alcoholic beverages from additional buildings or structures on the golf course if approved by the department and a fee has been paid. The department proposes a one-time fee of \$100 per additional golf course building in new (2)(k), which is consistent with other alcoholic beverage processing fees.

FISCAL IMPACT: In accordance with 2-4-302(1)(c), MCA, the department is required to estimate the fiscal impact through the payment and collection of fees proposed in ARM 42.12.111 and the number of persons affected.

For combined beer wholesaler and table wine distributor licenses, there is no fee-oriented fiscal impact associated with changing the rule to reflect this statutory license change. Similarly, the change in SB 75 to adopt registrations instead of licenses will not have an anticipated fiscal impact on the 125 out-of-state breweries and beer importers.

For brewery, winery, or distillery storage depot licenses, the department estimates that 13 distilleries and wineries would apply for this license at an aggregate license fee increase to the general fund of \$5,200 per year. The department estimates that the total number of distilleries and wineries affected is 59.

The department estimates that the fiscal impact for the license fee increase to implement HB 68 would increase general fund revenue by about \$9,000 each year starting in FY 2025 (July 1, 2024) as there are approximately 34 on-premises consumption beer licensees who do not have the wine amendment compared to 467 licensees who do have the amendment.

The department anticipates that approximately 30 of the 55 licensed Montana golf courses would pursue an additional golf course building to extend service of alcoholic beverages. Accordingly, the department estimates the fiscal impact of the fee in proposed (2)(k) to be \$100 per licensee multiplied by 30 applications totaling a \$3,000 one-time increase to the general fund.

42.12.118 ABBREVIATED APPLICATION FOR LICENSE MODIFICATION

(1) An abbreviated application may be used to modify a license as set forth in (2) and (3). The application process in ARM 42.12.101 shall be followed in all other cases.

(2) Licensees A licensee must submit an abbreviated application within 90 days of:

(a) removing an existing, previously qualified owner, member, partner, or shareholder from the license without the exchange of funds;

(b) adding an individual or entity as a less than 15 percent owner;

(c) adding or removing officers and/or directors of the licensee to comply with the requirements of 16-4-401(2)(b)(i), (2)(c)(i), (2)(h)(i), or (2)(i)(i), MCA, as applicable; or

~~(e)~~ (d) changing the entity type of the licensee if the existing owners and ownership percentages do not change.

(3) Licensees A licensee must submit an abbreviated application prior to:

~~(a) changing the ownership interest between two or more qualified owners, members, partners, or shareholders;~~

~~(b)~~ (a) transferring the location of the license;

~~(e)~~ (b) increasing the current ownership interest of any owner, member, partner, or shareholder from less than 15 percent to 15 percent or more;

~~(d)~~ (c) changing the entity type of the business if the existing owners or ownership percentages also change; or

~~(e)~~ (d) changing the license type.

(4) A licensee's failure to timely submit an abbreviated application shall constitute a violation and may subject the licensee to administrative action.

AUTH: 16-1-303, MCA

IMP: 16-4-401, 16-4-402, 16-4-414, 16-4-415, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.118 to implement HB 155 amendments to 16-4-415, MCA. HB 155 allows an ownership interest in an alcoholic beverage license to be transferred to an existing owner with 15 percent or more ownership without department approval, subject to reporting requirements at the time of license renewal. Based on HB 155, the department proposes to strike (3)(a) which is now obsolete, and renumber the remaining subsections.

The department also proposes minor grammatical amendments in (2) and (3) for improved consistency in the rule and with similar references in other rules.

42.12.128 CATERING ENDORSEMENT; CATERED EVENTS; EVENT BARRIERS (1) Any licensee having obtained a catering endorsement under the provisions of 16-4-111 or 16-4-204, MCA, is authorized to sell alcoholic beverages authorized under the license to persons attending a catered event sponsored by someone other than the licensee or the concessionaire of the licensee and at a location not otherwise licensed or operating under a special permit.

(2) Prior to selling or serving alcoholic beverages at the catered event, the licensee shall:

- (a) have an executed written agreement with the event's sponsor;
- (b) notify the local law enforcement agency that has jurisdiction over the area where the catered event will be held using a form provided by the department;
- (c) pay the local law enforcement agency a \$35 fee, if required by the local government, as provided in 16-4-111 and 16-4-204, MCA; and
- (d) ensure compliance with the alcoholic beverages sales restrictions provided in 16-3-306, MCA.

(3) A catered event may have more than one licensee cater the event. Licensees shall prevent the consumption of alcoholic beverages within their catered event service area that they did not sell or provide.

(4) A catered event may last for a maximum of three days, except a licensee may have one catered event per year that lasts up to seven days for a fair, as defined in ARM 42.12.106. The storage of alcoholic beverages may occur at the catered event, ~~one day prior to the catered event until one day following the conclusion of the catered event if the alcoholic beverages are in a secured location that prevents access by anyone other than the licensee or licensee's employees~~ as provided in 16-4-111 and 16-4-204, MCA.

(5) Alcoholic beverages may be sold and served at the catered event from a booth, stand, or other fixed place of business as designated and described in the notice given to the local law enforcement agency and may include grandstands or bleachers, as provided for in 16-4-111 and 16-4-204, MCA.

(6) If there is not an existing boundary defining the catered event service area, an event barrier shall be required to clearly mark where the sale and service of each licensee's alcoholic beverages is allowed. The event barrier:

(a) shall be constructed in a manner that directs or impedes ordinary foot traffic and clearly defines the boundary of the catered event service area;

(b) shall be at least three feet in height at all points;

(c) shall have a clearly defined entrance permitting access to the catered event service area;

(d) may be shared with an adjoining licensee to define their respective catered event service areas; and

(e) may have a portion consisting of an existing natural or artificial barrier.

(7) When a licensee caters an event that is within 15 feet of its licensed premises, patrons may take alcoholic beverages between the licensed premises and the area authorized for the catered event if the licensee:

(a) incorporates into the event barrier, a clearly marked path or paths from the public entry of the licensed premises to the public entry of the catered event;

(b) posts signs along the path or paths informing patrons as to where the consumption of alcoholic beverages is allowed and not allowed; and

(c) obtains approval from local government officials for the use of the path or paths, if:

(i) the licensee does not already have possessory interest for the area;

(ii) the licensee does not already have conditional use approval from local government officials for the area; or

(iii) there is an ordinance in place prohibiting open containers of alcoholic beverages.

(8) The sale and service of alcoholic beverages at the catered event may be conducted by:

(a) the licensee or licensee's employees;

(b) volunteers of the licensee; or

(c) the alcoholic beverage manufacturer or vendor, its employees, or registered vendor representatives if:

(i) the licensee gives their explicit consent;

(ii) the alcoholic beverage manufacturer or vendor holds a current alcoholic beverage license, registration, or permit from the department; and

(iii) each person listed in (c) serving alcoholic beverages is current with the Responsible Alcohol Sales and Service Act, provided in 16-4-1005, MCA, prior to the commencement of the catered event.

(9) On or before the 15th day of each month, the licensee shall electronically report, on a form provided by the department, those events the licensee catered in the previous month and shall include a copy of the notification form signed by local law enforcement.

(10) A copy of the executed written agreement between the licensee and event sponsor for each event catered shall be maintained by the licensee for a period of three years from the date of the event. The department may make an examination of any such agreement at any time.

(11) The licensee who catered the event is ultimately responsible for ensuring compliance with all alcoholic beverage laws and regulations, violations of which may subject the licensee to administrative action.

(12) A distillery licensed under 16-4-312, MCA, may sponsor a catered event with an all-beverages licensee with a catering endorsement if:

(a) the distillery obtains department approval by submitting a form provided by the department at least 30 days prior to the start of the catered event;

(b) the all-beverages licensee follows the catering requirements provided in statute and this rule;

(c) all liquor provided for on-premises consumption at the catered event is purchased by the all-beverages licensee from an agency liquor store;

(d) all liquor sold for off-premises consumption at the catered event is purchased by the all-beverages licensee from an agency liquor store; and

(e) the distillery is prohibited from selling liquor directly to catered event attendees.

(13) In accordance with 16-4-204, MCA, the department may approve only six catered events per calendar year, industry-wide. As such, catered event requests from distilleries will be processed and approved on a first-come, first-served basis.

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

IMP: 16-3-103, 16-4-111, 16-4-204, 16-4-312, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.128 to implement HB 164 and HB 578. HB 164 revised catering laws by removing any food requirements for on-premises consumption beer licensees, prohibiting concessionaires from sponsoring catered events, clarifying distance requirements where catered events may occur, making the local law enforcement fee at the discretion of the local government, and allowing the storage of alcoholic beverages at a catered event. HB 578 allows for distillery-sponsored catered events with an industry-wide limit of six events per year.

Amendments to (1), (2), and (4) are necessary to reflect statutory changes under HB 164.

Adopting proposed (12) implements necessary notice and approval processes provided in HB 578 for distillery-sponsored catered events and clarifies how product must be obtained for a catered event. Proposed (13) reflects HB 578's catered event limit for the distillery industry and provides necessary procedural guidance for department processing and approval of catered event requests.

42.12.131 APPLICATIONS FOR LICENSES AVAILABLE IN QUOTA AREAS, AND APPLICATION PROCESSING TIMES

(1) When the department is not required to conduct a competitive bidding process for an available license in a quota area, applications will be processed on a first-come, first-served basis.

~~(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)~~ (2) 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 department's 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

REASONABLE NECESSITY: The 68th Montana Legislature enacted House Bill 72 which made substantial revisions to 16-4-420, MCA, relating to the requirements for restaurant beer and wine licenses. The department proposes to amend ARM 42.12.131 by striking current (2) because the statutory amendments include this language making it unnecessary to repeat in rule.

The department also proposes to amend current (3) through grammar edits to improve clarity and renumber the section to (2).

42.12.132 LOCATION MANAGER (1) All on-premises retailers, off-premises retailers, manufacturers, and distributors shall designate at least one location manager, which may be a person or an entity providing location management services, to oversee the alcoholic beverage operations and ensure compliance with alcoholic beverage laws and regulations on behalf of the licensee.

(a) A location manager designation is based upon the duties performed rather than job title and a location manager must meet the qualifications criteria provided in 16-4-419, MCA, and this rule.

(b) If more than one person performs location manager duties, the licensee shall seek the department's approval for each manager.

(2) The licensee shall initially seek the department's approval of all location managers and any business entity providing location management services on the license application.

(3) Following initial licensure, the licensee shall seek the department's approval of a location manager as follows:

(a) if the location manager is not an owner vetted pursuant to 16-4-401, MCA, ~~within 30 days of the employee commencing location manager duties, then~~ the licensee shall submit the location manager application, the employee's personal history statement, two complete sets of the employee's fingerprint cards, and the fingerprint processing fee within 30 days of the employee commencing location manager duties; or

(b) if the location manager is an owner vetted pursuant to 16-4-401, MCA, ~~on or before the deadline to renew the license in the year the owner commences location manager duties, then~~ the licensee shall ~~submit the location manager application~~ must complete and submit the location manager application but does not need to resubmit the owner's personal history statement, two complete sets of the owner's fingerprint cards, or the fingerprint processing fee.

(4) If a licensee designates a business entity as a location manager, the business entity must appoint at least one person who meets the requirements of 16-

4-419, MCA, and this rule as a location manager. The licensee shall submit the representative's location manager application, personal history statement, two complete sets of fingerprint cards, and fingerprint processing fee within 30 days of the commencement of location manager duties.

~~(2)~~ (5) The licensee shall also confirm annually, on the license renewal form, who is performing location manager duties whether under (3) or (4). ~~At this time,~~ The licensee shall also identify any location managers who ceased performing managerial duties during the past license year.

~~(3) A location manager is an employee who provides general oversight of the alcoholic beverage operations and ensures compliance with alcoholic beverage laws and regulations. The location manager designation is based upon the duties performed rather than the job title assigned.~~

~~(4) A location manager's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen must demonstrate that the employee is likely to operate the establishment in compliance with all applicable laws of the state and local governments.~~

(5) (6) The department shall issue its determination of the location manager application within 15 days of receiving the results of the ~~background~~ investigation unless the department receives investigative findings that require additional consideration. In this case, the department will notify the licensee, in writing, within five days that an extension of the determination is necessary.

~~(6)~~ (7) The licensee shall:

- (a) retain ultimate control over the license and premises;
- (b) maintain an active participation in the alcoholic beverage operation sufficient to ensure the proper and lawful conduct of the business; and
- (c) except for an owner acting as a location manager, provide the location manager compensation commensurate with the duties performed. Compensation shall not be based on a percentage of gross sales or net profits.

~~(7)~~ (8) Failure to abide by the provisions of this rule, including the failure to disclose the person performing location manager duties, may subject the licensee to administrative action, including revocation of the license.

AUTH: 16-1-303, 16-4-419, MCA

IMP: 16-1-302, 16-4-414, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.132 which is primarily necessary to implement statutory changes enacted under Senate Bill 21 (2023) (SB 21). SB 21, codified as 16-4-419, MCA, provides statutory requirements for alcoholic beverage license location managers which previously existed in administrative rule, and also authorizes business entities that perform location manager services for a licensee. The department also proposes the revision, removal, and/or reorganization of rule content which is now redundant to 16-4-419, MCA, or reflects improvements for internal continuity.

The department's proposed amendments to (1) and (1)(a) reflect the transfer and revision of content from current (3) and the entity management option in 16-4-419(3), MCA. Proposed (1)(b) through (3) are a necessary reorganization of rule content with proposed removal of text for brevity or improved descriptions of

department business practices. Section (3)(b) proposes to remove an administrative burden on licensees for qualified owners who function as a location manager for the licensee.

The addition of proposed (4) implements 16-4-419, MCA, and provides consistent notice and application approval procedures for business entities/management companies engaged by a licensee as a location manager.

Proposed (5) reflects amendments to improve internal consistency and clarify that at no less often than license renewal, a licensee shall confirm its location manager.

Current (4) is proposed for removal because the same requirement is found in 16-4-419, MCA, and remaining sections are renumbered.

Amendments to proposed (6) clarify processing deadlines for location manager approval because department approval of a location manager is not limited to receipt of a favorable background check and may take additional time if document review or audit concerns are raised. If additional investigative time is warranted, the department proposes to timely notify the licensee.

Finally, the department proposes to add 16-4-419, MCA, as an implementing citation, which is required by 2-4-305, MCA.

42.12.143 RESTRICTION ON INTEREST IN OTHER LICENSES (1) For purposes of this rule, any ownership interest in a business that operates a license issued under the Montana Alcoholic Beverage Code is considered to be an ownership interest in the license itself.

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

(a) possess a financial or ownership interest in:

(i) a Montana agency liquor store;

(ii) possess an ownership interest in more than two additional Montana all-beverages licenses, for an aggregate number of three licenses, except as provided the limit for Montana all-beverages licenses established in 16-4-205, MCA; or

(iii) more than half the total number of Montana all-beverages licenses in any quota area described in 16-4-201, MCA;

(b) through a business or family relationship, share in the profits or liabilities in more than half the total number of Montana all-beverages licenses in the specific quota area in which the licenses will be held; or

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

(i) an alcoholic beverage manufacturer or importer of alcoholic beverages, ~~except that a licensee's spouse may possess an ownership interest in one or more manufacturer licenses as provided in 16-4-401, MCA; or~~

(ii) a distributor of alcoholic beverages, including a Montana combined beer wholesaler ~~and~~, Montana table wine distributor, and a Montana agency liquor store.

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

(a) possess a financial or ownership interest in a Montana agency liquor store; or

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

(i) an alcoholic beverage manufacturer or importer of alcoholic beverages, except that a licensee's spouse may possess an ownership interest in one or more manufacturer licenses as provided in 16-4-401, MCA; or

(ii) a distributor of alcoholic beverages, including a Montana combined beer wholesaler ~~and, Montana~~ table wine distributor, and a Montana agency liquor store.

(4) A Montana retail off-premises consumption beer and table wine licensee may not:

(a) possess a financial or ownership interest in a Montana agency liquor store; or

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

(i) an alcoholic beverage manufacturer or importer of alcoholic beverages; or

(ii) a distributor of alcoholic beverages, including a Montana combined beer wholesaler ~~and, Montana~~ table wine distributor, and a Montana agency liquor store.

(5) A Montana combined beer wholesaler and table wine distributor may not:

(a) possess a financial or ownership interest in a Montana agency liquor store, a Montana alcoholic beverages retailer, an alcoholic beverages manufacturer, or another Montana combined beer wholesaler and table wine distributor;

(b) have any affiliation with a Montana alcoholic beverages retailer, or the immediate family of a Montana alcoholic beverages retailer; or

(c) be owned or controlled by an alcoholic beverages manufacturer or an importer of alcoholic beverages.

~~(6) A Montana table wine distributor may not:~~

~~(a) possess a financial or ownership interest in a Montana agency liquor store, a Montana alcoholic beverages retailer, an alcoholic beverages manufacturer, or another Montana table wine distributor;~~

~~(b) have any affiliation with a Montana alcoholic beverages retailer or the immediate family member of a Montana alcoholic beverages retailer; or~~

~~(c) be owned or controlled by an alcoholic beverages manufacturer or an importer of alcoholic beverages.~~

~~(7) (6)~~ A Montana alcoholic beverage manufacturer may not possess a financial or ownership interest in:

(a) a distributor of alcoholic beverages, including a Montana beer wholesaler, a Montana table wine distributor, and a Montana agency liquor store; or

(b) a Montana alcoholic beverages retailer, except as provided in 16-4-401, MCA.

(7) When a licensed retailer and a licensed manufacturer operate a colocated license, the following restrictions apply in addition to those in (1) through (6):

(a) a person with an ownership interest in a licensed brewery or licensed winery may hold complete ownership of up to a combined total of three on-premises consumption beer and wine licenses or all-beverage licenses;

(b) a person with an ownership interest in a licensed distillery may hold complete ownership of up to three all-beverage licenses;

(c) a person with an ownership interest in an all-beverage license and a Montana distillery license may hold complete ownership interest in up to two additional all-beverage licenses; and

(d) a person with an ownership interest in an on-premises consumption beer and wine license or all-beverage license and a Montana brewery license or Montana winery license may hold complete ownership interest in up to two additional on-premises consumption beer and wine licenses or all-beverages licenses.

AUTH: 16-1-303, MCA

IMP: 16-4-201, 16-4-205, 16-4-401, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.143(2), (3), (4), (5), and strike (6) which is necessary to implement HB 127. HB 127 eliminates the individual beer wholesaler and table wine distributor licenses and creates a combined beer wholesaler and table wine distributor license, so all internal references require amendment.

The department also proposes to amend (2) to implement House Bill 242 (2023)(HB 242). HB 242 amended 16-4-205, MCA, to increase the number of all-beverage licenses in which a person may have ownership interest from three to seven. The section will now cross reference the statute for attribution and to alleviate any future rulemaking on the number of licenses allowed for ownership.

The department last proposes to amend (2)(c)(i), (3)(b)(i), proposed (6), and to add proposed (7), to implement HB 305 which as previously described allows certain retail licensees to have complete ownership in a manufacturing license. The permissible cross-tier ownerships have been codified at 16-4-401(9), MCA, and proposed (7) is a more accessible and necessary reiteration of license interplay.

42.12.145 ON-PREMISES CONSUMPTION BEER AND WINE AND ALL-BEVERAGE LICENSE - PREMISES SUITABILITY REQUIREMENTS (1) The department shall determine the suitability of the premises where an on-premises consumption beer and wine or all-beverage retailer proposes to operate a license, when a party applies to obtain a license, transfer ownership interest in an existing license requiring the vetting of a new party pursuant to 16-4-401, MCA, changes the location where a license will be operated, makes alterations to a premises with a floor plan that the department approved, or applies to operate under a concession agreement with a concessionaire, as provided in ARM 42.12.133. The requirements of this rule also apply to an on-premises consumption beer and wine or all-beverage retailer operating at a colocated premises.

(2) The premises of an on-premises consumption beer and wine or all-beverage retailer may be considered suitable only if:

(a) except as allowed in 16-3-311(1)(a), MCA, the applicant or licensee has possessory interest in the premises;

(b) the applicant or licensee has adequate control over the premises;

(c) except as allowed in 16-4-401, MCA, a single alcoholic beverage license of any kind will be operated at the premises;

(d) the premises are identified by a unique address;

(e) the premises are located in one building or a specific portion of one building, except that a patio/deck may extend the premises beyond the interior portion of the building. The premises may also include the buildings and structures allowed in 16-3-302, MCA, and [NEW RULE I]. The interior portion of the premises

must comply with the requirements of 16-3-311(3), MCA. Subject to the exceptions in 16-3-311(1)(a), (8), and (9), and (10), MCA, if the premises are located in a portion of a building, the premises must be separated by permanent floor-to-ceiling walls from any other business, including any other business operated by the licensee. Except as otherwise provided in 16-3-311(8), and (9), and (10), MCA, the only access from the premises to another business may be through a single lockable doors, no more than six feet wide, in the permanent floor-to-ceiling wall. ~~Additional lockable doors in the permanent floor to ceiling wall may be allowed only upon department approval;~~

(f) building, health, and fire code approval is obtained;

(g) the premises are located on regular police beats and can be properly policed by local authorities, which includes the premises being located on property to which law enforcement has unrestricted access, except as provided in 16-6-103, MCA;

(h) the premises are not located where a local government ordinance prohibits the sale of alcoholic beverages;

(i) the premises are either solely dedicated to the on-premises consumption of alcoholic beverages or are within a business directly related to the on-premises consumption of alcoholic beverages;

(j) the type of business is readily determinable due to indoor and outdoor signage and the premises' general layout and atmosphere;

(k) alcoholic beverages are advertised and displayed as being available for purchase;

(l) there are no signs, posters, or advertisements displayed on the exterior portion of the premises that identify any brewer, beer importer, or wholesaler in any manner. ~~This prohibition extends to buildings adjacent to the premises only if the retailer has possessory interest in the building.~~ This prohibition does not apply to temporary advertisements allowed under 16-3-244, MCA, or advertisements excepted in 16-3-244, MCA;

~~(m) the floor plan accurately states the dimensions of the premises, includes the entity name, alcoholic beverage license number, physical address, submission date, and identifies all service areas, stationary drink preparation areas, storage areas, patios/decks, perimeter barriers, drive-through windows, and permanent floor-to-ceiling walls required between the premises and another business;~~

~~(n)~~ (m) the interior premises include at least one stationary drink preparation area. The premises may have more than one drink preparation area, including drink preparation areas on the patio/deck and moveable drink preparation areas, subject to department approval;

~~(o)~~ (n) there is interior access to any interior portion of the premises;

~~(p)~~ (o) all storage areas are located in the interior portion of the premises, except as authorized by 16-3-311(1)(b) and (6) and 16-4-213, MCA;

~~(q)~~ (p) the physical layout and equipment utilized provide sufficient physical safeguards to prevent the self-service of alcoholic beverages at any drink preparation area; and

~~(r)~~ (q) self-service devices and vending machines are not used to serve alcoholic beverages.

(3) ~~The premises may have a patio/deck.~~ A patio/deck, authorized under 16-3-311, MCA, may be considered suitable only if:

(a) building, health, and fire code approval is obtained, as required by state or local law;

(b) subject to the exception in (c), the patio/deck is contiguous with and immediately accessible from the interior premises;

(c) any path connecting the interior premises and the patio/deck is under the possessory interest of the licensee, is clearly marked, and the department determines that sufficient physical safeguards are in place to ensure proper service and consumption of alcoholic beverages; and

(d) with the exception of a patio/deck at a golf course, a perimeter barrier or existing natural boundary clearly marks where the service and consumption of alcoholic beverages are allowed.

(4) If a licensee leases or subleases its kitchen, or another specified area within its premises, to allow another business entity to operate a business within the licensed premises, as conditioned in 16-3-311(1)(a), MCA, then the licensee shall ensure adequate physical safeguards are in place to prevent access to the alcoholic beverage inventory by the other business entity. The area leased or subleased by the licensee shall be clearly marked on the floor plan, a copy of which shall be submitted to the department.

~~(4)~~ (5) The premises must meet and maintain compliance with all suitability standards in place at the time the premises are inspected. The department may, at any time, verify that the premises remain in compliance with all suitability standards in place at the time the suitability of the premises was last determined. Upon determining that the premises do not meet all applicable suitability standards, the department may deny an application or take administrative action against a licensee, including license revocation.

~~(5)~~ (6) The privileges granted under a license extend only to the premises depicted in the floor plan approved by the department. The licensee shall follow the process in ARM 42.13.106 for a premises alteration.

AUTH: 16-1-303, MCA

IMP: 16-3-244, 16-3-309, 16-3-311, 16-3-312, 16-4-213, 16-4-402, 16-4-405, 16-4-418, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.145 which is necessary to implement statutory changes to 16-3-311, MCA, under HB 68 and HB 539. Since HB 68 removed the optional wine amendment to a retail on-premises consumption beer license the department proposes to amend the catchphrase of the rule and the internal references in (1) and (2).

The department proposes to amend (2)(a) to align with 16-3-311, MCA, as amended, which allows a licensee to lease or sublease the kitchen or another specified area within its premises to another business entity if certain conditions are met.

The department proposes to amend (2)(c) based on colocated licenses, which are referenced in 16-4-401, MCA, and reflects the department's proposal in NEW RULE II.

The department proposes to amend (2)(e) to reflect other aspects of HB 539's amendments to 16-3-302 and 16-3-311, MCA, and HB 98's amendments to 16-3-311, MCA, which allow public airports to use the entire airport terminal as the licensed premises regardless of other businesses or uses in the terminal.

The department proposes to amend (2)(l) by striking the second sentence in its entirety which is necessary to implement House Bill 160 (2023)(HB 160). HB 160 removed a long-standing statutory restriction that beer advertising could not be applied to the exterior of a building adjacent to that of a retail licensee so that provision is now obsolete.

As described in the statement of reasonable necessity for ARM 42.12.101(3)(e), the department proposes to transfer (2)(m) content to ARM 42.12.101(3)(e) to realign rule requirements for a complete application versus suitability of a premises.

The department proposes to amend (2)(p) to implement other HB 539 amendments to 16-3-311, MCA, which permit keg storage and beer lines to be in a noncontiguous storage area of a licensee.

The department also proposes (4) to implement other HB 539 changes to 16-3-311, MCA, which allows additional businesses to operate within a licensed premises without floor-to ceiling walls and without a concession agreement if the other business does not take orders, serve alcohol, or deliver alcohol and uses a separate point of sale system. Proposed (4) continues a necessary premises requirement in statute and administrative rule that a licensee must have sufficient physical safeguards to prevent access to a licensee's alcoholic beverage inventory since another business entity will be operating within the same space.

42.12.146 RESTAURANT BEER AND WINE LICENSE - PREMISES SUITABILITY REQUIREMENTS (1) The department shall determine the suitability of the premises where a restaurant beer and wine retailer proposes to operate a license when a party applies to obtain a license, transfer ownership interest in an existing license requiring the vetting of a new party pursuant to 16-4-401, MCA, change the location where a license will be operated, or make alterations to a premises with a floor plan that the department approved.

(2) The premises of a restaurant beer and wine retailer may be considered suitable only if:

(a) except as allowed in 16-3-311(1)(a), MCA, the applicant or licensee has possessory interest in the premises;

(b) the applicant or licensee has adequate control over the premises;

(c) a single alcoholic beverage license of any kind will be operated at the premises;

(d) the premises are identified by a unique address;

(e) the premises are located in one building or a specific portion of one building, except that a patio/deck may extend the premises beyond the interior portion of the building. The interior portion of the premises must comply with the requirements of 16-3-311(3), MCA. Subject to the exceptions in 16-3-311(8) and (9), MCA, if the premises are located in a portion of a building, the premises must be separated by permanent floor-to-ceiling walls from any other business, including any other business operated by the licensee. Except as provided in 16-3-311(1)(a), (8),

and (9), MCA, the only access from the premises to another business may be through a ~~single lockable door, no more than six feet wide,~~ in the permanent floor-to-ceiling wall. ~~Additional lockable doors in the permanent floor-to-ceiling wall may be allowed only upon department approval;~~

(f) building, health, and fire code approval is obtained;

(g) the premises are located on regular police beats and can be properly policed by local authorities, which includes the premises being located on property to which law enforcement has unrestricted access;

(h) the premises are not located where a local government ordinance prohibits the sale of alcoholic beverages;

(i) the type of business is readily determinable due to indoor and outdoor signage and the premises' general layout and atmosphere;

(j) alcoholic beverages are advertised and displayed as being available for purchase;

(k) there are no signs, posters, or advertisements displayed on the exterior portion of the premises that identify any brewer, beer importer, or wholesaler in any manner. ~~This prohibition extends to buildings adjacent to the premises only if the retailer has possessory interest in the building.~~ This prohibition does not apply to temporary advertisements allowed under 16-3-244, MCA;

~~(l) the floor plan accurately states the dimensions of the premises, includes the entity name, alcoholic beverage license number, physical address, submission date, and identifies all service areas, service bars, dining room, kitchen, storage areas, patios/decks, perimeter barriers, drive-through windows, and permanent floor-to-ceiling walls required between the premises and another business;~~

~~(m)~~ (l) there is seating for patrons totaling not more than the seating capacity for which the premises are licensed;

~~(n)~~ (m) there is an interior service bar. The premises may have more than one service bar, including service bars on the patio/deck, subject to department approval;

~~(o)~~ (n) there is interior access to any interior portion of the premises;

~~(p)~~ (o) all storage areas are located in the interior portion of the premises, except as authorized by 16-3-311(6), MCA;

~~(q)~~ (p) the physical layout and equipment utilized provide sufficient physical safeguards to prevent the self-service of alcoholic beverages at any service bar; and

~~(r)~~ (q) self-service devices and vending machines are not used to serve alcoholic beverages.

(3) ~~The premises may have a patio/deck.~~ A patio/deck, authorized under 16-3-311, MCA, may be considered suitable only if:

(a) building, health, and fire code approval is obtained;

(b) subject to the exception in (c), the patio/deck is contiguous with and immediately accessible from the interior premises;

(c) any path connecting the interior premises and the patio/deck is under the possessory interest of the licensee, is clearly marked, and the department determines that sufficient physical safeguards are in place to ensure proper service and consumption of alcoholic beverages; and

(d) a perimeter barrier clearly marks where the service and consumption of alcoholic beverages are allowed.

(4) If a licensee leases or subleases its kitchen, or another specified area within its premises, to allow another business entity to operate a business within the licensed premises, as conditioned in 16-3-311(1)(a), MCA, then the licensee shall ensure adequate safeguards are in place to prevent access to the alcoholic beverage inventory by the other business entity. The area leased or subleased by the licensee shall be clearly marked on the floor plan, a copy of which shall be submitted to the department.

(5) A licensee which leases or subleases its kitchen, or another specified area of its licensed premises, must still meet the definition of "restaurant" and fulfill the license requirements of 16-4-420, MCA.

~~(4)~~ (6) The premises must meet and maintain compliance with all suitability standards in place at the time the premises are inspected. The department may, at any time, verify that the premises remain in compliance with all suitability standards in place at the time the suitability of the premises was last determined. Upon determining that the premises do not meet all applicable suitability standards, the department may deny an application or take administrative action against a licensee, including license revocation.

~~(5)~~ (7) The privileges granted under a license extend only to the premises depicted in the floor plan approved by the department. The licensee shall follow the process in ARM 42.13.106 for a premises alteration.

AUTH: 16-1-303, MCA

IMP: 16-3-244, 16-3-309, 16-3-311, 16-3-312, 16-4-402, 16-4-405, 16-4-421, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.146(2)(a), (2)(e), and (2)(p) to implement statutory changes to 16-3-311(1)(a), MCA, made under HB 539 and are referenced in the department's statement of reasonable necessity for the amendment to ARM 42.12.145.

The department proposes to amend (2)(k) in the same manner and for the same reasons as proposed for ARM 42.12.145(2)(l) (necessary to implement statutory changes to 16-3-311, MCA, made under HB 160). As described in the statement of reasonable necessity for ARM 42.12.101(3)(e), the department proposes to transfer (2)(l) content to ARM 42.12.101(3)(e) to realign rule requirements for a complete application versus suitability of a premises. The amended (3)(e) also contains doors, hallways, and stairways references for consistency with House Bill 705 (2021) revisions to 16-3-311, MCA, which expanded allowances in suitability of premises for licensees operating in multi-tenant and/or private dwelling buildings.

The department also proposes amendments to (4) in the same manner and for the same reasons as proposed ARM 42.12.145(4) (necessary to implement other HB 539 changes to 16-3-311, MCA, allowing additional business to operate within a licensed premises without floor-to ceiling walls and without a concession agreement if the other business does not take orders, serve alcohol, or deliver alcohol and uses a separate point of sale system). As with proposed ARM 42.12.145(4), proposed (4) in this rule continues a necessary premises requirement in statute and administrative rule that a licensee must have sufficient physical safeguards to prevent access to a

licensee's alcoholic beverage inventory since another business entity will be operating within the same space.

The department proposes the addition of proposed (5) because 16-3-311, MCA, as amended, did not override a restaurant beer and wine licensee's specific requirements provided in 16-4-420, MCA, and the rule section is a necessary reinforcement of the law for this license type.

42.12.147 OFF-PREMISES BEER AND TABLE WINE LICENSE - PREMISES SUITABILITY REQUIREMENTS (1) The department shall determine the suitability of the premises where an off-premises beer and table wine retailer proposes to operate a license when a party applies to obtain a license, transfer ownership interest in an existing license requiring the vetting of a new party pursuant to 16-4-401, MCA, change the location where a license will be operated, or make alterations to a premises with a floor plan that the department approved.

(2) The premises of an off-premises beer and table wine retailer may be considered suitable only if:

- (a) the applicant or licensee has possessory interest in the premises;
- (b) the applicant or licensee has adequate control over the premises;
- (c) a single alcoholic beverage license of any kind will be operated at the premises;
- (d) the premises are identified by a unique address;
- (e) the premises are located in one building or a specific portion of one building. The interior portion of the premises must comply with the requirements of 16-3-311(3), MCA. If the premises are located in a portion of a building, the premises must be separated by permanent floor-to-ceiling walls from any other licensed alcoholic beverage business. The only access from the premises to another licensed alcoholic beverage business may be through a single lockable doors, no more than six feet wide, in the permanent floor-to-ceiling wall. ~~Additional lockable doors or a doorway larger than six feet wide in the permanent floor-to-ceiling wall may be allowed only upon department approval;~~
- (f) building, health, and fire code approval is obtained;
- (g) the premises are located on regular police beats and can be properly policed by local authorities, which includes the premises being located on property to which law enforcement has unrestricted access;
- (h) the premises are not located where a local government ordinance prohibits the sale of alcoholic beverages;
- (i) the premises are in a stand-alone beer and/or table wine business, a grocery store, or a drugstore licensed as a pharmacy;
- (j) the type of business is readily determinable due to indoor and outdoor signage and the premises' general layout and atmosphere;
- (k) alcoholic beverages are advertised and displayed as being available for purchase;
- (l) there are no signs, posters, or advertisements displayed on the exterior portion of the premises that identify any brewer, beer importer, or wholesaler in any manner. ~~This prohibition extends to buildings adjacent to the premises only if the retailer has possessory interest in the building.~~ This prohibition does not apply to temporary advertisements allowed under 16-3-244, MCA;

~~(m) the floor plan accurately states the dimensions of the premises, includes the entity name, alcoholic beverage license number, physical address, submission date, identifies any storage areas, drive-through windows, and permanent floor-to-ceiling walls required between the premises and another licensed alcoholic beverage business;~~

~~(n) (m)~~ there is interior access to any interior portion of the premises; and

~~(o) (n)~~ all storage areas are located in the interior portion of the premises, except as authorized in 16-3-311(6), MCA.

(3) The premises must meet and maintain compliance with all suitability standards in place at the time the premises are inspected. The department may, at any time, verify that the premises remain in compliance with all suitability standards in place at the time the suitability of the premises was last determined. Upon determining that the premises do not meet all applicable suitability standards, the department may deny an application or take administrative action against a licensee, including license revocation.

(4) The privileges granted under a license extend only to the premises depicted in the floor plan approved by the department. The licensee shall follow the process in ARM 42.13.106 for a premises alteration.

AUTH: 16-1-303, MCA

IMP: 16-3-244, 16-3-309, 16-3-312, 16-4-115, 16-4-402, 16-4-405, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.147(2)(e), (2)(l), and (2)(p) in the same manner and for the same reasons in the department's statement of reasonable necessity for the amendments to ARM 42.12.145 and 42.12.146 (implement statutory changes to 16-3-311(1)(a), MCA, made under HB 539).

As described in the statement of reasonable necessity for ARM 42.12.101(3)(e), the department proposes to transfer (2)(m) content to ARM 42.12.101(3)(e) to realign rule requirements for a complete application versus suitability of a premises.

The department's proposed amendment in proposed (2)(n) updates a statutory cross-reference.

42.12.148 BEER WHOLESALER AND TABLE WINE DISTRIBUTOR - PREMISES SUITABILITY REQUIREMENTS (1) The department shall determine the suitability of the premises ~~of the principal place of business and~~ including any subwarehouse where a beer wholesaler and table wine distributor proposes to operate a license when a party applies to obtain a license, transfer ownership interest in an existing license requiring the vetting of a new party pursuant to 16-4-401, MCA, change the location where a license will be operated, or make alterations to a premises with a floor plan that the department approved.

(2) The premises of a beer wholesaler and table wine distributor may be considered suitable only if:

(a) the applicant or licensee has possessory interest in the premises;

(b) the applicant or licensee has adequate control over the premises;

- (c) a single alcoholic beverage license of any kind will be operated at the premises;
 - (d) the premises are identified by a unique address;
 - (e) building, health, and fire code approval is obtained;
 - (f) the premises are located in one building or a specific portion of one building. The interior portion of the premises must be a continuous area that is not broken by any area in which the applicant or licensee does not have adequate control, such as another business or a common area shared with other building tenants. If the premises are located in a portion of a building, the premises must be separated by permanent floor-to-ceiling walls from any other licensed alcoholic beverage business. The only access from the premises to another licensed alcoholic beverage business may be through a ~~single lockable doors, no more than six feet wide,~~ in the permanent floor-to-ceiling wall. ~~Additional lockable doors in the permanent floor-to-ceiling wall may be allowed only upon department approval;~~
 - ~~(g) the floor plan accurately states the dimensions of the premises, includes the entity name, alcoholic beverage license number, physical address, and date and identifies any permanent floor-to-ceiling wall required between the premises and another licensed alcoholic beverage business;~~
 - ~~(h)~~ (g) the premises include sufficient space for the storage and distribution of beer and/or table wine in large quantities;
 - (i) (h) there is interior access to any interior portion of the premises; and
 - (j) (i) all storage areas are located in the interior portion of the premises.
- (3) The premises may include more than one building for storage and distribution purposes only if the property on which the buildings are located is contiguous and the licensee has possessory interest in the property on which the buildings are located. To seek approval, the licensee shall submit a form provided by the department. All buildings on the premises are subject to suitability requirements in (2).
- (4) The premises must meet and maintain compliance with all suitability standards in place at the time the premises are inspected. The department may, at any time, verify that the premises remain in compliance with all suitability standards in place at the time the suitability of the premises was last determined. Upon determining that the premises do not meet all applicable suitability standards, the department may deny an application or take administrative action against a licensee, including license revocation.
- (5) The privileges granted under a license extend only to the premises depicted in the floor plan approved by the department. The licensee shall follow the process in ARM 42.13.106 for a premises alteration.

AUTH: 16-1-303, MCA

IMP: 16-4-103, 16-4-108, 16-4-402, MCA

REASONABLE NECESSITY: The department proposes to amend 42.12.148(1) to implement statutory changes throughout Title 16, chapter 4, MCA, made under House Bill 155 (2023). HB 155 generally revised terminology including references to the location of wholesaler or table wine distributor's business as a premises and not principal place of business. Additionally, since a subwarehouse

operates under a different license, there is no need for a specific reference in rule. Any premises a wholesaler or table wine distributor intends to use must meet the suitability requirements provided in this rule.

The department proposes to amend ARM 42.12.148(2)(f) in the same manner and for the same reasons in the department's statement of reasonable necessity for the amendments to ARM 42.12.145 through 42.12.147 (to implement statutory changes to 16-3-311(1)(a), MCA, made under HB 539).

As described in the statement of reasonable necessity for ARM 42.12.101(3)(e), the department proposes to transfer (2)(g) content to ARM 42.12.101(3)(e) to realign rule requirements for a complete application versus suitability of a premises.

42.12.149 WINERY, BREWERY, AND DISTILLERY - PREMISES SUITABILITY REQUIREMENTS (1) The department shall determine the suitability of the premises where an alcoholic beverage manufacturer proposes to operate a license when a party applies to obtain a license, transfer ownership interest in an existing license requiring the vetting of a new party pursuant to 16-4-401, MCA, change the location where a license will be operated, or make alterations to a premises with a floor plan that the department approved. The requirements of this rule also apply to an alcoholic beverage manufacturer operating at a colocated premises.

(2) The premises of a manufacturer may be considered suitable only if:

- (a) the applicant or licensee has possessory interest in the premises;
- (b) the applicant or licensee has adequate control over the premises;
- (c) a single alcoholic beverage license of any kind will be operated on the premises, except as authorized under an approved alternating proprietor arrangement;

- (d) the premises are identified by a unique address;
- (e) building, health, and fire code approval is obtained;
- (f) the premises are located in one building or a specific portion of one building, except that a patio/deck may extend the premises beyond the interior portion of the building. The interior portion of the premises must comply with the requirements of 16-3-311(3), MCA. If the premises are located in a portion of a building, the premises must be separated by permanent floor-to-ceiling walls from any other licensed alcoholic beverage business, except as provided in 16-3-311(8) and (9), MCA. The only access from the premises to another licensed alcoholic beverage business may be through a single lockable doors, no more than six feet wide, in the permanent floor-to-ceiling wall, except as provided in 16-3-311(8) and (9), MCA. ~~Additional lockable doors in the permanent floor-to-ceiling wall may be allowed only upon department approval;~~

- ~~(g) the floor plan accurately states the dimensions of the premises, includes the entity name, alcoholic beverage license number, physical address, submission date, and identifies all manufacturing areas, storage areas, sample room, drink preparation areas, patios/decks, perimeter barriers, drive-through windows, and permanent floor-to-ceiling walls required between the premises and another licensed alcoholic beverage business, except as provided in 16-3-311(8) and (9), MCA;~~

- ~~(h)~~ (g) there is interior access to any interior portion of the premises;

- ~~(f)~~ (h) all storage areas are located in the interior portion of the premises;
- ~~(g)~~ (i) access by unauthorized persons to manufacturing areas is restricted;

and

~~(k)~~ (j) it is readily determinable that a manufacturer operates at the premises due to outdoor signage and the existence of the equipment necessary to undertake the activities for which the premises are licensed.

(3) The premises may include more than one building for manufacturing purposes only if ~~the property on which the buildings are located is contiguous and~~ the licensee has possessory interest in the property on which the buildings are located. To seek approval, the licensee shall submit a form provided by the department and include verification that the Alcohol and Tobacco Tax and Trade Bureau approved the licensee's registration to operate any additional building under the manufacturer's existing federal permit or notice. All buildings on the premises are subject to the suitability requirements in (2).

~~(4) A domestic brewery, winery, or distillery may operate a warehouse on property that is not contiguous to property on which the manufacturing premises are located anywhere in the state only if the warehouse is used exclusively for storage. To seek approval, the licensee shall submit a form provided by the department and include verification, if applicable, that the Alcohol and Tobacco Tax and Trade Bureau approved the licensee's registration to operate the warehouse. A licensee may seek approval for more than one warehouse. Each warehouse must have a separate storage depot license. All warehouses are subject to the suitability requirements in (2) and must be equipped with refrigeration and cooling apparatus.~~

~~(5) A domestic distillery may operate a warehouse on property that is not contiguous to property on which the manufacturing premises are located only if the warehouse is used exclusively for storage. To seek approval, the licensee shall submit a form provided by the department and include verification that the Alcohol and Tobacco Tax and Trade Bureau approved the licensee's registration to operate the warehouse. A licensee may seek approval for more than one warehouse. Each warehouse must have a separate domestic distillery storage warehouse license. All warehouses are subject to the suitability requirements in (2).~~

~~(6)~~ (5) In addition to all other requirements, a manufacturer's premises with a sample room shall be considered suitable only if:

- (a) there is a single contiguous sample room;
- (b) the sample room is located in the interior portion of the premises;
- (c) the sample room is not located in a storage warehouse;
- (d) the sample room contains a drink preparation area. The premises may have more than one drink preparation area, including drink preparation areas on the patio/deck, subject to department approval;
- (e) the physical layout and equipment utilized provide sufficient physical safeguards to prevent the self-service of alcoholic beverages at any drink preparation area; and
- (f) self-service devices and vending machines are not used to serve alcoholic beverages.

~~(7)~~ (6) A manufacturing premises with a sample room may have a patio/deck. The patio/deck will be considered suitable only if:

- (a) building, health, and fire code approval is obtained;

(b) the patio/deck is contiguous with and immediately accessible from the sample room, except where the department approves a path connecting the sample room and the patio/deck. The use of a path may only be approved if the licensee holds possessory interest in the path, the path is clearly marked, and the department determines that sufficient physical safeguards are in place to ensure proper service and consumption of alcoholic beverages;

(c) a perimeter barrier clearly marks where the service and consumption of alcoholic beverages is allowed; and

(d) the physical layout and equipment prevent the self-service of alcoholic beverages. This includes a prohibition against the service of alcoholic beverages through self-service devices and vending machines. Reach-in coolers and open shelving are prohibited unless they are located in a drink preparation area and the department determines that sufficient physical safeguards are in place to prevent the self-service of alcoholic beverages.

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

(8) The premises must meet and maintain compliance with all suitability standards in place at the time the premises are inspected. The department may, at any time, verify that the premises remain in compliance with all suitability standards in place at the time the suitability of the premises was last determined. Upon determining that the premises do not meet all applicable suitability standards, the department may deny an application or take administrative action against a licensee, including license revocation.

(9) The privileges granted under a license extend only to the premises depicted in the floor plan approved by the department. The licensee shall follow the process in ARM 42.13.106 for a premises alteration.

AUTH: 16-1-303, MCA

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

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.149 which is necessary to implement statutory changes enacted under House Bill 48 (2023) (HB 48), HB 539, and House Bill 579 (2023) (HB 579).

The department proposes to amend (2)(f) in the same manner and for the same reasons in the department's statement of reasonable necessity for the amendments to ARM 42.12.145 through 42.12.148 (necessary to implement HB 539 changes to 16-3-311, MCA, allowing additional business to operate within a licensed premises without floor-to-ceiling walls and without a concession agreement if the other business does not take orders, serve alcohol, or deliver alcohol and uses a separate point of sale system). As described in the statement of reasonable necessity for ARM 42.12.101(3)(e), the department proposes to transfer (2)(g) content to ARM 42.12.101(3)(e) to realign rule requirements for a complete application versus suitability of a premises.

Amendment to (3) is proposed to reflect HB 579 changes to 16-4-312, MCA, which now allows a distillery to operate additional manufacturing buildings under the same license if allowed under the same federal basic permit. HB 579 also clarified

in 16-4-312, MCA, the sample room limit a licensee may operate, so the department believes proposed (7) is a necessary reiteration of the new statutory restriction.

HB 48 created two new license types: a winery storage depot license and a distillery storage depot license. Amending (4) is necessary to notify licensees of the suitability requirements that must be met for the storage depot to be approved by the department and the requisite federal requirement for a premises to be approved by the Alcohol and Tobacco Tax and Trade Bureau. HB 48 also removed the requirement that a brewery storage depot must be equipped with refrigeration and cooling apparatuses so (4) is also amended for continuity with statute. Lastly, because (4) proposes to incorporate language for distillery storage depots, (5) is no longer necessary and the department proposes its removal.

42.12.150 ALCOHOLIC BEVERAGE INDUSTRY TRADE SHOWS ~~(1) An all-beverage licensee or on-premises consumption beer licensee may host an industry trade show at the licensee's licensed premises or may cater an industry trade show pursuant to ARM 42.12.128. Alcoholic beverages provided at an industry trade show are limited by the hosting or catering licensee's type of license.~~

~~(2) (1) For the purpose of this rule, an alcoholic beverage industry trade show means an event sponsored by the department, another state agency of Montana, or a nonprofit association representing an alcoholic beverage industry association, and where alcoholic beverages are provided to attendees for promotional purposes manufacturers showcase their products to industry trade show attendees. An industry trade show shall not be open to the public. A nonprofit association may not sponsor more than two industry trade shows per year.~~

~~(2) Alcoholic beverage industry trade shows may only be held if prior approval is obtained from the department. A trade show sponsor must electronically submit an industry trade show application to the department at least 30 days prior to the alcoholic beverage industry trade show.~~

~~(3) All attendees of an alcoholic beverage industry trade show must be admitted are limited to the following persons invited by the event sponsor; and must be a licensee, a person employed in the alcoholic beverage industry or a related industry, or are a family member or partner of such persons, and may include public officers, candidates for public office, and public employees involved in the alcoholic beverage industry, or related industry. A related industry includes but is not limited to gambling, food preparation, and other professional services provided to alcoholic beverages licensees.~~

~~(4) A vendor, as defined in ARM 42.11.105, with a current vendor permit, as provided in ARM 42.11.213, may request a trade show case from the department for use at an industry trade show. A trade show case means a case of product used by a registered vendor representative for promoting a vendor's products to attendees of an industry trade show. A product that has not been approved by the department may not be included in a trade show case. For the purposes of this rule, product means a liquor item identified by a unique identification number or stock-keeping unit.~~

~~(a) Except as provided in 16-4-311, MCA, the vendor must ship the trade show case to the state liquor warehouse at no charge to the department.~~

~~(b) In order for an industry trade show case to be removed from bailment at~~

the state liquor warehouse, a vendor must submit a request electronically on a form provided by the department at least seven days prior to the requested ship date to the agency liquor store.

~~(c) A trade show case must be purchased by a registered vendor representative, as defined in ARM 42.11.211, from an agency liquor store at a cost of \$12.00 per case.~~

~~(d) A vendor is limited to providing a maximum of nine thousand milliliters of each product per industry trade show.~~

~~(5) A beer manufacturer or a beer manufacturer's employees or agents who intend to provide beer at an industry trade show or a table wine manufacturer or the table wine manufacturer's employees or agents who intend to provide table wine at an industry trade show must purchase the beer or table wine from the licensee hosting the trade show for no more than the ordinary retail price.~~

(4) The department, a state agency of Montana, or a nonprofit association representing an alcoholic beverage industry may not sponsor more than two alcoholic beverage industry trade shows per year.

(5) An alcoholic beverage industry trade show may be held at:

(a) the licensed premises of an all-beverages licensee or on-premises consumption beer and wine licensee;

(b) a location catered by an all-beverages licensee or on-premises consumption beer and wine licensee; or

(c) a location not otherwise licensed if the trade show sponsor has commercial general liability policy (CGL) with liquor liability coverage or has obtained an event liability insurance policy (with liquor liability coverage) for the trade show with coverage limits no less than \$1 million per occurrence / \$2 million aggregate.

(6) Except as provided in (8), a beer manufacturer or a beer manufacturer's employees or agents who intend to provide beer at an industry trade show or a table wine manufacturer or the table wine manufacturer's employees or agents who intend to provide table wine at an industry trade show must purchase the beer or table wine, for no more than the ordinary retail price, from:

(a) the all-beverage licensee or on-premises consumption beer and wine licensee hosting the industry trade show if the trade show is held at a location allowed for in (5)(a) or (5)(b); or

(b) any all-beverage licensee or on-premises consumption beer and wine licensee if the industry trade show is held at a location allowed for in (5)(c).

(7) Except as provided in (8), a vendor, as defined in ARM 42.11.105, with a current vendor permit, as provided in ARM 42.11.213, may request a trade show case from the department for use at an industry trade show. A trade show case means a case of product used by a registered vendor representative for promoting a vendor's products to attendees of an industry trade show. For the purposes of this rule, product means a liquor item identified by a unique identification number or stock-keeping unit.

(a) Except as provided in 16-4-311, MCA, the vendor must ship the trade show case to the state liquor warehouse at no charge to the department.

(b) In order for an industry trade show case to be removed from bailment at the state liquor warehouse, a vendor must submit a request electronically on a form provided by the department at least seven days prior to the requested ship date to

the agency liquor store.

(c) A trade show case must be purchased by a registered vendor representative, as defined in ARM 42.11.211, from an agency liquor store at a cost of \$12.00 per case.

(8) An alcoholic beverage manufacturer may use its own equipment, trucks, and employees or use a common carrier to deliver alcoholic beverages it produces from its premises to the alcoholic beverage industry trade show location.

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

(a) The alcoholic beverage manufacturer or its employees may serve samples with the permission of the licensee.

(b) All persons serving samples at an alcoholic beverage industry trade show shall be compliant with the Responsible Alcohol Sales and Service Act prior to the alcoholic beverage industry trade show.

(c) Only department-approved product samples may be served at the alcoholic beverage industry trade show.

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

(e) The service of samples must be conducted so as to prevent the consumption or possession of alcoholic beverages on the premises by persons who are under 21 years of age or actually, apparently, or obviously intoxicated.

(6) (10) At the conclusion of an alcoholic beverage industry trade show, any remaining alcoholic beverages may not be given away to attendees and must be retained by the alcoholic beverage manufacturer or vendor, the alcoholic beverage manufacturer or vendor's employees, or registered vendor representatives for a future industry trade show; used for sampling purposes; or given to attendees of the industry trade show at the discretion of the alcoholic beverage manufacturer or vendor, the alcoholic beverage manufacturer or vendor's employees or registered vendor representatives.

(11) An alcoholic beverage manufacturer is responsible for the payment of all applicable alcoholic beverage taxes on alcoholic beverage samples provided at an alcoholic beverage industry trade show which are not purchased from a licensed retailer or agency liquor store.

(7) (12) A licensee who hosts or caters an industry trade show is ultimately responsible for ensuring compliance with all alcoholic beverage laws and regulations, violations of which may subject the licensee to administrative action.

AUTH: 16-1-303, 16-1-307, MCA

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

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.150 to implement the enactment of 16-1-307, MCA, under House Bill 120 (2023) (HB 120). HB 120 allows alcoholic beverage manufacturers the ability to showcase alcoholic beverage products to alcoholic beverage industry trade show

attendees and is an expansion of this rule which the department adopted in 2019. Accordingly, ARM 42.12.150 requires amendment as follows:

1. The removal of current (1) and the amendment of current (2), renumbered as (1), because current text does not reflect the expanded sponsor allowance for an alcoholic beverage industry trade show.

2. Proposed (2) reflects a basic application and department approval process which the department contends is necessary for the effective administration of alcoholic beverage industry trade shows.

3. Section (3) reflects minor amendments relative to the revised name of these alcoholic beverage industry events and clarifies who are the authorized attendees of an alcoholic beverage industry trade show because they are not public events.

4. The text in current (4) has been moved to proposed (6) for improved structure of the rule and contains minor revision to reflect the limited exception specified in proposed (8). Current (5) is proposed for removal because the new law does not limit alcoholic beverage industry trade shows to vendors and beer manufacturers.

5. Proposed (6) through (9) are necessary to clarify sponsorship and hosting, where the events may be held, provide guidelines regarding the types of alcoholic beverages that may be served based on the event host's license type, the disposition of responsibility for the service of alcoholic beverage samples at an alcoholic beverage industry trade show, and to provide necessary sample size limitations.

6. Proposed (10) includes necessary amendments that strike obsolete vendor language from the rule and require the licensee who hosted the alcoholic beverage industry trade show retain any remaining alcoholic beverage inventory at the close of the event.

7. Proposed (11) is a necessary amendment to clarify manufacturer responsibility for the payment of alcoholic beverage taxes relative to the product samples provided to an alcoholic beverage industry trade show.

8. Proposed (12) contains a necessary, minor amendment to reflect a licensee who hosts an alcoholic beverage industry trade show as a caterer of alcoholic beverages.

9. Finally, the department proposes to add 16-1-307, MCA, as an authorizing and implementing citation, which is required by 2-4-305, MCA.

42.12.151 LIMITED ALL-BEVERAGES LICENSE FOR CONTINUING CARE RETIREMENT COMMUNITY - PREMISES SUITABILITY REQUIREMENTS AND CONDITIONS FOR OPERATING

(1) The department shall determine the suitability of the premises when a continuing care retirement community applies to obtain a limited all-beverage license provided in 16-4-315, MCA, changes the location where the license will be operated, or makes alterations to the department-approved premises. The privileges granted under a license extend only to the premises depicted in the floor plan approved by the department except on-premises consumption may extend across the continuing care retirement community's campus, as provided in 16-4-315, MCA.

- (2) The continuing care retirement community premises may be considered suitable only if:
- (a) the applicant or licensee has possessory interest in the premises;
 - (b) the applicant or licensee has adequate control over the premises;
 - (c) no other license authorized under Title 16, MCA, will be operated concurrently at the premises;
 - (d) the premises are identified by a unique address;
 - (e) the premises are located within one building or a specific portion of one building. The interior of the premises must be a continuous area that is not broken by any area in which the applicant or licensee does not have adequate control, such as another business or a common area shared with other building tenants;
 - (f) building, health, and fire code approvals are obtained;
 - (g) the premises are located on regular police beats and can be properly policed by local authorities, which includes the premises being located on property to which law enforcement has unrestricted access;
 - (h) the premises are not located where a local government ordinance prohibits the sale of alcoholic beverages;
 - (i) the premises complies with the licensing restrictions provided in 16-3-306, MCA;
 - (j) there are no signs, posters, or advertisements displayed on the exterior of the premises that identify any brewer, beer importer, or wholesaler in any manner. ~~This prohibition extends to buildings adjacent to the premises only if the retailer has possessory interest in the adjacent building.~~ This prohibition does not apply to temporary advertisements allowed under 16-3-244, MCA;
 - (k) the floor plan accurately states the dimensions of the premises, includes the applicant or licensee's name; alcoholic beverage license number, if applicable; physical address and date of application; and identifies the central dining area, any stationary drink preparation area, and any storage areas. A plat of the continuing care retirement community campus must also be provided to the department that shows the campus boundaries and any other structures located on the campus;
 - (l) the interior of the premises includes at least one stationary drink preparation area. The central dining area may have more than one drink preparation area, including moveable drink preparation areas, subject to department approval;
 - (m) all storage areas are located in the interior of the premises;
 - (n) alcoholic beverages will not be sold through a drive-up window;
 - (o) the physical layout and equipment utilized provide sufficient physical safeguards to prevent the self-service of alcoholic beverages at any drink preparation area; and
 - (p) self-service devices and vending machines are not used to serve alcoholic beverages.
- (3) The premises must meet and maintain compliance with all suitability standards in place at the time the premises was last approved by the department. The department may, at any time, verify that the premises remain in compliance with those suitability standards. Upon determining that the premises does not meet all applicable suitability standards, the department may deny an application or take administrative action against the licensee, including license revocation.

(4) The licensee shall follow the process in ARM 42.13.106 for a premises alteration. Alterations to residential areas or other areas where alcoholic beverages are not sold or served from do not require submittal or approval from the department.

(5) In addition to all other alcoholic beverage licensing requirements, a limited all-beverages continuing care retirement community licensee shall:

(a) only purchase and possess on the premises liquor and fortified wine from an agency liquor store, beer from a beer wholesaler or brewery, and table wine from a table wine distributor or winery, except for alcoholic beverages obtained elsewhere by residents of the continuing care retirement community for consumption in residential areas;

(b) sell or serve alcoholic beverages only from an approved drink preparation area;

(c) prevent the sale or service of alcoholic beverages between 8 p.m. and 11 a.m.;

(d) prevent the consumption or possession of alcoholic beverages outside of residential areas between 2 a.m. and 11 a.m. by removing all alcoholic beverages from individuals' possession by 2 a.m.;

(e) prevent the consumption or possession of alcoholic beverages on the premises by persons who are under 21 years of age, or actually, apparently, or obviously intoxicated, in accordance with 16-3-301, MCA; and

(f) prevent the on-premises consumption of alcoholic beverages not sold or provided at the premises except for alcoholic beverages obtained elsewhere by residents of the continuing care retirement community for consumption in residential areas.

AUTH: 16-1-303, 16-4-315, MCA

IMP: 16-3-244, 16-3-309, 16-3-311, 16-4-315, 16-4-402, 16-4-405, 16-6-303, MCA

REASONABLE NECESSITY: As described in the department's preceding statement(s) of reasonable necessity, HB 160 removed a long-standing statutory restriction that beer advertising could not be applied to the exterior of a building adjacent to that of a retail licensee. Since that provision in rule is now obsolete, it is necessary for the department to remove it from ARM 42.12.151(2)(j).

42.12.152 NONCONTIGUOUS ALCOHOLIC BEVERAGE STORAGE AREAS; RESORT ALTERNATE RETAIL ALCOHOLIC BEVERAGE STORAGE FACILITIES (1) The use of a noncontiguous alcoholic beverage storage area by an on-premises retail licensee is permissible, as provided in 16-3-311, MCA. A noncontiguous alcoholic beverage storage area may be located within ten miles of the licensee's premises as measured in a straight line from the nearest entrance of the licensed premises to the nearest entrance of the noncontiguous storage area.

(2) The use of a resort alternate alcoholic beverage storage ~~facility~~ facilities are permissible, as provided in 16-3-311 and 16-4-213, MCA.

(3) Except as provided in 16-3-311(7), MCA, A a noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility must

only be used for the storage of alcoholic beverages and must have adequate physical safeguards to prevent access by individuals other than the licensee or their employees.

(4) A licensee must submit the following to the department via its online licensing portal for approval of either a noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility:

(a) a completed noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility request form, as applicable;

(b) the application fee provided in 16-3-311 or 16-4-213, MCA;

(c) a copy of the floor plan for a noncontiguous alcoholic beverage storage area or the resort site plan and floor plan for a resort alternate alcoholic beverage storage facility;

(d) documentation of the licensee's possessory interest in the noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility;

(e) documentation demonstrating that a noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility meets the requirements of 16-3-311 and 16-4-213, MCA, as applicable, and (3);

(f) evidence of approvals from state or local officials that the premises meet building, health, and fire code requirements, as required by state or local law; and

(g) any additional documentation the department deems reasonably necessary in order to approve the licensee's request.

(5) Upon its acceptance and review of a licensee's submissions in (4), the department will arrange an inspection of a noncontiguous alcoholic beverage storage area or a resort alternate alcoholic beverage storage facility and will review the inspection findings.

(6) The department will notify the licensee, in writing, of the department's approval or denial of the noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility.

(7) Upon approval, a licensee's license will be updated to reflect the location of the noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility. The licensee must display a copy of the license in a prominent place at the noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility.

(8) No alcoholic beverages may be stored by the licensee at the noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility prior to receiving department approval.

(9) The selling, giving away, or consumption of alcoholic beverages at a noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility is prohibited.

AUTH: 16-1-303, MCA

IMP: 16-3-301, 16-3-311, 16-4-213, MCA

REASONABLE NECESSITY: As described in the department's preceding statement(s) of reasonable necessity, HB 539 made several statutory changes, among them an amendment to 16-3-311, MCA, which allows noncontiguous storage

areas to be located within ten miles of a licensee's premises. Accordingly, the department proposes to amend ARM 42.12.152(1) to provide how the ten-mile limitation is measured.

The department proposes to amend (2) to comport with HB 539's allowance for additional resort alternate alcoholic beverage storage facilities. HB 539 also allows certain licensees to use up to three resort alternate alcoholic beverage storage facilities.

42.12.204 TREATMENT OF A LICENSE OF AN INCAPACITATED OR DECEASED LICENSEE; NOTICE AND DOCUMENTATION REQUIREMENTS

(1) Alcoholic beverages licenses may be transferred to the personal representative of the estate of any deceased licensee in accordance with appropriate probate proceedings. Pursuant to 16-4-431, MCA, in the event of the death or the judicial determination of incapacity of a licensee, the appointed conservator, guardian, personal representative, executor, or administrator must notify the department within 90 days of their appointment. In any event, the department must be notified within 180 days of the death or the judicial determination of incapacity of a licensee or owner of a licensee.

(2) An appointee's notice under (1) may be made by telephone, in writing, via electronic mail, or through submission of a department-provided form.

(3) In all such cases a certified copy of the death certificate or of administration Documentation of the appointee's appointment must be filed with provided to the department within 30 days of the notice required in (1).

(4) An appointee may request department approval to continue operation of the licensed business for the duration of the existing license and to renew the license when it expires. In such case, the appointee must meet the licensure requirements set forth in 16-4-401, MCA, and pay all applicable license renewal, fingerprint, and license application fees.

(a) The department will not authorize an appointee's continued operation of a licensed business absent the documentation required in (3).

(b) If an appointee does not meet the requirements of (3) or this section, or elects not to operate the licensed business, the department shall place the license on approved non-use pending the outcome of a successor appointee, the sale or transfer of the affected license described in (5), or receipt of a judicial determination of licensee's restored capacity. This non-use is not subject to the requirements of 16-3-310, MCA.

(5) An appointee, as personal representative of a licensee or owner of a licensee, must provide the department with A a certified copy of the decree of distribution or order of settlement affecting the license and confirming the sale and/or transfer of the license must also be filed with the department in connection with the transfer of the license to the a distributee or purchaser. The distributee or purchaser of an alcoholic beverages license must comply with all licensing criteria before the transfer of the license will be approved by the department.

(2) (6) If an alcoholic beverages license is owned by joint tenants with right of survivorship, it ownership of the license may be reissued in the name of amended to reflect the surviving joint tenant or tenants, upon presentation of proof of death of the decedent joint tenant or tenants.

(7) In all other cases, upon the death of a licensee it is necessary to apply for transfer of ownership of the license as provided by 16-4-204 and 16-4-404, MCA.

AUTH: 16-1-303, 16-4-431, MCA

IMP: 16-4-204, 16-4-404, 16-4-431, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.204 to implement House Bill 43 (2023) (HB 43) which revised alcohol laws relating to the death or incapacity of a licensee or owner of a license. HB 43, proposed as a part of Governor Gianforte's Red Tape Relief Initiative, establishes notice requirements for court-appointed representatives when a death or incapacity of a licensee occurs because appointees (e.g., personal representatives and conservators) are often unaware of the regulatory framework associated with alcoholic beverages licenses in Montana; and reflects numerous experiences the department has had with unreported licensee deaths and the continued operation of the licensed business by unapproved individuals. HB 43 amendments to statute provide notice to court-appointed representatives and licensees while allowing flexibility for judicial proceedings that are often times beyond the control of the licensee, the court-appointed representative, and the department.

As a result of HB 43, ARM 42.12.204 requires amendment to support the expanded allowance of appointees and provide procedural guidance. The first amendment changes the rule's catchphrase to expand the scope to include incapacitated licensees, new notice requirements, and that documentation to the department is required.

Amendments in (1) propose a necessary reiteration of the statutory appointee types and reporting deadlines to the department relative to an appointment (90 days) or in all other cases (180 days).

Section (2) proposes to provide an appointee options for the required notification. Development of a department form is pending but the department desires to place the text into the rule in anticipation of the completion of the form upon adoption of this rulemaking.

Section (3) proposes to explain that formal documentation is required based on the type of court-appointed representative and establishes a deadline for the submission of documentation because appointee notification and the provision of documentation may not always coincide.

Section (4) proposes procedural guidance for appointees, confirms documentation and licensure requirements, and the continued payment of all licensing fees. Subsections (4)(a) and (b) propose options for appointees who are unresponsive to the statutory requirements, choose not to operate, are precluded from operating the licensed business, or where capacity of a licensee is uncertain, and a subsequent judicial determination of restored capacity is possible. In these cases, imposition of non-use status is a reasonable solution and requires minimal engagement by an appointee with the department.

The amendments to (5) propose increased clarity, improved sentence structure, and incorporate 16-4-431, MCA, terminology.

Section (6) amendments propose to improve clarity and structure by separating the final sentence into a standalone section, proposed (7), to address

what is to occur for all other matters involving a deceased licensee that are not already addressed in rule.

42.12.205 REQUIREMENTS WHEN LICENSE SUBJECT TO LIEN (1) All-beverages and on-premises beer and wine licenses may be subject to a mortgage, security interest, and other valid lien. Upon written request to the department, accompanied by a copy of the note or mortgage, security agreement, or other loan document (in which the license or licenses to be affected are described with common certainty such as inclusion of license number), together with a fee as required in ARM 42.12.111, the department will add the name of the mortgagee, secured party, or other lien holder, which must be endorsed upon the license. All such requests shall be upon forms prescribed by the department and signed in each case by the licensee and the mortgagee, secured party, or other lien holder.

(2) No transfer of any license subject to any mortgage security interest, or other lien shall be approved unless the mortgagee, secured party, or lien holder shall subscribe and acknowledge the instrument of assignment. If the mortgagee, secured party, or lien holder is deceased, or otherwise unavailable, the instrument of assignment may be subscribed and acknowledged by the personal representative, heir, devisee, or other person upon providing sufficient proof that the person has authority to act on behalf of the estate or has otherwise received the right to the security interest or lien.

(3) At such time as any mortgage, security interest, or lien affecting any license has been satisfied and fulfilled, the name of the mortgagee, secured party, or lien holder shall be removed upon written request of all parties in interest. If the mortgagee, secured party, or lien holder is deceased, or otherwise unavailable, the written request may be made by the personal representative, heir, devisee, or other person upon providing sufficient proof that the person has authority to act on behalf of the estate or has otherwise received the right to the security interest or lien. Any name of a mortgagee, secured party, or lien holder may also be removed upon the written request of the licensee or applicant for the license if accompanied by a court order releasing the security interest or lien, or other sufficient proof showing that the security interest or lien has expired, been discharged, or otherwise extinguished.

(4) Alcoholic beverage licenses may be subject to security interests as defined in 30-1-201, MCA, and other valid liens. The perfection of a security interest or other lien in an alcoholic beverages license does not depend upon filing with the department, but rather by the statutory requirements, which apply to the particular security interest or lien. If a secured party or a lien creditor, as defined in 30-9A-102, MCA, desires to give additional public notice, he may do so by filing a claim of security interest or other lien with the department. The department acts only as an additional source of public notice for voluntarily filed claims of security interest and other liens. The licensee must be the debtor. A loan guarantee by a licensee does not establish a valid security interest or lien by the lender under this rule.

(5) The consent of a secured party or a lien creditor is not required by the department to transfer a license. Persons who have filed a claim of a security interest or lien will be given notice by the department of any application for transfer of the license.

(6) Upon written request to the department, together with a fee as required in ARM 42.12.111, the name of a person claiming a security interest shall be endorsed upon the license and shall be kept on file with the department. All such requests shall be upon forms prescribed by the department and signed in each case by the licensee and the person claiming the security interest.

(7) The name of a lien creditor shall not be endorsed upon the license. However, upon written request to the department, the department shall keep the name of the lien creditor on file. The request must be accompanied by sufficient proof of perfection of the lien claimed. No fee is required.

(8) Any notice of security interest or other lien may be deleted from the department's file upon written request of the secured party or lien creditor on forms prescribed by the department. If the secured party or lien creditor is deceased, or otherwise unavailable, the written request for deletion may be made by a personal representative, heir, devisee, or other person upon providing sufficient proof that the person has authority to act on behalf of the estate or has otherwise received the right to the security interest or lien. Any notice of security interest or other lien may also be deleted from the department's file upon the written request of the licensee or applicant for the license if accompanied by a court order releasing the security interest or lien, or other sufficient proof showing that the security interest or lien has expired, been discharged, or otherwise extinguished.

(9) A security interest or other lien may be foreclosed upon in any manner provided by law. In nonjudicial foreclosures, the department will require sufficient documentation that the proper foreclosure proceedings were followed, pursuant to 16-4-801, MCA. Purchasers of a license at a foreclosure sale must apply to the department for transfer of the license and are subject to all statutes and rules required of any other applicant.

(10) Sections (1) through (3) will apply to all security interests and liens filed with the department prior to September 1, 1990. Beginning September 1, 1990, (4) through (9) will apply to all new security interests and liens filed with the department.

AUTH: 16-1-303, MCA

IMP: 16-4-204, 16-4-404, 16-4-801, MCA

REASONABLE NECESSITY: As described in the department's preceding statement(s) of reasonable necessity, HB 68 removed the optional wine amendment to a retail on-premises consumption beer license, which is now included with the license and is referred to as an on-premises consumption retail beer and wine license. The department finds it necessary to amend ARM 42.12.205(1) to reflect the change to the referenced license type.

42.12.208 TEMPORARY OPERATING AUTHORITY (1) The department may grant an applicant temporary operating authority, as provided in ~~16-4-404~~ 16-4-433, MCA, ~~only for the transfer of ownership of a license.~~ The applicant must submit an application meeting the requirements of ARM 42.12.101 and intend to operate the licensed business pending final approval. ~~The department may not grant temporary operating authority on an application for an original license or when there is a proposed change of location.~~

~~(2) The granting of temporary operating authority is neither a temporary license nor a permit. It does not constitute a transfer of ownership, nor does it guarantee that the department will grant the application if it finds, subsequent to receipt of a complete investigation report, that the applicant is not qualified to hold a license or the premises are not suitable for the operation of the business.~~

~~(3) (2) Temporary operating authority will be issued for a 45-day one period not to exceed 180 days. If the application is not approved within this 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) (3) The recorded owner of the license must resume operation of the business conducted under the license in cases where the temporary operating authority has expired and cannot be extended. If temporary operating authority has expired or been revoked, the applicant shall cease all operations and, in the case of a transfer of ownership, the licensee shall resume operations or place the license on nonuse.~~

~~(5) (4) Temporary operating authority will be immediately revoked if the applicant to whom temporary operating authority was granted, or the applicant's employees, violate any provisions of Title 16, MCA, or department rules. Such violations may affect the final decision of the department.~~

~~(6) (5) Any proposed fine, suspension, or revocation arising out of a violation will be assessed against, and is the responsibility of, the recorded owner of the license.~~

AUTH: 16-1-303, MCA

IMP: 16-4-404, 16-4-433, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.208 to implement House Bill 71 (2023) (HB 71) which enacted 16-4-433, MCA. Section 16-4-433, MCA, includes eligibility requirements, duration, and clarifies the ability for the department to grant, deny, and revoke temporary operating authority. Amending the rule is necessary to remove obsolete provisions, for general continuity with the statute, and to provide clear guidance to licensees and applicants when temporary operating authority has expired or been revoked.

42.12.209 TRANSFER OF OWNERSHIP OF A LICENSE TO ANOTHER

PERSON (1) An ownership interest may be transferred to another qualified person only pursuant to means legally authorized for the transfer of personal property in Montana, such as when the person:

- (a) is a purchaser upon a bona fide sale;
- (b) is the distributee of a license from a personal representative of the estate of a deceased licensee;
- (c) has a security interest in a license ~~being foreclosed~~ subject to foreclosure;

or

(d) is gifted the license and the donor completely transfers ownership interest, as provided in Title 70, chapter 3, part 1, MCA; ~~or~~

~~(e) is appointed receiver under the license receivership.~~

(2) Except as allowed in ARM 42.12.118, an ownership interest may not be transferred until an a transfer application ~~reflecting the proposed transfer~~ is submitted to the department and the department approves the application.

(3) A current ownership interest of less than 15 percent may not be increased to 15 percent or more until an application reflecting the proposed increase is submitted to the department and the department approves the application.

(4) The application process in ARM 42.12.101 shall be followed unless an abbreviated application is authorized by ARM 42.12.118.

(5) Before approving a transfer of ownership application, The the department shall make a thorough investigation as to the qualifications of the an applicant and the suitability of the premises proposed for licensing. The department must also determine that ~~the a~~ transferred ownership interest will be is being independently exercised by a transferor to the a new owner and will not remain under the control of the transferor ~~before approving the transfer.~~

(6) The department shall not approve an application for a transfer of an ownership interest where the current owner is not current on the filing or payment of Montana state taxes or liquor fees, fines, or penalties.

(7) Prior to the department granting its written approval of a transfer of ownership interest:

(a) a certificate, stock, or other evidence of the proposed ownership interest may not be registered in the licensee's records; and

(b) earnest money may be paid to the license seller, not to exceed five percent of the license purchase price, but any additional funds or other consideration for the license or alcoholic beverage inventory may not be exchanged unless:

(i) temporary operating authority is granted, but any consideration other than earnest money must be returned to the buyer in the event the application is not approved; or

(ii) the consideration is held in escrow.

(8) The provisions of this rule do not apply to the:

(a) transfer of a security interest in a license pursuant to 16-4-801, MCA;

(b) addition of an individual or entity as a less than 15 percent owner;

(c) death of a licensee (ARM 42.12.204 applies); or

(d) foreclosure of a security interest in a license or in an ownership interest (ARM 42.12.211 applies).

(9) Any A person or entity that is not a licensee approved by the department 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) The department, in its sole discretion, may waive an application requirement set forth in this rule.

(11) The buyer of the license can acquire the seller's alcoholic beverage inventory ~~when either temporary operating authority has been granted to the buyer~~

pursuant to ~~ARM 42.12.208~~ or the transfer of the license to the buyer has been approved by the department as provided in 16-4-404, MCA.

AUTH: 16-1-303, MCA

IMP: 16-4-401, 16-4-402, 16-4-404, MCA

REASONABLE NECESSITY: As a companion to the department's proposals and statement of reasonable necessity to amend ARM 42.12.204, the department also proposes to amend ARM 42.12.209 to implement HB 43 which revised alcohol laws relating to the death or incapacity of a licensee or owner of a license.

The first amendment proposes to change the rule's catchphrase for clarity and to remove limitations of transfers to "persons."

The remaining amendments are proposed to improve the rule through increased clarity of the rule text and sentence structure for what is to occur for cases involving the transfer of a license.

42.12.307 RESORT AREA DETERMINATION APPLICATION PROCESS

(1) A developer or landowner seeking a resort area designation shall submit to the department, at its sole expense:

(a) a completed application for resort area determination;

(b) a plat or master plan of the resort area;

(c) details of the recreational resort facilities that are or will be within the resort area, as that definition is described in ARM 42.12.302;

(d) processing fees as provided in ARM 42.12.111;

(e) except as provided in (2), an appraisal from an appraiser, as defined in 37-54-102, MCA, which provides a detailed analysis of the current actual valuation of the resort or recreational facilities, including land and improvements, of not less than \$4 10 million, at least ~~half~~ \$5 million of which valuation must be for a structure or structures within the resort area; and

(f) any other reasonably necessary documents for the department to reach a final decision.

(2) A developer or landowner may request the use of the department's statutory valuation of the property for property tax purposes to determine the current actual valuation requirements in (1)(e).

~~(2)~~ (3) If the documents in (1) are not provided, the department will notify the developer or landowner of the missing items and request submission prior to the hearing date.

AUTH: 16-1-303, MCA

IMP: 16-4-212, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.307(1)(e) and to add new (2) to implement Senate Bill 59 (2023) (SB 59). SB 59 increased the valuation requirements to qualify for a resort area determination and provided an allowance for the developer or landowner to utilize and submit the department's statutory valuation of the property for property tax purposes as its required appraisal.

42.12.323 PERMISSIBLE AND PROHIBITED SPECIAL PERMIT ACTIVITIES

(1) A special permit issued pursuant to 16-4-301, MCA, entitles the holder to sell and serve beer and/or table wine at retail only at a booth, stand, or other fixed place of business within the exhibition enclosure, confined to specified premises or designated areas, described in the application and approved by the department. A holder of any such permit, or his agents or employees may also sell and serve beer and table wine in the grandstand or bleacher.

(2) A special event may only last for a maximum of three days except that each permit holder may have one special event per year that lasts up to seven days for a fair if it is a county, state, or regional fair that occurs no more than once per year, is held on a publicly owned fairgrounds, and is officially sanctioned by a government entity.

(3) Special permits issued under 16-4-301, MCA, entitle the holder to sell and serve liquor, beer, and/or table wine at retail only within the hall or building described in the application. A holder of a special permit, the holder's agents, or employees may not sell liquor, beer, and/or table wine to persons other than members of the permittee organization and their bona fide guests. Where posts of nationally chartered veterans organizations or lodges of a recognized national fraternal organization do not own or maintain a permanent post, lodge building, or hall, the department may issue a special permit to the organization for use at premises where the post or lodge regularly meet to conduct its meetings or community related events.

(4) Beer wholesalers and table wine distributors shall not:

(a) allow their employees to assist a special permittee or catering permittee in the sale of beer and/or table wine, except for setting up equipment for sale and service of beer or table wine; or

(b) sell beer and/or table wine to a special permittee or catering permittee on a consignment basis.

(5) A special permittee or catering permittee may use portable equipment furnished by a wholesaler in accordance with 16-3-241, MCA.

AUTH: 16-1-303, MCA

IMP: 16-3-103, 16-3-241, 16-4-301, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.323(1) to implement Senate Bill 59 (2023) (SB 59). Among its other enactments, SB 59 expanded 16-4-301, MCA, to allow service of table wine in the grandstands or bleacher area when a special event is being held with a special permit, so the proposed amendment in (1) aligns with the change in the law.

42.12.324 SPECIAL PERMITS (1) A special permit application must be completed and approved by the department when requesting the ability to sell beer and table wine to patrons attending a special event. The holder of a special permit must abide by all applicable laws governing the retail sale of beer and table wine for on-premises consumption.

(2) The length of time for which a special permit can be issued is determined by the fact that there is an outcome, conclusion, or result. For example, the winner of a baseball tournament or the end of a concert.

(3) A special permit issued to an association or corporation pursuant to 16-4-301(1)(c), MCA, is used for professional sporting contests or junior hockey contests during seasons of play only.

~~(3)~~ (4) Except as provided in 16-4-301(1)(e), An an applicant for a special permit cannot have an ownership interest in a manufacturer, importer, bottler or distributor of alcoholic beverages or ownership in an agency liquor store.

(4) (5) Any on-premises consumption retail licensee entitled to a catering endorsement will not be issued a special permit, except for veteran and fraternal licensees as provided for in 16-4-301, MCA.

~~(5)~~ (6) Only one permit is required for multiple locations where beer and table wine are sold within the enclosure where the event is held. All locations must be described on the permit application. A copy of the permit must be posted at each location.

~~(6)~~ (7) A special permit cannot be issued to a location where another permit or license is issued.

~~(7)~~ (8) Private parties where no money or other consideration is exchanged such as weddings or office parties are not required to obtain a special permit.

~~(8)~~ (9) A special permit is subject to the provisions of 16-3-306, MCA, unless the entities in 16-3-306, MCA, provide the department with advanced written approval. The department may revoke a special permit if the permit holder fails to operate the sale of alcoholic beverages at the special events in compliance with the alcoholic beverage laws and rules.

AUTH: 16-1-303, MCA

IMP: 16-3-306, 16-4-301, MCA

REASONABLE NECESSITY: Similar to the department's proposals and necessity to amend ARM 42.12.323, it is also necessary for the department to amend ARM 42.12.324 to implement SB 59. In addition to table wine sales under a special permit in (1) and (6), the department proposes to add new (3) to align with 16-4-301, MCA, that a special event holder permit is approved for the season of sporting contests or junior hockey contests only.

The department also proposes to strike the first sentence in proposed (9) because the provisions in 16-3-306, MCA only apply to retail licensees. Special permittees are not licensees and therefore are not subject to 600-foot proximity restriction.

42.12.501 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 (ILOC)" means a letter of credit between a financial institution and a bidder, in accordance with Title 30, chapter 5, MCA, in which the issuing financial institution guarantees:~~

~~(a) the bidder's payment of a stated bid amount;~~

~~(b) the ILOC will be irrevocable for a minimum of one year from the date of the competitive bidding closing if the bidder's bid is the highest bid submitted for the available license;~~

~~(c) the department is named as beneficiary of the ILOC; and~~

~~(d) the financial institution will not modify the ILOC without the department's consent if the bidder's bid is the highest bid submitted for the available license.~~

(5) (4) "Minimum bid amount" means the lowest acceptable bid amount. The minimum bid amount shall be set by the department 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) (5) "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, 16-4-430, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.501 to implement House Bill 144 (2023) (HB 144). HB 144 removed the requirements from the licensing statutes that a bidder in a competitive bid for an alcoholic beverage license must submit an irrevocable letter of credit with the bidder's bid form. Since the requirement is obsolete, the department must strike the definition in (4).

42.12.502 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; and

(d) the department's denial of an application for licensure or the applicant's withdrawal of an application for licensure 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)~~ (2) The department shall publish the availability of the license once a week for ~~four~~ two consecutive weeks in the a 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 minimum bid amount; and
- (e) that the department will use a competitive bidding process for determining who is granted the opportunity to apply for licensure.

(3) Concurrent with the notice of publication in (2), the department will post the availability of a license on the department's website until the competitive bid deadline provided in ARM 42.12.503(2), and will send an electronic notification to any individuals who have signed up with the department to receive competitive bid notices.

(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 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, 16-4-430, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.502 to implement HB 144. Since HB 144 removed the statutory language limiting how many licenses the department may publish for competitive bid within a year, current (2) of the rule is obsolete and must be removed.

The department proposes to reduce the number of publications per competitive bid described in proposed (2) from four weeks to two weeks to expedite the bid process, given the removal of the irrevocable letter of credit requirement. The department also proposes to amend references to newspapers of general circulation in the quota area because reliance and compliance with newspaper circulation as effectuating official notice are outdated and logistically difficult and cost prohibitive; yet the statute still requires publication. The department believes the amendments are a reasonable balance until a legislative solution to amend the statute is presented.

The department also proposes new (3) which formally adopts the department's business practice of electronic notifications into the competitive bid rule because there is a more contemporary, efficient, and cost-effective way to inform the public of competitive bidding opportunities other than local newspapers. The department does not believe that the reduced publication time and use of alternate notifications will have any adverse effects on those individuals interested in competitive bidding for a license.

42.12.503 RETAIL ALCOHOLIC BEVERAGE LICENSE COMPETITIVE BID FORMS (1) Competitive bid forms must be submitted electronically to the department.

(2) The deadline to submit a bid is ten business days from the date of the last publication notice required in ARM 42.12.502~~(3)~~(2).

(3) The department shall notify the highest bidder, in writing, if any deficiencies exist on the highest bidder's bid form. The highest bidder shall have the opportunity to correct any deficiencies by submitting a revised bid form within five business days of being notified.

(4) 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) 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; or

(c) the bidder's bid amount is less than the minimum bid amount; ;

~~(d) the bidder fails to include an irrevocable letter of credit from a financial institution;~~

~~(e) the irrevocable letter of credit fails to identify the department as the beneficiary; or~~

~~(f) the irrevocable letter of credit is not equal to or greater than the bidder's bid amount.~~

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, 16-4-430, MCA

REASONABLE NECESSITY: Similar to the department's proposals and necessity to amend ARM 42.12.501 and 42.12.502, the department proposes to amend ARM 42.12.503(4) to implement HB 144; and the removal of the text in (4) is consistent with the revised law.

Based on the proposed amendment to strike ARM 42.12.502(2), the department must amend the cross-reference in (2) of this rule.

42.12.504 DETERMINATION OF SUCCESSFUL COMPETITIVE BIDDER AND SUBMISSION OF COMPLETED APPLICATION (1) The department shall rank all qualified bidders by bid amount.

(2) 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 (i.e., successful) bidder in writing. The department shall also notify all other bidders that the highest successful bidder was notified.

(5) The highest successful 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 successful bidder upon the department receiving and approving a written request by the highest successful bidder that explains the need for additional time. If the highest successful bidder does not submit a completed application for licensure within the allotted time, the highest successful bidder will be disqualified. Once the successful bidder submits its license application for licensure has been submitted to the department, the highest bidder becomes an the applicant for all purposes relative to the requirements and qualifications for licensure.

(6) ~~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 denial of the application.~~ All applications for licensure must be made in the name of the individual successful bidder of the competitive bid, or a business entity that is wholly owned by the successful bidder. For example, John Doe is the successful bidder of a license in a competitive bid process, so the applicant for the issuance of the license may either be John Doe, individually, or a corporation or limited liability company in which John Doe maintains the only ownership interest.

(7) License applications that do not comply with (6) will be disqualified and the department will proceed as provided in (10).

~~(7)~~ (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.

~~(8)~~ (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.

(9) (10) If the application for licensure is not approved or the license is forfeited pursuant to 16-4-430(7), MCA, the next highest bidder will be notified in writing. ~~The next highest bidder will have two weeks to submit an irrevocable letter of credit for their bid amount if the original letter of credit was cancelled.~~ The next highest bidder shall comply with the requirements of (5) through ~~(8)~~ (9) and 16-4-430(4), MCA.

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, 16-4-430, MCA

REASONABLE NECESSITY: Similar to the department's proposals and necessity to amend ARM 42.12.501 through 42.12.503, the department proposes to amend ARM 42.12.504(6) and (9) to implement HB 144 and the removal of the text in the sections is consistent with the revised law.

The department also proposes amendments to (4) and (5) to improve sentence structure and to clarify bidder referencing for consistency with the rule's catchphrase, such as clarifying instances where "successful" bidder is more appropriate than "highest" bidder when describing the results of a competitive bid for a license.

The department also proposes to amend (6) and proposes new (7) to clarify the requirement that the successful bidder for a license submit a license application with the same ownership structure as submitted in the competitive bid form, excepting only the form of entity ownership. This requirement is necessary to maintain integrity of the competitive bid process while allowing a modest business planning allowance for the successful bidder to hold the license.

42.13.106 ALTERATION OF PREMISES (1) Any alteration to licensed premises, other than a cosmetic change, must be approved by the department.

(a) An alteration that increases the premises' square footage must receive preapproval.

(b) An alteration that does not increase the premises' square footage must be submitted within seven days from its commencement.

(2) A licensee must submit a request to alter the premises and provide copies of the current and proposed floor plans meeting the requirements of ARM 42.12.101.

(3) Upon receipt of the items in (2), the department will notify the licensee within seven business days of the approval or denial of the alteration request.

(4) The department's approval of an alteration request shall be valid for one year. An alteration not completed within one year must be resubmitted to the department for another approval.

(5) If the alteration prevents the licensee from continuing operations, the licensee shall request nonuse status pursuant to ARM 42.13.107.

(6) Upon completion of the alterations, the licensee is responsible for ensuring the department receives notification of building, health, and fire code approval for the premises, if any such permits were required.

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

(8) 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) Any alteration to licensed premises, other than a cosmetic change, without approval shall constitute a violation and may subject the licensee to administrative action.

AUTH: 16-1-303, MCA

IMP: 16-3-302, 16-3-311, 16-4-402, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.13.106(2), which is necessary for consistency with the department's proposed amendments to ARM 42.12.101(3)(e) regarding floorplans, and amend (6) and (7) to implement other enactments of HB 539. HB 539 revised 16-3-311(2), MCA, which does not require an alteration to be inspected by local government agencies if the alteration did not require a building permit. The proposed amendments add the new statutory condition but maintain the historic references to building, health, and fire code approvals because premises alterations may impact any combination of those three customary inspections that relate to suitability to which the department gives deference.

The department also proposes the minor punctuation amendment in (8) for improved sentence structure.

42.13.107 NONUSE STATUS (1) The department shall grant nonuse status to a licensee who:

(a) is issued a license without an approved premises as provided in 16-4-417, MCA; or

(b) is not operating a going establishment if the licensee ~~submits a written verification documenting to the department's satisfaction how the nonuse is beyond the licensee's control and the request is received~~ provides written notice to the department prior to exceeding 90 days of not operating a going establishment.

(2) Except as provided in (3) or in 16-4-431(2), MCA, an approved nonuse period shall not exceed one year.

(3) The department may extend the one-year nonuse period if the licensee provides evidence that the delay in use is for reasons outside the licensee's control, that the licensee is progressing on a department-approved alteration, or for licenses issued without a premises, the licensee is making progress toward licensure.

Acceptable reasons for not operating a going establishment extending the nonuse period may include but are not limited to:

(a) the death of the licensee or the licensee's family member;

(b) a natural disaster;

(c) a department approved alteration is underway or is pending department approval; or

(d) the licensee lost possessory interest in the premises; or

(e) bankruptcy.

~~(3) The approved nonuse period shall not exceed one year.~~

(4) Prior to expiration of the approved nonuse period, the licensee shall resume operations and notify the department that operations have resumed.

(5) If a licensee fails to timely resume operations or provide the required notification, the department shall lapse the license pursuant to 16-3-310, MCA, and ARM 42.13.108.

(6) A licensee cannot resume operations of a license at premises where the licensee:

(a) was granted nonuse status for the license; and

(b) operated another license at the premises while the previous license was on nonuse status.

~~(7) The department shall deny a request for nonuse status if the licensee has been granted nonuse status for the license within the previous six months, unless the request is based upon reasons other than voluntary closure due to adverse economic conditions or a proposed sale of a license.~~

~~(8) (7)~~ (7) A licensee may not purchase, sell, or otherwise provide alcoholic beverages while on nonuse status. This includes catering events and operating through a concession agreement.

(8) The amount of time spent on nonuse status does not count towards the operational requirement provided in 16-4-417 and 16-4-432, MCA.

(9) A license issued pursuant to 16-4-101, 16-4-107, and 16-4-311, MCA, may be granted nonuse status if the licensee submits a written request to the department prior to exceeding 90 days of not operating.

(10) A licensee granted nonuse status pursuant to (9) may not produce, purchase, sell, distribute, or otherwise provide alcoholic beverages while on nonuse status.

AUTH: 16-1-303, 16-4-417, 16-4-431, MCA

IMP: 16-3-310, 16-4-417, 16-4-431, 16-4-432, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.13.107 primarily to implement statutory exceptions regarding nonuse which were enacted through House Bills 123 and 166 (2023) (HB 123) (HB 166). HB 123 and HB 166 allow the department to extend nonuse status past one year if the licensee provides evidence that the delay is for reasons outside their control or that they are progressing on a department-approved alteration.

The department proposes amendments to (1)(b), (2), (3), and (7) based on legislation and also department review of 16-3-310, MCA, which concluded the statute does not require substantiation of a licensee's first 90-day nonuse request found in (1), nor does it contemplate the specified conditions found in (7). The rule should also be amended through the proposed reorganization of content in (2) and (3). Other proposed changes reflect improvements in rule language.

Section (8) proposes to implement HB 123's enactment of 16-4-432, MCA, which requires that a licensee operate the license for at least one year prior to transferring the license to another person or business entity unless that transfer is due to a death of an owner. It is also necessary to clarify in (8) that when a license is on nonuse status it is not operational and, therefore, does not count toward the 16-4-432(1)(b), MCA, requirement.

The department proposes new (9) and (10) under its general rulemaking authority which the department believes is a necessary addition to the rule to allow manufacturers to put their respective licenses on nonuse status.

Finally, the department proposes to add 16-4-431, MCA, as an authorizing citation and 16-4-417, 16-4-431, and 16-4-432, MCA, as implementing citations, which is required by 2-4-305, MCA.

42.13.109 SEVEN-DAY CREDIT LIMITATION (1) A ~~brewery license brewer, beer importer, a beer wholesaler license, a winery license, or a table wine distributor license~~ will be suspended or revoked or otherwise sanctioned is subject to a penalty under 16-4-406, MCA, if credible evidence demonstrates that ~~a licensee they~~ they extended credit to a retail licensee for more than seven days or sold and delivered beer to a retailer who has unpaid deliveries that exceed seven days.

~~(2) A retailer's license will be suspended or revoked or otherwise sanctioned~~ A retail licensee is subject to a penalty under 16-4-406, MCA, if credible evidence demonstrates that the retail licensee accepted credit extended by a brewer, beer importer, or a beer wholesaler, winery, or table wine distributor for more than seven days for the purchase of beer or table wine or failed to pay a brewer, beer importer, beer wholesaler, winery, or table wine distributor within seven days from the date the beer or table wine was delivered.

(3) The first day of the seven-day credit period begins at 8 a.m. on the day after the delivery.

- (4) Criteria which demonstrates credit has been extended are:
 - (a) wholesaler delivered product to retailer;
 - (b) retailer or wholesaler does not have documentation of payment;
 - (c) wholesaler has been without payment for more than seven days; and
 - (d) wholesaler does not have documentation of efforts to collect payment; or
 - (e) (a), (b), (c), and the wholesaler has no documentation to show further product delivery was terminated.
- (5) Criteria which demonstrates credit has been accepted:
 - (a) wholesaler delivered product to retailer;
 - (b) retailer or wholesaler does not have documentation of payment;
 - (c) wholesaler has been without payment for more than seven days; and
 - (d) product has not been returned by retailer.
- (6) When a license is sold and a debt to a beer and wine wholesaler remains unpaid, the debt becomes the obligation of the new owner of the license. Based on the seven-day credit limitation, the wholesaler may not sell to the new licensee until the previous debt is paid in full.

AUTH: 16-1-303, MCA

IMP: 16-3-243, 16-3-406, 16-4-404, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.13.109 which is necessary to implement House Bill 95 (2023) (HB 95). HB 95 revised and modernized 16-3-243, MCA, regarding payment of beer delivered by a brewer or beer wholesaler to a licensed retailer. The department's proposed amendments reflect the updates of industry terminology in statute and the license types that are subject to the statutory credit limitation.

42.13.111 DEFINITIONS The following definitions apply to this chapter:

- (1) "Alteration" means a structural change or a modification to the premises other than a cosmetic change. Examples include adding a patio or removing a half wall.
- (2) "Building" means an enclosed structure with external walls and a roof. Separate structures or structures connected by skyways are not considered one building for licensing purposes.
- (3) "Contiguous" means touching or sharing a common border.
- (4) "Contract packaging" means blending, bottling, packing, and/or filling of a distilled spirits product by a domestic distilled spirits plant for another distilled spirits plant.
- (5) "Cosmetic change" means a nonstructural change to the premises. Examples include painting, carpeting, and other interior decorating.
- (6) "Coupons" are certificates or tickets entitling the holder to a specified right, as redemption for cash or gifts or reduced purchase price.
- (7) "Distilled at the microdistillery" means the process of vaporization and subsequent condensation of a beverage containing ethyl alcohol that occurs at the licensed premises.
- (8) "Distilled spirits" means alcoholic beverages that contain ethyl alcohol and generally are the result of distillation of fermented materials. Examples include

whiskey, gin, vodka, cordials, liqueurs, and flavored brandies. Distilled spirits do not include alcoholic beverages that are defined as beer or wine by the Montana Alcoholic Beverage Code.

(9) "Distilled spirits plant" means a plant at which distilled spirits are manufactured, produced, aged, stored, packaged, or bottled.

(10) "Drink preparation area" means the bar area on the premises where alcoholic beverages are stored and prepared for on-premises consumption and from which alcoholic beverages may be sold for off-premises consumption.

(11) "Flavors and nonbeverage ingredients containing alcohol" means any intermediate product containing alcohol that is used in the production of beer.

(12) "Floor plan" means a diagram with measurements of the premises as seen from above.

(13) "Fortified wine" means wine that contains more than 16 percent, but not more than 24 percent, of alcohol by volume. Fortified wine constitutes liquor for distribution purposes.

(14) "Going establishment" means a business that:

(a) is open at least 20 hours per week for any four weeks in a 90-day period;

(b) maintains an inventory of at least ten cases of alcoholic beverages for each day that the establishment is open; and

(c) sells or provides a minimum of \$50, calculated at cost, of alcoholic beverages each week the establishment is open.

(15) "Grocery store" means a self-service retail establishment where a variety of perishable and nonperishable food items and household goods are sold for use off the premises.

(16) "Industry member" is any person engaged in business as a manufacturer, importer, or wholesaler of alcoholic beverages.

(17) "Mitigating circumstances" means a justification for a violation that the department considers extenuating enough to warrant a reduction of the penalty that would otherwise be proposed.

(18) "Original packaging" means the sealed container in which a manufacturer packages its product for retail sale. It includes bottles, cans, kegs, and growlers, but does not include lines or piping carrying product from a manufacturer's premises to a retailer's premises.

(19) "Patio/deck" means an outdoor portion of the premises where the preparation, service, and consumption of alcoholic beverages is allowed.

(20) "Perimeter barrier" means a barrier enclosing the perimeter of the patio/deck. The barrier shall be constructed in a manner that impedes foot traffic and clearly defines the boundary of the exterior portion of the premises. The barrier shall be at least three feet high at all points and may have a single ~~six-foot-wide~~ entrance permitting public access from an unlicensed area to the patio/deck. Upon the department's determination that the barrier accomplishes its intended purpose, the barrier may:

(a) be constructed of materials such as lattice or wrought iron that do not form a solid structure;

(b) have a portion of it be water;

(c) have additional entrances permitting public access to the patio/deck; and

(d) be less than three feet in height.

(21) "Portable satellite vehicle" or "other movable satellite device" as used in 16-3-302, MCA, may include:

- (a) self-propelled wheeled vehicles such as golf carts, concession vans, or similar conveyances containing beverage dispensing and storage equipment; or
- (b) wheeled devices such as concession wagons or vendors carts and other similar vehicles which may be towed, pushed, or transported to a temporary site and which contains beverage dispensing and storage equipment; and
- (c) fixed booths or stands in which portable beverage dispensing and storage equipment may be temporarily installed and removed after use.

(22) "Posted price" as it applies to liquor and fortified wine, means the wholesale price of liquor and fortified wine for sale to persons who hold liquor licenses as fixed and determined by the department.

(23) "Premises" means the area in the floor plan approved by the department on which the activities authorized under the license may be conducted.

~~(24) "Prepared food business," as it applies to an on-premises beer license with a wine amendment, means a public eating establishment where the food is not made on-site.~~

~~(25)~~ (24) "Primary packaging" means the container that directly holds the alcoholic beverage. Examples of primary packaging include, but are not limited to, aluminum cans, glass bottles, kegs, and a box containing a plastic bladder or other soft flexible container of wine.

~~(26)~~ (25) "Purchase price" means the ordinary, dine-in menu price for beer and wine and food items.

~~(27) "Restaurant," as it applies to an on-premises beer license with a wine amendment, means a public eating establishment where food is made on-site.~~

(28) (26) "Sale to an underage person" means a violation consisting of the unlawful sale, service, or delivery of an alcoholic beverage to a person under the age of 21.

~~(29)~~ (27) "Sample room" means the area of a manufacturer's premises where the service, sale, and on-premises consumption of alcoholic beverages are permitted.

~~(30)~~ (28) "Seasonal business" means a business closed for greater than 90 consecutive days due to climatic and other conditions. ~~Examples include a dude ranch, resort, or park hotel.~~

(31) (29) "Self-service of alcoholic beverages" means allowing persons other than the licensee or its employees to have access to alcoholic beverages prior to the licensee or its employees providing the alcoholic beverage to the person for on-premises consumption.

(32) (30) "Service area" means the area on the premises where the service, sale, and on-premises consumption of alcoholic beverages are permitted. The service area includes any patio/deck and drink preparation area.

~~(33)~~ (31) "Service bar" means an area on a restaurant beer and wine licensee's premises where alcoholic beverages are stored and prepared for on-premises consumption.

(34) (32) "Stand-alone beer and/or table wine business" means a business in which 95 percent of the business's annual gross income comes from the sale of beer, table wine, or both.

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

REASONABLE NECESSITY: The department proposes to amend ARM 42.13.111 to continue implementation of HB 68 through the proposed removal of (24) and (27) since all former beer licenses have been converted to an on-premises consumption retail beer and wine license, and the prior requirement to operate this license type as a prepared food business or restaurant has been removed from statute.

The department also proposes to amend the definition of "seasonal business" to implement House Bill 166 (2023) (HB 166). HB 166 removed examples of businesses that qualify for seasonal status from statute which provides the department more flexibility in approving seasonal status for licenses.

42.13.112 SEASONAL BUSINESS (1) The department may approve a license for use in a seasonal business to enable closures exceeding 90 consecutive days.

(2) To request approval, the licensee shall submit a written request that includes the:

- (a) type of seasonal business;
- (b) justification for operating seasonally; and
- (c) general dates of operation.

(3) Once approved, a licensee shall notify the department prior to changing the general dates of operation.

(4) The time spent on seasonal status does not count towards the operational requirement provided in 16-4-417 and 16-4-432, MCA, when the business is closed.

AUTH: 16-1-303, MCA
IMP: 16-3-310, 16-4-417, 16-4-432, MCA

REASONABLE NECESSITY: Similar to the department's proposals and necessity for the amendments to ARM 42.13.107 to implement HB 123, the department proposes to amend ARM 42.13.112 through proposed (4). When a license has been granted seasonal status and is closed for a portion of the year, the business is not operational and, therefore, the closure does not count towards the operational requirement found in 16-4-432, MCA.

Finally, the department proposes to add 16-4-417 and 16-4-432, MCA, as implementing citations, which is required by 2-4-305, MCA.

42.13.201 LABELING AND PACKAGING REQUIREMENTS (1) As a condition of holding a retail license, no retail licensee shall sell, offer for sale, or provide any beer, wine, or hard cider unless the label and primary packaging are in conformity with this rule and ARM 42.13.221.

(2) Alcoholic beverage products are a mature product category, restricted by law to only consumers age 21 and older and who are not intoxicated, and therefore

should be marketed in a responsible and appropriate manner. The department, in its discretion and on a case-by-case basis, will not approve a beer, wine, or hard cider label or primary package that:

(a) blurs the distinction between an alcoholic and nonalcoholic product by utilizing labeling and/or primary packaging that emphasize features that are most commonly associated with nonalcoholic consumable products including, but not limited to:

- (i) aerosol cans; or
- ~~(ii) gelatin cups;~~
- ~~(iii) (ii) hollow candies; or~~
- ~~(iv) mason jars that contain fruit;~~

(b) uses flavors that are designed to target or particularly appeal to underage persons, such as:

- (i) cotton candy; or
- (ii) bubble gum; or
- (c) contains graphics or elements that:

- (i) are designed to target or particularly appeal to underage persons;
- (ii) minimizes, fails to identify, or disguises that the product contains alcohol;

or

(iii) alludes to or suggests irresponsible, excessive, or underage consumption; or

(d) is in powdered or crystalline form.

(3) The department will notify the winery, wine importer, brewer, or beer importer of any products that do not conform to the requirements in (2). The winery, wine importer, brewer, or beer importer must remove the product from the Montana market within 60 days of being notified by the department.

AUTH: 16-1-303, MCA

IMP: 16-1-101, 16-1-102, 16-1-106, 16-1-303, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.13.201 to strike the former prohibition of beer, wine, and hard cider products in gelatin cups to implement HB 455. Under the revised law, the department may not prohibit a beer, wine, or hard cider product that is sold in gelatin cups that are shelf stable and liquid at room temperature.

The department also proposes to remove the prohibition of products in mason jars that contain fruit as this is becoming a more common practice for suppliers to package their products and has shown little public harm in other states that allow for this type of packaging.

42.13.211 PERMISSIBLE ADVERTISING (1) No licensee shall publish or cause to be published or disseminate or cause to be disseminated any advertisement of ~~liquor (distilled spirits, wine, or malt beverages)~~ alcoholic beverages unless such advertisement conforms with ARM 42.13.221.

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

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

(3) For the purpose of this rule, "advertising" means the publication, dissemination, solicitation, or circulation of visual, oral, or written communication intended for the public.

(4) The prohibited acts in this rule shall constitute a violation and may subject the licensee to administrative action.

AUTH: 16-1-303, MCA

IMP: 16-3-103, 16-3-244, MCA

REASONABLE NECESSITY: With the recent expansion of permissible activities and relationships between alcoholic beverages licensees and third parties under statute, the department notes that there has been a steady rise in misrepresentation, deception, and false advertising involving alcoholic beverages licensees or by related third parties.

The department proposes to amend ARM 42.13.211 to curb intentional deceptive advertising practices which lead to marketplace confusion. The department contends the proposed amendments are a necessary clarification of existing federal and state law and provide additional guidance for licensees on the subject matter.

Amendment to (1) clarifies "alcoholic beverages" which is necessary for consistency with most administrative rule references to these products. Section (2) is proposed to clearly state impermissible advertising with representative examples. Proposed (3) provides a necessary definition for administration of the rule. Proposed (4) provides notifies licensees that impermissible advertising constitutes a violation under the law.

42.13.405 WINERY - CONDITIONS FOR OPERATING (1) In addition to all other alcoholic beverage licensing requirements, a winery shall:

(a) refrain from providing alcoholic beverages on the premises until the department approves a sample room;

(b) except as provided in 16-4-401(9), MCA, not possess any interest in real or personal property owned, occupied, or used by an alcoholic beverage retailer in the conduct of the retailer's business;

(c) store alcoholic beverages only on the premises;

(d) store on the premises only the alcoholic beverages for which the premises are licensed or those authorized under an approved alternating proprietor arrangement;

(e) except as provided in 16-3-316(4)(a), MCA, sell and deliver its products to distributors or retailers only in original packaging;

(f) prevent the self-service of alcoholic beverages on the premises;

- (g) prevent the consumption or possession of alcoholic beverages on the premises by persons who are under 21 years of age or actually, apparently, or obviously intoxicated;
 - (h) prevent the sale of alcoholic beverages for on-premises or off-premises consumption between 2 a.m. and 8 a.m.;
 - (i) prevent the consumption or possession of alcoholic beverages on the premises between 2 a.m. and 8 a.m. by removing all alcoholic beverages, other than those sold for off-premises consumption pursuant to (3), from individuals' possession by 2 a.m.;
 - (j) prevent the on-premises consumption of alcoholic beverages not sold or provided at the premises and those sold in original packaging for off-premises consumption;
 - (k) prevent the consumption of alcoholic beverages in the manufacturing area or storage area except as authorized by federal laws;
 - (l) maintain records documenting its business operations including, but not limited to the sale, production, storage, and processing of alcoholic beverages on the premises; and
 - (m) electronically file all required alcoholic beverage tax returns and pay any taxes owed as provided in law.
- (2) A license to operate a winery is not a retail license.
- (3) A winery may sell alcoholic beverages on its premises to a consumer for off-premises consumption under the following conditions:
- (a) all alcoholic beverages must be in original packaging, prepared servings, or growlers;
 - (b) except as provided in (c), alcoholic beverages may only be sold in an approved sample room; and
 - (c) use curbside pickup, including a drive-through window, to sell alcoholic beverages that were ordered online, in person, or through the phone.

AUTH: 16-1-303, MCA

IMP: 16-3-301, 16-3-304, 16-3-305, 16-3-312, 16-3-406, 16-3-411, 16-4-107, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.13.405(1)(b) to implement HB 305. Among its other enactments, HB 305 changed general licensure requirements in 16-4-401, MCA, to permit an ownership interest in both a manufacturing license and a retail license under certain conditions.

The department also proposes to amend (1)(e) to reflect a statutory exception enacted by HB 97 to allow an alcoholic beverage manufacturer the ability to sell or donate alcoholic beverages to nonprofit or tax-exempt organizations for fundraising events.

The department proposes the amendment in (3)(c) to implement and align with HB 254, which amended 16-3-312, MCA, to allow curbside orders to be ordered online, through the phone, or in person.

42.13.601 BREWERY - CONDITIONS FOR OPERATING (1) In addition to all other alcoholic beverage licensing requirements, a brewery shall:

- (a) except as provided in 16-4-401(9), MCA, not possess any interest in real or personal property owned, occupied, or used by an alcoholic beverage retailer in the conduct of the retailer's business;
 - (b) store alcoholic beverages only on the premises;
 - (c) store on the premises only the alcoholic beverages for which the premises are licensed or those authorized under an approved alternating proprietor arrangement;
 - (d) prevent the consumption of alcoholic beverages in the manufacturing area or storage area except as authorized by federal law;
 - (e) except as provided in 16-3-316(4)(a), MCA, sell and deliver its products to wholesalers and retailers only in original packaging;
 - (f) maintain records documenting its business operations including, but not limited to, the sale, production, storage, and processing of alcoholic beverages on the premises; and
 - (g) electronically file all required alcoholic beverage tax returns and pay any taxes owed as provided in law.
- (2) A license to operate a brewery is not a retail license.
- (3) In addition to all other requirements, a brewery with an annual nationwide production of less than ~~400 barrels~~ 200 gallons shall:
- (a) refrain from providing alcoholic beverages on the premises until the department approves a sample room;
 - (b) only provide samples without charge;
 - (c) prevent the self-service of alcoholic beverages on the premises;
 - (d) prevent the consumption or possession of alcoholic beverages on the premises by persons who are under 21 years of age or actually, apparently, or obviously intoxicated;
 - (e) prevent the on-premises consumption of alcoholic beverages not sold or provided at the premises and those sold for off-premises consumption pursuant to (f);
 - (f) sell all alcoholic beverages on its premises to a consumer for off-premises consumption under the following conditions:
 - (i) the alcoholic beverages must be sold in an approved sample room;
 - (ii) the alcoholic beverages must be in original packaging, prepared servings, or growlers only;
 - (iii) the sale of alcoholic beverages is prohibited between 2 a.m. and 8 a.m.;
 - (g) subject to, and in addition to the off-premises consumption sales conditions in (f), a brewery may use curbside pickup, including a drive-through window, to sell alcoholic beverages that were ordered online, in person, or through the phone.
- (4) In addition to all other requirements, a small brewery with an annual nationwide production of not less than ~~400 barrels~~ 200 gallons or more than 60,000 barrels that operates a sample room shall:
- (a) refrain from providing alcoholic beverages on the premises until the department approves a sample room;

(b) provide with or without charge no more than 48 ounces of alcoholic beverages to any individual for on-premises consumption or prepared servings through curbside pickup, including a drive-through window, during a business day;

(c) provide not more than 2,000 barrels of beer annually for on-premises consumption, including the premises of any affiliated manufacturers as defined in 16-3-213, MCA;

(d) prevent the sale of alcoholic beverages for on-premises consumption between 8 p.m. and 10 a.m.;

(e) prevent the consumption or possession of alcoholic beverages on the premises between 9 p.m. and 10 a.m. by removing all alcoholic beverages other than those sold for off-premises consumption pursuant to (h) from individuals' possession by 9 p.m.;

(f) prevent the self-service of alcoholic beverages on the premises;

(g) prevent the consumption or possession of alcoholic beverages on the premises by persons who are under 21 years of age or actually, apparently, or obviously intoxicated;

(h) sell alcoholic beverages on its premises to a consumer for off-premises consumption under the following conditions:

(i) the alcoholic beverages must be sold in an approved sample room;

(ii) all alcoholic beverages sold must be in original packaging, prepared servings, or growlers;

(iii) the sale of alcoholic beverages is prohibited between 2 a.m. and 8 a.m.;

(iv) the sale of alcoholic beverages in prepared servings is prohibited between 8 p.m. and 10 a.m.; ~~and~~

(i) subject to, and in addition to the off-premises consumption sales conditions in (h), a brewery may use curbside pickup, including a drive-through window, to sell alcoholic beverages that were ordered online, in person, or through the phone; ~~and~~

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

(5) In addition to all other requirements, a brewery with an annual nationwide production of 60,000 barrels or more may only sell beer in original packaging to a licensed beer distributor. Selling or providing alcoholic beverages to consumers for consumption on the premises and selling alcoholic beverages to retailers is prohibited.

AUTH: 16-1-303, MCA

IMP: 16-3-211, 16-3-213, 16-3-214, 16-3-242, 16-3-301, 16-3-304, 16-3-305, 16-3-312, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.13.601(1)(a) to implement HB 305. Among its other enactments, HB 305 changed general licensure requirements in 16-4-401, MCA, to permit an ownership interest in both a manufacturing license and a retail license under certain conditions.

Similar to the department's amendments to ARM 42.13.405(1)(e), the department proposes to amend (1)(e) of this rule to reflect HB 97 amendments to statute which allow an alcoholic beverage manufacturer the ability to sell or donate alcoholic beverages to nonprofit or tax-exempt organizations for fundraising events.

The department proposes to replace the 100-barrel threshold in (3) and (4) with 200 gallons to implement the HB 97 revision to the definition of small brewery to those breweries that produce not less than 200 gallons or more than 60,000 barrels of beer annually nationwide.

Similar to the department's amendments to ARM 42.13.405, the department proposes to amend (3)(g) and (4)(i) of this rule to reflect HB 254 statutory changes which allow curbside orders to be placed online, through the phone, or in person.

The department also proposes new (4)(j) to implement Senate Bill 312 (2023) (SB 312). SB 312 allows brewers to collaborate in the manufacturing of a distinct collaboration beer to provide prior notification to the department and limits the service of the collaboration beer in a calendar year. The department proposes a seven-business-day notice requirement so it can properly notify any impacted groups ahead of the proposed activity, and also proposes to adopt a definition for "distinct collaboration beer" which the department believes is necessary for administration of this rule.

42.13.802 DISTILLERY - CONDITIONS FOR OPERATING (1) In addition to all other alcoholic beverage licensing requirements, a distillery shall:

(a) not sell, deliver, or provide any alcoholic beverages until the licensee has obtained a certificate of label approval or an exemption from label approval from the Alcohol and Tobacco Tax and Trade Bureau and product approval from the department;

(b) except as provided in 16-4-401(9), MCA, not possess any interest in real or personal property owned, occupied, or used by an alcoholic beverage retailer in the conduct of the retailer's business;

(c) store alcoholic beverages only on the premises;

(d) store on the premises only the alcoholic beverages for which the premises are licensed or those authorized under an approved alternating proprietor arrangement;

(e) except as provided in 16-3-316(4)(a), MCA, sell and deliver its product in Montana only in original packaging and to the department; and

(f) maintain records documenting its business operations including, but not limited to, the sale, production, storage, and processing of alcoholic beverages on the premises.

(2) A license to operate a distillery is not a retail license.

(3) In addition to all other requirements, a microdistillery shall:

(a) electronically file all required alcoholic beverage tax returns and pay any taxes owed as provided in law;

- (b) only transfer alcoholic beverages from a manufacturing area or storage area to a sample room in original packaging;
 - (c) prevent the consumption of alcoholic beverages in the manufacturing area or storage area except as authorized by federal law;
 - (d) prevent the self-service of alcoholic beverages on the premises;
 - (e) prevent the consumption or possession of alcoholic beverages on the premises by persons who are under 21 years of age or actually, apparently, or obviously intoxicated;
 - (f) prevent the on-premises consumption of alcoholic beverages not sold or provided at the premises and those sold in original packaging for off-premises consumption;
 - (g) only provide alcoholic beverages to consumers at a microdistillery for on-premises or off-premises consumption that have been produced at the microdistillery. For purposes of this requirement only, an alcoholic beverage is considered to have been produced at a microdistillery only if:
 - (i) on a quarterly basis, at least 90 percent of the liquor provided at the microdistillery for on-premises or off-premises consumption was distilled at the microdistillery; and
 - (ii) all liquor provided at the microdistillery for on-premises and off-premises consumption contains alcohol that was distilled at the microdistillery;
 - (h) notify the department of the percentage of alcohol distilled at the microdistillery for each liquor product prior to providing the product to consumers at the microdistillery for on-premises or off-premises consumption. The microdistillery shall notify the department of any changes to the percentages on file with the department prior to providing the changed product to consumers.
- (4) In addition to all other requirements, a microdistillery that operates a sample room shall:
- (a) refrain from providing alcoholic beverages to consumers for on-premises consumption until a sample room is approved by the department;
 - (b) prevent the consumption or possession of alcoholic beverages outside of an approved sample room and any approved patio/deck;
 - (c) prevent the sale of alcoholic beverages for on-premises consumption between 8 p.m. and 10 a.m.;
 - ~~(e)~~ (d) prevent the consumption or possession of alcoholic beverages on the premises between 8 9 p.m. and 10 a.m. by removing all alcoholic beverages other than those sold for off-premises consumption pursuant to (5) from individuals' possession by 8 9 p.m.; and
 - ~~(d)~~ (e) regardless of the liquor product's alcohol content, provide no more than a combined total of 2 ounces of liquor products approved for labeling or exempt from labeling for on-premises consumption or prepared servings for curbside pickup to any individual during a business day.
- (5) In addition to all other requirements, a microdistillery that conducts off-premises sales shall:
- (a) sell alcoholic beverages only in original packaging;
 - (b) sell alcoholic beverages only in an approved sample room except for curbside pickup, including a drive-through window, that were ordered online, in person, or through the phone;

(c) sell no more than ~~1.75~~ 4.5 liters of liquor product approved for labeling or exempt from labeling in one day to an individual;

(d) sell alcoholic beverages for off-premises consumption only between 8 a.m. and 2 a.m.; and

(e) deliver alcoholic beverages only to the department or an agency liquor store; the delivery of alcoholic beverages to consumers off-site is prohibited.

AUTH: 16-1-303, 16-1-424, MCA

IMP: 16-1-404, 16-3-301, 16-3-304, 16-3-305, 16-3-312, 16-4-311, 16-4-312, 16-4-501, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.13.802(1)(b) to implement HB 305. Among its other enactments, HB 305 changed general licensure requirements in 16-4-401, MCA, to permit an ownership interest in both a manufacturing license and a retail license under certain conditions.

Similar to the department's amendments to ARM 42.13.405(1)(e) and 42.13.601(1)(e), the department proposes to amend (1)(e) of this rule to reflect HB 97 enactments which allow an alcoholic beverage manufacturer the ability to sell or donate alcoholic beverages to nonprofit or tax-exempt organizations for fundraising events.

The department proposes to incorporate the text in proposed (4)(c) and amend the hours referenced in proposed (4)(d) to implement HB 539 which requires distilleries to have the same sample hours as small breweries.

Similar to the department's amendments to ARM 42.13.405 and 42.13.601, the department proposes to amend (5)(b) to reflect HB 254's allowance of curbside orders to be placed online, through the phone, or in person.

Lastly, the department proposes the amendment in (5)(c) to implement an HB 539 enactment which increased the amount of liquor a distillery can sell to an individual for off-premises consumption per day from 1.75 liters to 4.5 liters.

42.13.804 MICRODISTILLERY - MONTHLY TAX RETURN (1) Each microdistillery shall electronically file with the department a monthly Excise and License Tax Return, as required by 16-1-424, MCA, reporting the following information:

(a) the total number of gallons distilled during the preceding calendar month to verify the distillery qualifies as a microdistillery based on its production level;

(b) the total number of bottles transferred to the sample room for on-premises consumption with or without charge at the distillery;

(c) the total number of bottles transferred to a colocated license at the colocated premises;

~~(c)~~ (d) the total number of bottles sold to consumers at retail for off-premises consumption;

(e) the total number of bottles donated to nonprofit and tax-exempt organizations, pursuant to 16-3-316, MCA;

(f) the total number of bottles brought to a state-allowed industry trade show pursuant to 16-1-307, MCA; and

(d) (g) the total amount of liquor excise tax and liquor license tax due for the month being reported.

(2) All product provided to a consumer by the microdistillery must have a standard quotation and specification form on file with the department. If no form is provided to the department or, at the department's discretion, if the form provided is or appears to be incomplete or inaccurate, the department may determine the per-bottle liquor excise tax and liquor license tax that the distillery must pay. The liquor excise tax and liquor license tax will be determined by using the higher of:

(a) the retail selling price set by the microdistillery as the posted price; or
(b) an average cost for products within the same category and size by other domestic distilleries that sell product to the department.

(3) The department will notify the microdistillery of the posted price per bottle, the per-bottle liquor excise tax, and the liquor license tax amounts as determined in (2).

(4) The return must be accompanied by payment of the tax pursuant to 16-1-424, MCA, on or before the 15th day of each month for liquor sold during the previous month.

AUTH: 16-1-303, 16-1-424, MCA

IMP: 16-1-404, 16-1-424, 16-4-311, 16-4-312, 16-4-501, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.13.804 to implement HB 305. Among its other enactments, HB 305 changed general licensure requirements in 16-4-401, MCA, which permits an ownership interest in both a manufacturing license and a retail license under certain conditions, allows a manufacturer and retailer with complete ownership to be colocated in the same premises, and allows for the transfer of product between the two licenses.

The department proposes (1)(c) to clarify that when product is transferred at a colocated premises, the microdistillery is still responsible for paying the taxes on the product.

Similar to the department's other proposals and necessity for rulemaking stated above, the department proposes (1)(e) to implement the HB 95 allowance for manufacturers to donate alcoholic beverage to nonprofits and tax-exempt organizations and to clarify that a microdistillery is still responsible for paying the taxes on donated product.

The department proposes the amendment in (1)(f) to require reporting of alcoholic beverage inventory brought to an industry trade show, described in 16-1-307, MCA, as enacted under HB 120, and provided in ARM 42.12.150.

42.13.901 DEFINITIONS The following definitions apply to this subchapter:

(1) "Acceptable forms of identification" include:

- (a) state driver license or identification card;
- (b) Canadian driver license or identification card;
- (c) passport;
- (d) tribal identification card; and

(e) any form of government-issued identification whether issued digitally or in a hard-copy version.

(2) "Combined exam score" means the overall score of an exam administered by a private training provider where the Montana portion of the exam is weighted as 50 percent of the overall exam score.

(3) "House policies" means a company policy that dictates how a certain situation, activity, or process should be handled.

(4) "Incident log" means a document that tracks situations occurring on the licensed premises.

(5) "Private training provider" means a private business that provides responsible alcohol sales and service training using a program that is approved by the department.

(6) "Proof of training document" means a document stating the program name, training date, participant's name, and participant's date of birth, that is issued to a participant who obtained a score of 80 percent or more on the exam.

(7) "State trainer" means an individual that is approved by the department to provide responsible alcohol sales and service training using the department's curriculum.

(8) "Training records" means records submitted to the department by a private training provider that include the program name, training date, whether training was online or in person, and each participant's name, date of birth, and combined exam score.

AUTH: 16-4-1009, MCA

IMP: 16-4-1006, MCA

REASONABLE NECESSITY: The department proposes to amend the definition of "acceptable forms of identification" in ARM 42.13.901(1) because numerous states have authorized an individual's use of either a digital or hard-copy version of their driver's license and alcoholic beverages licensees and their employees often validate an individual's age to purchase alcoholic beverages via their driver's license.

While the Montana Legislature enacted House Bill 519 (2023) (HB 519) to implement digital driver's license changes to 61-5-116, MCA, HB 519 is not effective until September 1, 2025. Independent of HB 519, the department believes the proposed amendment is necessary, reflects a change in the modernization of identification, and lies within the department's authority under 16-1-303, MCA, to allow licensees to accept valid issuance of digital identification.

42.13.1002 ALTERNATING PROPRIETOR ON A MANUFACTURER'S PREMISES (1) An alternating proprietor arrangement occurs when a tenant manufacturer utilizes the licensed premises and equipment of a host manufacturer to produce and/or package alcoholic beverages.

(2) The tenant must be licensed by the department to manufacture the alcoholic beverages to be produced and/or packaged.

(3) The tenant and host must seek the department's approval for each alternating proprietor arrangement necessitating approval by the Alcohol and Tobacco Tax and Trade Bureau.

(4) To apply, the tenant and host shall submit a complete application to the department that includes:

(a) documentation of Alcohol and Tobacco Tax and Trade Bureau approval;
(b) a description of the areas and equipment to be used by the tenant;
(c) a copy of the host's floor plan identifying the areas to be used by the tenant; and

(d) a copy of the executed agreement between the tenant and host.

(5) The department shall notify the tenant and host in writing of its approval or denial of the alternating proprietor arrangement within 15 business days of receiving all requested information.

(6) The tenant and host shall notify the department in writing within ten business days of receiving notice from the Alcohol and Tobacco Tax and Trade Bureau that approval for an existing alternating proprietor arrangement has been revoked.

(7) All regulations set forth in Title 27 of the Code of Federal Regulations, in effect on October 5, 2015, addressing alternating proprietor arrangements are adopted by reference, except where the provisions of those regulations may be contrary to or inconsistent with the provisions of Montana law or department rule. Copies may be obtained from the United States Treasury at www.ttb.gov. Failure to comply with those regulations shall constitute a violation of this rule and may subject the tenant and host to administrative action, including revocation of their manufacturing licenses.

(8) The tenant shall maintain possession, title, and control over all raw materials and its product on the host's premises.

(9) The tenant's product must be separate and identifiable from the products of all other tenants and the host at all stages of production and through removal of the product from the host's premises.

(10) The tenant and host shall keep separate records of their respective production and removals. The department may make an examination of any records kept by the tenant and host.

(11) The host is prohibited from selling, providing, or distributing the tenant's product, with or without charge, in the host's sample room, on its licensed premises, or elsewhere.

(12) The tenant must adhere to all applicable distribution requirements set forth in the Montana Alcoholic Beverage Code.

(13) In addition to all other requirements imposed by this rule, where the tenant is a brewery:

(a) for purposes of the tax imposed by 16-1-406, MCA:

(i) wholesalers shall pay the tax due on beer purchased from the tenant; and
(ii) the tenant shall pay the tax due on beer sold directly to consumers and retailers;

(b) for purposes of the tax imposed by 16-1-406, MCA, the small brewery 60,000-barrel production cap in 16-3-213 and 16-3-214, MCA, all beer produced by a tenant at a host's premises shall be considered as part of the tenant's annual nationwide production; and

(c) a tenant with an annual nationwide production between ~~400~~ 200 gallons and 60,000 barrels may provide, with or without charge, beer in its sample room only

if the beer was brewed and fermented at its premises. This restriction includes a prohibition against a tenant providing beer in its sample room that was brewed or fermented at a host's premises. A tenant that brewed and fermented beer at its premises and packaged the beer at a host's premises may provide that beer, with or without charge, in the tenant's sample room.

(14) In addition to all other requirements imposed by this rule, where the tenant is a winery:

(a) for purposes of the tax imposed by 16-1-411, MCA:

(i) wholesalers shall pay the tax due on wine purchased from the tenant; and

(ii) the tenant shall pay the tax due on wine sold directly to consumers and retailers; and

(b) a tenant may provide, with or without charge, wine for consumption on its licensed premises that was produced and/or packaged at its premises or a host's premises.

(15) In addition to all other requirements imposed by this rule, where the tenant is a distillery:

(a) for purposes of the taxes imposed by 16-1-401 and 16-1-404, MCA, agency liquor stores shall pay the tax due on liquor purchased from the department;

(b) for purposes of the taxes imposed by 16-1-401 and 16-1-404, MCA, and the microdistillery 200,000 proof gallon production cap set forth in 16-4-310, MCA, all liquor produced by a tenant at a host's premises shall be considered liquor produced by the tenant; and

(c) a tenant distillery with an annual production of 200,000 proof gallons or less may provide, with or without charge, liquor in its sample room only if the liquor was produced at its premises. This restriction includes a prohibition against a tenant distillery providing liquor in its sample room that was produced at a host's premises, subject to the production exception in ARM 42.13.802.

(16) When the host manufacturer's licensed premises is a colocated premises, as allowed in 16-4-401, MCA, the tenant manufacturer may only utilize the manufacturing area. Retail sales by the tenant manufacturer on the host manufacturer's premises are prohibited.

~~(16)~~ (17) An alternating proprietor arrangement may only be conducted in accordance with the provisions of this rule. Failure to abide by the provisions of this rule may subject the tenant and host to administrative action, including revocation of their manufacturing licenses.

AUTH: 16-1-201, 16-1-303, MCA

IMP: 16-1-201, 16-1-401, 16-1-404, 16-1-406, 16-1-411, 16-3-213, 16-3-214, 16-4-310, 16-4-311, 16-4-312, 16-4-406, MCA

REASONABLE NECESSITY: Similar to the department's proposed amendments and justification for ARM 42.13.601, the department proposes to amend ARM 42.13.1002(13)(c) to implement HB 97's amendment to 16-3-213, MCA, which revised the definition of small brewery to those breweries that produce not less than 200 gallons or more than 60,000 barrels of beer annually nationwide.

The department also proposes the inclusion of proposed (16) to establish suitability requirements for colocated premises and aligns with the Alcoholic Beverage Code and the department's existing administrative rules.

42.13.1003 CONTRACT MANUFACTURING (1) Contract manufacturing occurs when a manufacturer utilizes its licensed premises and equipment to produce and/or package alcoholic beverages for another manufacturer to sell, called the client.

(2) The contract manufacturer and the client must be licensed by the department to manufacture the alcoholic beverages to be produced and/or packaged.

(3) The contract manufacturer and client must seek the department's approval prior to engaging in a contract manufacturing arrangement. To apply, the contract manufacturer and client shall submit a complete application to the department.

(4) The department shall notify the contract manufacturer and client in writing of its approval or denial of the contract manufacturing arrangement within 15 business days of receiving all requested information.

(5) The sale and distribution of alcoholic beverages manufactured by the contract manufacturer may only be conducted as follows:

(a) a contract manufacturer is prohibited from selling, providing, or distributing the product, with or without charge, in the contract manufacturer's sample room, on its licensed premises, or elsewhere;

(b) the contract manufacturer may only sell the product to the client; and

(c) once the client holds title to the product, the client must adhere to all applicable distribution requirements in the Montana Alcoholic Beverage Code, the same as though the client produced the product.

(6) The contract manufacturer and client shall maintain control over their separate business records at all times. The department may make an examination of the records of the contract manufacturer or client.

(7) In addition to all other requirements imposed by this rule, where the client is a brewery:

(a) for purposes of the tax imposed by 16-1-406, MCA:

(i) wholesalers shall pay the tax due on beer purchased from the client; and

(iii) the client shall pay the tax due on beer sold directly to consumers and retailers;

(b) for purposes of the tax imposed by 16-1-406, MCA, the small brewery 60,000-barrel production cap set forth in 16-3-213 and 16-3-214, MCA, all beer produced by the contract manufacturer for the client shall be considered as part of the client's annual nationwide production; and

(c) a client with an annual nationwide production between ~~400~~ 200 gallons and 60,000 barrels may provide, with or without charge, beer in its sample room only if the beer was brewed and fermented at its premises. This restriction includes a prohibition against a client providing beer in its sample room that was brewed or fermented at a contract manufacturer's premises. A client that brewed and fermented beer at its premises and then had the beer packaged at a contract

manufacturer's premises may provide that beer, with or without charge, in the client's sample room.

(8) In addition to all other requirements imposed by this rule, where the client is a winery:

(a) for purposes of the tax imposed by 16-1-411, MCA:

(i) wholesalers shall pay the tax due on wine purchased from the client; and

(ii) the client shall pay the tax due on wine sold directly to consumers and retailers; and

(b) the client may provide, with or without charge, wine for consumption on its licensed premises only if the wine was produced by the client. This restriction includes a prohibition against the client providing wine that was produced by a contract manufacturer. A client that produced the wine at its premises and then had the wine packaged at a contract manufacturer's premises may provide that wine, with or without charge, for consumption on its licensed premises.

(9) In addition to all other requirements imposed by this rule, where the client is a distillery:

(a) for purposes of the taxes imposed by 16-1-401 and 16-1-404, MCA, agency liquor stores shall pay the tax due on liquor purchased from the department;

(b) for purposes of the taxes imposed by 16-1-401 and 16-1-404, MCA, and the microdistillery 200,000 proof gallon production cap set forth in 16-4-310, MCA, all liquor produced by a contract manufacturer for the client shall be considered as part of the client's annual nationwide production; and

(c) a client with an annual production of 200,000 proof gallons or less may provide, with or without charge, liquor in its sample room only if the liquor was produced at its premises. This restriction includes a prohibition against a client providing liquor in its sample room that was produced at a contract manufacturer's premises, subject to the production exception in ARM 42.13.802.

(10) Except as provided in (11), a contract manufacturing arrangement may only be conducted in accordance with the provisions of this rule. Failure to abide by the provisions of this rule may subject the contract manufacturer and client to administrative action, including revocation of their manufacturing licenses.

(11) The department may approve a contract manufacturing arrangement that does not fit within the bounds of this rule only if the proposed arrangement is not prohibited by federal and state alcoholic beverage regulations. This may include a contract manufacturing arrangement where the client is not located in Montana.

AUTH: 16-1-303, MCA

IMP: 16-1-401, 16-1-404, 16-1-406, 16-1-411, 16-3-213, 16-3-214, 16-4-310, 16-4-311, 16-4-312, 16-4-406, MCA

REASONABLE NECESSITY: Similar to the department's proposed amendments and necessity for ARM 42.13.601 and 42.13.1002, the department proposes to amend ARM 42.13.1003(7)(c) to implement HB 97's revision to 16-3-213, MCA, which revised the definition of small brewery to those breweries that produce not less than 200 gallons or more than 60,000 barrels of beer annually nationwide.

42.13.1102 ALL-BEVERAGES LICENSE - CONDITIONS FOR OPERATING

(1) In addition to all other alcoholic beverage licensing requirements, an all-beverages licensee shall:

(a) only purchase and possess on the premises liquor and fortified wine from an agency liquor store, beer from a beer wholesaler or brewery, and table wine from a table wine distributor or winery, except as permitted under 16-3-301(8), 16-4-213, 16-4-401(9)(e), 16-4-404(7), and 16-6-306(3), MCA, ~~and described in (5)~~;

(b) store alcoholic beverages only on the premises or in an approved noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility, as applicable;

(c) offer liquor, beer, and wine for on-premises consumption;

(d) prevent the self-service of alcoholic beverages on the premises;

(e) prevent the sale of alcoholic beverages for on-premises or off-premises consumption between 2 a.m. and 8 a.m.;

(f) prevent the consumption or possession of alcoholic beverages on the premises between 2 a.m. and 8 a.m. by removing all alcoholic beverages other than those sold for off-premises consumption pursuant to (2) from individuals' possession by 2 a.m.;

(g) prevent the consumption or possession of alcoholic beverages on the premises by persons who are under 21 years of age or actually, apparently, or obviously intoxicated; and

(h) prevent the on-premises consumption of alcoholic beverages not sold or provided at the premises and those sold in original packaging, prepared servings, or growlers for off-premises consumption, except as described in (5).

(2) An all-beverages licensee may sell alcoholic beverages for off-premises consumption under the following conditions:

(a) alcoholic beverages must be sold in original packaging, prepared servings filled at the time of sale, or growlers of beer or table wine filled at the time of sale; and

(b) the sale of alcoholic beverages must occur on the premises, except as provided in (3) and (4).

(3) An all-beverages licensee may use curbside pickup, including a drive-through window, to sell alcoholic beverages that were ordered online, in person, or through the phone.

(4) An all-beverages licensee may deliver alcoholic beverages to a customer off-site under the following conditions:

(a) the licensee must apply for, and be issued, a delivery endorsement from the department. The application fee for the delivery endorsement is \$200;

(b) alcoholic beverage delivery is limited to beer and wine in original packaging. The delivery of liquor is prohibited;

(c) the licensee may deliver alcoholic beverages if the delivery includes food purchased from and prepared by the licensee. The purchase price of the delivered beer and wine may not exceed the purchase price of the delivered food; and

(d) the licensee must use its employees who are 21 years of age or older for all food deliveries that include alcoholic beverages. Third-party delivery companies are prohibited.

(5) An all-beverages licensee may open and serve wine from a sealed bottle that was brought on to the premises by a patron and may charge a corkage fee. An all-beverages licensee may purchase up to a total of six gallons of beer or table wine per day from in-state licensed retailers. The licensee shall maintain records for any beer or table wine purchased from in-state retailers separate from those for inventory purchased through ordinary means of distribution. Records shall include:

(a) the date of purchase;
(b) the type(s), brand(s), and quantity of beer or table wine purchased; and
(c) the identity of the retailer from whom the beer or table wine was purchased.

(6) An all-beverages licensee may allow a customer to take a partially consumed bottle of table wine to go if the bottle is adequately sealed with the original cork or bottle top. This provision is not intended to supersede any jurisdiction's open container laws or contravene 61-8-1026, MCA, regarding open alcoholic beverage containers in motor vehicles.

(7) If a licensee leases or subleases its kitchen, or another specified area within its premises, to allow another business entity to operate a business within the licensed premises, as conditioned in 16-3-311(1)(a), MCA, then the licensee shall ensure adequate safeguards are in place to prevent access to the alcoholic beverage inventory by the other business entity. The area leased or subleased by the licensee shall be clearly marked on the floor plan, a copy of which shall be submitted to the department.

AUTH: 16-1-303, MCA

IMP: 16-3-301, 16-3-303, 16-3-304, 16-3-305, 16-3-311, 16-3-312, 16-4-213, 16-4-405, 16-6-303, 16-6-306, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.13.1102 to implement changes to 16-4-404(7), MCA, enacted under House Bill 71 (2023) (HB 71); 16-3-312, MCA, enacted under HB 254; and 16-3-301(8), MCA, enacted under HB 539.

HB 71 expanded a licensee's ability to acquire inventory outside ordinary means of distribution. HB 254 permits curbside orders to be placed online, through the phone, or in person. HB 539, among its other enactments, allows licensed retailers to purchase beer and table wine from another licensed in-state retailer subject to the limitations in 16-3-301, MCA.

The department's proposed amendments to (1)(a) are for HB 71 implementation.

The department proposes the amendment in (3) to implement HB 254 and for consistency with 16-3-312, MCA, as amended.

The department proposes to remove the first sentence in (5), which is unrelated to legislative enactment, because the requirement does not lend to an improved understanding of the requirement provided in 16-6-306(3), MCA. As with other "operating conditions" rules, however, the department proposes to add HB 539 changes to 16-3-301, MCA, into (5) which the department contends is a necessary reiteration of the statute, is consistent with other existing department rules in the chapter, and improves licensee referencing of operational requirements.

The department's addition of proposed (6), while unrelated to legislation, is the result of licensee feedback regarding operation of 16-6-306(3), MCA, and is proposed to clarify the disposition of any remaining patron-provided alcoholic beverages prior to their leaving the premises after meal service has concluded.

The department also proposes (7) which is necessary to implement other HB 539 changes to 16-3-311, MCA, which allows an additional business to operate within a licensed premises without floor-to ceiling walls, and without a concession agreement if the other business does not take orders, serve alcohol, or deliver alcohol and uses a separate point of sale system. Proposed (7) continues a necessary statutory premises requirement that a licensee have sufficient safeguards to prevent access by others to its alcoholic beverage inventory.

42.13.1103 RESTAURANT BEER AND WINE LICENSE - CONDITIONS FOR OPERATING (1) In addition to all other alcoholic beverage licensing requirements, a restaurant beer and wine licensee shall:

(a) only purchase and possess on the premises fortified wine from an agency liquor store, beer from a beer wholesaler or brewery, and table wine from a table wine distributor or winery, except as permitted under 16-3-301(8), 16-4-404(7), and 16-6-306(3), MCA, ~~and described in (5)~~;

(b) store alcoholic beverages only on the premises or in an approved noncontiguous alcoholic beverage storage area;

(c) offer beer and wine for on-premises consumption;

(d) serve beer and wine only to patrons who order food;

(e) state alcoholic beverage sales on the food bill;

(f) obtain at least 65 percent of its annual gross income from the sale of food, excluding the sale of nonalcoholic beverages;

(g) prevent the self-service of alcoholic beverages on the premises;

(h) prevent the sale of alcoholic beverages between 11 p.m. and 11 a.m.;

(i) prevent the consumption or possession of alcoholic beverages on the premises between 11 p.m. and 11 a.m. by removing all alcoholic beverages from individuals' possession by 11 p.m. other than those sold for off-premises consumption pursuant to (2);

(j) prevent the consumption or possession of alcoholic beverages on the premises by persons who are under 21 years of age or actually, apparently, or obviously intoxicated; and

(k) prevent the consumption of alcoholic beverages that were not purchased at the premises, except as described in (5).

(2) A restaurant beer and wine licensee may sell alcoholic beverages for off-premises consumption under the following conditions:

(a) food must be included in the purchase and the alcoholic beverages stated on the customer's bill;

(b) alcoholic beverages must be sold in original packaging, prepared servings, or growlers filled at the time of sale; and

(c) the sale of alcoholic beverages must occur on the premises, except for curbside pickup, including a drive-through window, that were ordered online, in person, or through the phone.

(3) A restaurant beer and wine licensee may deliver alcoholic beverages to a customer off-site under the following conditions:

(a) the licensee must apply for, and be issued, a delivery endorsement from the department. The application fee for the delivery endorsement is \$200;

(b) alcoholic beverage delivery is limited to beer and wine in original packaging;

(c) the delivery must include food purchased from and prepared by the licensee. The purchase price of the delivered beer and wine may not exceed the purchase price of the delivered food; and

(d) the licensee must use its employees who are 21 years of age or older for all food deliveries that include alcoholic beverages. Third-party delivery companies are prohibited.

(4) In addition to the requirements in (1) through (3), any restaurant for which a restaurant beer and wine license was not in effect as of April 9, 2009, shall:

(a) serve an evening dinner meal at least four days a week for at least two hours a day between 5 p.m. and 11 p.m.; and

(b) sell the majority of its food and drinks, excluding any carry-out business, in nondisposable containers.

~~(5) A restaurant beer and wine licensee may open and serve wine from a sealed bottle that was brought on to the premises by a patron and may charge a corkage fee.~~ A restaurant beer and wine licensee may purchase up to a total of six gallons of beer or table wine per day from licensed in-state retailers. The licensee shall maintain records for beer or table wine purchased from in-state retailers separate from those for inventory purchased through ordinary means of distribution. Records shall include:

(a) the date the beer or table wine was purchased;

(b) the type(s), brand(s), and quantity of beer or table wine purchased; and

(c) the identity of the in-state retailer from whom the beer or table wine was purchased.

(6) A restaurant beer and wine licensee may allow a customer to take partially consumed bottles of wine to go if the bottle is adequately sealed with the original cork or bottle top. This provision is not intended to supersede any jurisdiction's open container laws or contravene 61-8-1026, MCA, regarding open alcoholic beverage containers in motor vehicles.

(7) If a licensee leases or subleases its kitchen, or another specified area, to allow another business entity to operate a business within the licensed premises, as conditioned in 16-3-311(1)(a), MCA, then the licensee shall ensure adequate safeguards are in place to prevent access to the alcoholic beverage inventory by the other business entity. The area leased or subleased by the licensee shall be clearly marked on the floor plan, a copy of which shall be submitted to the department.

(8) A licensee which leases or subleases its kitchen, or another specified area of its licensed premises, must still meet the definition of "restaurant" and fulfill the license requirements stated in 16-4-420, MCA.

AUTH: 16-1-303, MCA

IMP: 16-3-301, 16-3-305, 16-3-311, 16-3-312, 16-4-405, 16-4-420, 16-6-306,
MCA

REASONABLE NECESSITY: The department propose to amend ARM 42.13.1103 to implement changes to 16-4-404(7), MCA, enacted under HB 71; 16-3-312, MCA, enacted under HB 254; and 16-3-301(8), MCA, enacted under HB 539.

HB 71 expanded a licensee's ability to acquire inventory outside ordinary means of distribution. HB 254 permits curbside orders to be placed online, through the phone, or in person. HB 539, among its other enactments, allows licensed retailers to purchase beer and table wine from another licensed in-state retailer subject to the limitations in 16-3-301, MCA.

The department's proposed amendments to (1)(a) are for HB 71 implementation.

The department proposes the amendment in (2)(c) to implement HB 254 and for consistency with 16-3-312, MCA, as amended.

The department proposes to remove the first sentence in (5), which is unrelated to legislative enactment, because the requirement does not lend to an improved understanding of the requirement provided in 16-6-306(3), MCA. As with other "operating conditions" rules, however, the department proposes to add HB 539 changes to 16-3-301, MCA, into (5) which the department contends is a necessary reiteration of the statute, is consistent with other existing department rules in the chapter, and improves licensee referencing of operational requirements.

The department's addition of proposed (6), while unrelated to legislation, is the result of licensee feedback regarding operation of 16-6-306(3), MCA, and is proposed to clarify for licensees the disposition of any remaining patron-provided alcoholic beverages prior to their leaving the premises after meal service has concluded.

The department also proposes (7) which is necessary to implement other HB 539 changes to 16-3-311, MCA, which allows an additional business to operate within a licensed premises without floor-to ceiling walls and without a concession agreement if the other business does not take orders, serve alcohol, or deliver alcohol and uses a separate point of sale system. Proposed (7) continues a necessary statutory premises requirement that a licensee have sufficient safeguards to prevent access by others to its alcoholic beverage inventory.

The department proposes the addition of new (8) because 16-3-311, MCA, as amended, did not override the specific requirements provided in 16-4-420, MCA, for operating a restaurant and the rule section is a necessary notification for this license type.

42.13.1104 ON-PREMISES CONSUMPTION BEER AND WINE LICENSE - CONDITIONS FOR OPERATING

(1) In addition to all other alcoholic beverage licensing requirements, an on-premises consumption beer and wine licensee shall:

(a) only purchase and possess on the premises beer from a beer wholesaler or brewery, fortified wine from an agency liquor store, and table wine from a table wine distributor or winery, except as permitted under 16-3-301(8), 16-4-401(9)(e), 16-4-404(7), and 16-6-306(3), MCA, and described in (6);

(b) store alcoholic beverages only on the premises or in an approved noncontiguous alcoholic beverage storage area;

(c) offer beer and wine for on-premises consumption;

- (d) prevent the self-service of alcoholic beverages on the premises;
- (e) prevent the sale of alcoholic beverages for on-premises or off-premises consumption between 2 a.m. and 8 a.m.;
- (f) prevent the consumption or possession of alcoholic beverages on the premises between 2 a.m. and 8 a.m., by removing all alcoholic beverages other than those sold for off-premises consumption pursuant to ~~(3)~~ (2) from individuals' possession by 2 a.m.;
- (g) prevent the consumption or possession of alcoholic beverages on the premises by persons who are under 21 years of age or actually, apparently, or obviously intoxicated; and
- (h) prevent the on-premises consumption of alcoholic beverages not sold or provided at the premises and those sold for off-premises consumption pursuant to ~~(3)~~ (2).

~~(2) In addition to the requirements and exceptions in (1), an on-premises consumption beer licensee with a wine amendment shall:~~

- ~~(a) only purchase and possess on the premises fortified wine from an agency liquor store and table wine from a table wine distributor or winery, except as described in (6);~~
- ~~(b) offer wine for on-premises consumption; and~~
- ~~(c) operate a restaurant or prepared food business on the premises.~~

~~(3) (2)~~ An on-premises consumption beer and wine licensee ~~and an on-premises consumption beer licensee with a wine amendment~~ may sell alcoholic beverages for off-premises consumption under the following conditions:

- (a) alcoholic beverages must be sold in original packaging, prepared servings filled at the time of sale, or growlers of beer or table wine filled at the time of sale; and
- (b) except as provided in ~~(5)~~ (4) and ~~(6)~~ (5), the sale of alcoholic beverages must occur on the premises.

~~(4) (3)~~ An on-premises consumption beer and wine licensee ~~and an on-premises consumption beer licensee with a wine amendment~~ may use curbside pickup, including a drive-through window, to sell alcoholic beverages that were ordered online, in person, or through the phone.

~~(5) (4)~~ An on-premises consumption beer and wine licensee ~~and an on-premises consumption beer licensee with a wine amendment~~ may deliver alcoholic beverages to a customer off-site under the following conditions:

- (a) the licensee must apply for, and be issued, a delivery endorsement from the department. The application fee for the delivery endorsement is \$200;
- (b) alcoholic beverage delivery is limited to beer and wine ~~—depending on the license amendment—~~ in original packaging;
- (c) the licensee may deliver alcoholic beverages if the delivery includes food purchased from and prepared by the licensee. The purchase price of the delivered beer and wine ~~—depending on the license amendment—~~ may not exceed the purchase price of the delivered food; and
- (d) the licensee must use its employees who are 21 years of age or older for all food deliveries that include alcoholic beverages. Third-party delivery companies are prohibited.

~~(6) (5) An on-premises consumption beer licensee and an on-premises consumption beer licensee with a wine amendment may open and serve wine from a sealed bottle that was brought on to the premises by a patron and may charge a corkage fee. An on-premises consumption beer and wine licensee may purchase up to a total of six gallons of beer or table wine per day from licensed in-state retailers. The licensee shall maintain records for beer or table wine purchased from in-state retailers separate from those for inventory purchased through ordinary means of distribution. Records shall include:~~

~~(a) the date the beer or table wine was purchased;
(b) the type(s), brand(s), and quantity of beer or table wine purchased; and
(c) the identity of the retailer from whom the beer or table wine was purchased.~~

~~(6) An on-premises consumption beer and wine licensee may allow a customer to take partially consumed bottles of wine with them to go if the bottle is adequately sealed with the original cork or bottle top. This provision is not intended to supersede any jurisdiction's open container laws or contravene 61-8-1026, MCA, regarding open alcoholic beverage containers in motor vehicles.~~

~~(7) If a licensee leases or subleases its kitchen, or another specified area within its premises, to allow another business entity to operate a business within the licensed premises, as conditioned in 16-3-311(1)(a), MCA, then the licensee shall ensure adequate safeguards are in place to prevent access to the alcoholic beverage inventory by the other business entity. The area leased or subleased by the licensee shall be clearly marked on the floor plan, a copy of which shall be submitted to the department.~~

AUTH: 16-1-303, MCA

IMP: 16-3-301, 16-3-303, 16-3-304, 16-3-305, 16-3-311, 16-3-312, 16-3-411, 16-4-104, 16-4-105, 16-4-405, 16-6-306, MCA

REASONABLE NECESSITY: The department propose to amend ARM 42.13.1104 to implement changes to 16-4-105, MCA, enacted under HB 68; 16-4-404(7), MCA, enacted under HB 71; 16-3-312, MCA, enacted under HB 254; and 16-3-301(8), MCA, enacted under HB 539.

HB 68 removed the optional wine amendment to a retail on-premises consumption beer license that was provided in 16-4-105, MCA, and all licenses are an on-premises consumption retail beer and wine license. HB 71 expanded a licensee's ability to acquire inventory outside ordinary means of distribution. HB 254 amended 16-3-312, MCA, to allow curbside orders to be placed online, through the phone, or in person. HB 539, among its other enactments, allows licensed retailers to purchase beer and table wine from another licensed in-state retailer subject to the limitations in 16-3-301, MCA.

To implement HB 68, the department must amend the catchphrase of the rule, amend all internal references to the license type, and remove text that pertained to wine amendments to align the rule with the revised statute.

The department's proposed amendments to (1)(a) are for HB 71 implementation.

The department proposes an amendment in proposed (3) to implement HB 254 for consistency with the statute.

The department proposes to remove the first sentence in proposed (5), which is unrelated to legislative enactment, because the requirement does not lend to an improved understanding of the requirement provided in 16-6-306(3), MCA. As with other "operating conditions" rules, however, the department proposes to add HB 539 changes to 16-3-301, MCA, into proposed (5) which the department contends is a necessary reiteration of the statute, is consistent with other existing department rules in the chapter, and improves licensee referencing of operational requirements.

The department's addition of proposed (6), while unrelated to legislation, is the result of licensee feedback regarding operation of 16-6-306(3), MCA, and is proposed to clarify for licensees the disposition of any remaining patron-provided alcoholic beverages prior to their leaving the premises after meal service has concluded.

The department also proposes new (7) which is necessary to implement other HB 539 changes to 16-3-311, MCA, which allows an additional business to operate within a licensed premises without floor-to ceiling walls and without a concession agreement if the other business does not take orders, serve alcohol, or deliver alcohol and uses a separate point of sale system. Proposed (7) continues a necessary statutory premises requirement that a licensee have sufficient safeguards to prevent access by others to its alcoholic beverage inventory.

42.13.1105 OFF-PREMISES CONSUMPTION BEER AND TABLE WINE LICENSE - CONDITIONS FOR OPERATING (1) In addition to all other alcoholic beverage licensing requirements, an off-premises consumption beer and table wine licensee shall:

(a) only purchase and possess on the premises beer from a beer wholesaler or brewery and table wine from a table wine distributor or winery except as permitted under 16-3-301(8) and 16-4-404(7), MCA;

(b) store beer and/or table wine only on the premises or in an approved noncontiguous alcoholic beverage storage area;

(c) sell beer and/or table wine for off-premises consumption only in their original packages;

(d) operate as a stand-alone beer and/or table wine business, grocery store, or drugstore licensed as a pharmacy; and

(e) prevent the sale of alcoholic beverages between 2 a.m. and 8 a.m.

(2) The sale of alcoholic beverages must occur on the premises. An off-premises consumption beer and/or table wine licensee may use curbside pickup, including a drive-through window, to sell alcoholic beverages that were ordered online, in person, or through the phone.

(3) In addition to the requirements in (1), an off-premises consumption beer and/or table wine licensee that operates in a grocery store shall maintain groceries with a retail value of at least \$3,000 at all times. The inventory must include at least three different types of items in each of the following categories: meats, vegetables, fruits, baked goods, dairy, and household supplies. For example, three different types of items in the dairy category would be cheese, milk, and butter, but skim milk,

chocolate milk, and whole milk would not be considered as three different types of items in the dairy category.

(4) The delivery of alcoholic beverages by an off-premises consumption beer and table wine licensee to the consumer off-site is prohibited.

(5) An off-premises consumption beer and/or table wine licensee may purchase up to a total of six gallons of beer or table wine per day from licensed in-state retailers. The licensee shall maintain records for beer or table wine purchased from retailers separate from those for inventory purchased through ordinary means of distribution. Records shall include:

(a) the date the beer or table wine was purchased;

(b) the type(s), brand(s), and quantity of beer or table wine purchased; and

(c) the identity of the retailer from whom the beer or table wine was purchased.

AUTH: 16-1-303, MCA

IMP: 16-3-301, 16-3-304, 16-3-305, 16-3-312, 16-4-115, 16-4-402, 16-4-405, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.13.1105 which is necessary to implement changes to 16-4-404(7), MCA, enacted under HB 71; 16-3-312, MCA, enacted under HB 254; and 16-3-301(8), MCA, enacted under HB 539.

The department's proposed amendments to (1)(a) are necessary for HB 71 implementation.

The department proposes an amendment in (2) to implement HB 254 for consistency with the statute.

The department proposes to add HB 539 changes to 16-3-301, MCA, into proposed (5) which the department contends is a necessary reiteration of the statute, is consistent with other existing department rules in the chapter, and improves licensee referencing of operational requirements.

42.13.1202 BEER WHOLESALER AND TABLE WINE DISTRIBUTOR - CONDITIONS FOR OPERATING (1) In addition to all other alcoholic beverage licensing requirements, a beer wholesaler and table wine distributor shall:

(a) maintain a fixed place of business, sufficient capital, and the facilities, storehouse, receiving house, or warehouse for the receiving, storing, and handling of beer, table wine, and sacramental wine in large quantities for distribution and sale;

(b) receive beer, table wine, and sacramental wine from an importer, brewery, winery, wholesaler, or distributor only if:

(i) the importer, brewery, winery, wholesaler, or distributor is licensed by or registered with the department;

(ii) all product labels have been approved by the department; and

(iii) an agreement of distributorship agreement is in place between the manufacturer or importer and the wholesaler or distributor and has been filed with the department in accordance with 16-3-226 and 16-3-416, MCA;

(c) store beer, table wine, and sacramental wine only on the licensed premises of its principal place of business or the premises of its licensed subwarehouse;

(d) except as provided in 16-3-219 and 16-3-418, MCA, deliver alcoholic beverages using its own employees, trucks, and equipment;

(e) sell beer, table wine, and sacramental wine only in its original packaging;

(f) sell and deliver beer, table wine, and sacramental wine under its Montana license only to the premises of other licensed wholesalers or distributors, licensed alcoholic beverage retailers, agency liquor stores, or to the location of catered events of a licensed alcoholic beverage retailer, ~~agency liquor stores,~~ special events for a special permit holder, and approved noncontiguous alcoholic beverage storage areas or resort alternate alcoholic beverage storage facilities, or under a department-approved delivery arrangement, as provided in 16-3-219, MCA. This does not in any way prohibit the licensee from operating in compliance with other state or federal law;

(g) prevent the consumption of alcoholic beverages on the licensed premises of its principal place of business and the premises of any licensed subwarehouse;

(h) not possess any interest in real or personal property owned, occupied, or used by an alcoholic beverage retailer in the conduct of the retailer's business; and

(i) electronically file all required alcoholic beverage tax returns and pay any taxes owed as provided in law.

(2) A beer wholesaler and/or table wine distributor shall only sell product under a bona fide sale. It shall not sell product on consignment, under conditional sale, with the privilege of return, or in a sale involving acquisition of other products.

(3) A beer wholesaler and/or table wine distributor shall only exchange or accept product returned from an alcoholic beverage retailer, wholesaler, or distributor for ordinary and usual commercial reasons, such as defective product, a delivery error, and discontinued product or business. It shall not accept product returned based upon the product being overstocked, slow moving, or seasonal.

AUTH: 16-1-303, MCA

IMP: 16-3-212, 16-3-219, 16-3-231, 16-3-232, 16-3-242, 16-3-301, 16-3-404, 16-3-406, 16-3-418, 16-4-103, 16-4-106, 16-4-108, 16-4-402, 16-4-415, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.13.1202 which is necessary to implement the statutory changes to 16-3-226, 16-3-416, and 16-3-420, MCA, enacted under House Bill 49 (2023) (HB 49), and the amendments enacted under HB 155. HB 49 requires wholesalers or distributors to file all agreements of distributorship between them and a brewer, beer importer, winery, or wine importer. HB 155 revised general terminology in Title 16, chapter 4, MCA, to a more current vernacular.

Based on the HB 49 requirements, the department proposes an amendment to (1)(b)(iii) for clarity that aligns the rule to the revised statute. The department proposes to amend (1)(c) and (1)(g) to reflect the location of a wholesaler or table wine distributor's business as a premises and not principal place of business for consistency with HB 155.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., June 17, 2024.

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

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 5 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.

8. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at sosmt.gov/ARM/register.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor(s) of House Bills 31, 43, 48, 49, 50, 68, 69, 70, 71, 72, 95, 96, 97, 98, 120, 123, 124, 127, 144, 145, 155, 157, 164, 166, 242, 254, 305, 455, 539, 578, 579, 783, and 867 and Senate Bills 20, 21, 59, 63, 75, 209, 264, and 312 were contacted by email on March 25, 2024 and again on April 12, 2024.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and amendment of the above-referenced rules may significantly and directly impact small businesses, but any such significant or direct small business impact is attributable to the department through the implementation of the pertinent legislation described in this rulemaking.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State April 16, 2024.