

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I, amendment of ARM 42.13.111, 42.13.201, 42.13.401, 42.13.806, 42.13.1002, 42.13.1003, and repeal of ARM 42.12.317 and 42.13.404 pertaining to implementing legislative changes to table wine, hard cider, and sacramental wine tax reporting requirements and microdistillery production changes; and updating labeling and packaging requirements)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL
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TO: All Concerned Persons

1. On September 30, 2019 at 11:30 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on September 13, 2019. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. The rule as proposed to be adopted provides as follows:

NEW RULE I TABLE WINE, HARD CIDER, AND SACRAMENTAL WINE REPORTING REQUIREMENTS (1) All wineries and table wine distributors that sell table wine, hard cider, or sacramental wine in Montana must electronically file the tax returns and reports listed in (2) through (5), on forms provided by the department, and pay any tax due in accordance with the filing frequencies prescribed in 16-1-411, MCA.

(2) The following entities shall file a wine tax return for table wine sold in Montana and a hard cider tax return for hard cider sold in Montana:

(a) registered or licensed wineries with a direct shipment endorsement for table wine, hard cider, or both sold directly to consumers;

(b) licensed wineries for table wine, hard cider, or both sold to licensed retailers;

- (c) licensed wineries, located in Montana, for table wine, hard cider, or both sold to consumers through the winery's sample room; and
 - (d) table wine distributors for table wine, hard cider, or both sold to licensed retailers.
- (3) The following licensed entities shall file a wine tax return for sacramental wine sold in Montana:
- (a) sacramental wine licensees located outside Montana for sacramental wine sold to officials of churches or other established religious organizations;
 - (b) licensed wineries for sacramental wine containing not more than 16 percent alcohol by volume sold to licensed retailers and for sacramental wine containing not more than 24 percent alcohol by volume sold to sacramental wine licensees; and
 - (c) table wine distributors for sacramental wine containing not more than 16 percent alcohol by volume sold to licensed retailers and for sacramental wine containing not more than 24 percent alcohol by volume sold to sacramental wine licensees.
- (4) Licensed out-of-state wineries that sell table wine, hard cider, or sacramental wine directly to licensed retailers shall report the amount of table wine, hard cider, and sacramental wine sold to each licensed retailer.
- (5) Licensed or registered wineries that sell table wine, hard cider, or sacramental wine to a table wine distributor shall report the amount of table wine, hard cider, and sacramental wine sold to each table wine distributor.
- (6) Licensed retailers that purchase table wine, hard cider, or sacramental wine directly from a licensed out-of-state winery shall report the amount of table wine, hard cider, and sacramental wine purchased from each winery on or before the 15th day of each month following the purchase of the table wine, hard cider, and sacramental wine.

AUTH: 16-1-303, MCA

IMP: 16-1-411, 16-3-404, 16-3-411, 16-4-107, 16-4-313, 16-4-1101, 16-4-1102, 16-4-1103, MCA

REASONABLE NECESSITY: The department proposes to adopt New Rule I regarding new tax and reporting requirements that apply when table wine, hard cider, and sacramental wine are sold in the state. It is necessary for the department to propose New Rule I to implement House Bill 84 (HB 84) by the 66th Montana Legislature, which amended 16-1-411, MCA, and the frequency of licensee or registrant tax return filing to the department based on the type of license or registration that is held, and by the amount of table wine, hard cider, and sacramental wine the entity sold during the reported period.

HB 84, and proposed New Rule I, seek to improve reporting efficiency by minimizing the number of returns filed and the frequency of reporting that is required by wine and hard cider licensees or registrants and providing for electronic filing of any required return or report. The current reporting requirements for wine products can be found in ARM 42.12.317 and 42.13.404 and much of New Rule I content is based on the content of these rules. The department intends for New Rule I to reflect the new filing frequency criteria provided in 16-1-411, MCA, as amended, combine tax and

reporting requirements for all three wine product types into one location, and justify the repeal of ARM 42.12.317 and 42.13.404.

The department also proposes through New Rule I to remove existing form name references from rule because the department believes its webpage and online reporting portal provide sufficient information to direct filing parties to the correct form.

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

42.13.111 DEFINITIONS The following definitions apply to this chapter:

(1) through (16) remain the same.

~~(17) "Microdistillery" means a distillery located in Montana that produces 25,000 gallons or less of liquor annually.~~

(18) through (34) remain the same but are renumbered (17) through (33).

AUTH: 16-1-303, MCA

IMP: 16-1-302, MCA

REASONABLE NECESSITY: The department proposes to strike the definition of microdistillery in (17) due to the passage of Senate Bill 182 by the 66th Montana Legislature. Senate Bill 182 revised the definition of microdistillery to include any distillery located in Montana that produces 200,000 proof gallons or less of liquor annually. Rather than amending the definition to the new production threshold, the department proposes to strike the definition as it is already provided for in statute and unnecessary to repeat in rule.

42.13.201 LABELING AND PACKAGING REQUIREMENTS (1) remains the same.

(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) and (b) remain the same.

(c) contains graphics or elements that:

(i) and (ii) remain the same.

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

(d) is in powdered or crystalline form.

(3) remains the same.

AUTH: 16-1-303, MCA

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

REASONABLE NECESSITY: The department is proposing to amend ARM 42.13.201 to prohibit the sale of beer and wine products packaged in powdered form. This amendment is necessary and an exercise of the department authority to

protect the health, welfare, and safety of the citizens of Montana. The department does not believe that allowing Montana to be a test market in determining whether the social impact concerns related to these products are valid would be in the best interest of the health, welfare, and safety of Montana's citizens.

Further, the department contends this rule amendment is necessary to apply consistent labeling and packaging restrictions to beer and wine with those present in ARM 42.11.402(3)(e) for liquor products. It is important that the department provide regulatory consistency across all alcoholic beverage product types.

42.13.401 IMPORTATION OF WINE (1) A foreign winery or importer, not otherwise licensed in Montana, desiring to ship table wine, sacramental wine, or hard cider to Montana must submit an application for registration specified in 16-4-107, MCA. The registration must be renewed annually by October 1 and be accompanied by the applicable registration fee shown in (3).

(2) remains the same.

(3) For the first year, the registration fee is based on the total number of 9-liter cases the registrant intends to ship to Montana that year. For subsequent years, the registration fee is based on the total number of 9-liter cases the registrant actually shipped to Montana during the preceding year. The registration fee schedule is as follows:

- (a) 0-60 9-liter cases = no charge;
 - (b) 61-500 9-liter cases = \$100;
 - (c) 501-1000 9-liter cases = \$200;
 - (d) 1001- 2000 9-liter cases = \$300; or
 - (e) 2001 + 9-liter cases = \$400.
- (4) through (6) remain the same.

AUTH: 16-1-303, 16-4-1103, MCA

IMP: 16-3-402, 16-4-107, 16-4-1102, 16-4-1103, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.13.401(1) to include sacramental wine and hard cider in the list of products a foreign winery or importer is allowed to ship to Montana once registered. This amendment is necessary because all three product types can be shipped under the registration.

The department also proposes to amend (3) to base the foreign winery or importer registration fee on 9-liter cases rather than a general case reference. This amendment is necessary to apply a consistent measurement of volume for determining the foreign winery or importer's registration fee. The proposed 9-liter measurement of volume is well known and uniform in the alcoholic beverage industry.

42.13.806 USE OF OUTSOURCED DISTILLED SPIRITS IN THE MANUFACTURING OF DISTILLED SPIRITS (1) through (5) remain the same.

AUTH: 16-1-303, MCA

IMP: 16-1-401, 16-1-404, ~~16-3-214~~ 16-4-311, 16-4-312, MCA

REASONABLE NECESSITY: The department proposes correcting implementing citation errors in this rule. These amendments are necessary for the rule to comply with 2-4-305(3), MCA.

42.13.1002 ALTERNATING PROPRIETOR ON A MANUFACTURER'S PREMISES (1) through (3) remain the same.

(4) To apply, the tenant and host shall submit a complete application to the department that includes:

(a) and (b) remain the same.

(c) a copy of the host's ~~floorplan~~ floor plan identifying the areas to be used by the tenant; and

(d) through (12) remain the same.

(13) In addition to all other requirements imposed by this rule, where the tenant is a brewery:

(a) remains the same.

(b) for purposes of the tax imposed by 16-1-406, MCA, the small brewery ~~40,000~~ 60,000 barrel production cap in 16-3-213, MCA, and the ~~60,000 barrel production cap in~~ 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 100 and ~~40,000~~ 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; and

~~(d) a tenant with an annual nationwide production between 10,000 and 60,000 barrels may provide, without charge, beer on its licensed premises that was produced and/or packaged at its premises or a host's premises.~~

(14) remains the same.

(15) In addition to all other requirements imposed by this rule, where the tenant is a distillery:

(a) remains the same.

(b) for purposes of the taxes imposed by 16-1-401 and 16-1-404, MCA, and the microdistillery ~~25,000~~ 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 ~~25,000~~ 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 ~~42.13.805(3)~~ 42.13.802.

(16) remains the same.

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: The department proposes to amend (4)(c) to correct a grammatical error and for continuity with other instances of the word "floor plan" stated in chapters 12 and 13.

Subsection (13) is proposed for amendment due to the passage of House Bill 541 during the 65th Montana Legislature. House Bill 541 revised the definition of small brewery to a brewery that has an annual nationwide production of not less than 100 barrels or more than 60,000 barrels. The amendments proposed in (13) are necessary to reflect 16-3-213, MCA, as amended.

Subsection (15)(b) is proposed for amendment due to the passage of Senate Bill 182 during the 66th Montana Legislature, which increased the microdistillery production cap from 25,000 gallons to 200,000 proof gallons. The amendments in (15) are necessary for consistency with statute, as amended.

Subsection (15)(c) is also proposed for amendment for the same reason as (15)(b) and to correct an internal cross-reference to another administrative rule. The cross-reference should be to ARM 42.13.802, not ARM 42.13.805(3).

42.13.1003 CONTRACT MANUFACTURING (1) through (6) remain the same.

(7) In addition to all other requirements imposed by this rule, where the client is a brewery:

(a) remains the same.

(b) for purposes of the tax imposed by 16-1-406, MCA, the small brewery ~~40,000~~ 60,000 barrel production cap set forth in 16-3-213, ~~MCA~~, and the ~~60,000~~ barrel production cap set forth in 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 100 and ~~40,000~~ 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; and

~~(d) a client with an annual nationwide production between 10,000 and 60,000 barrels may provide, without charge, beer on its licensed premises that was produced and/or packaged at its premises or a contract manufacturer's premises.~~

(8) remains the same.

(9) In addition to all other requirements imposed by this rule, where the client is a distillery:

(a) remains the same.

(b) for purposes of the taxes imposed by 16-1-401 and 16-1-404, MCA, and the microdistillery ~~25,000~~ 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 ~~25,000~~ 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 ~~42.13.805(3)~~ 42.13.802.

(10) and (11) remain the same.

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: Section (7) is proposed for amendment due to the passage of House Bill 541 during the 65th Montana Legislature. House Bill 541 revised the definition of small brewery to a brewery that has an annual nationwide production of not less than 100 barrels or more than 60,000 barrels. The amendments proposed in (7) are necessary to reflect 16-3-213, MCA, as amended.

Subsections (9)(b) and (c) are proposed for amendment due to the passage of Senate Bill 182 during the 66th Montana Legislature, which increased the microdistillery production cap from 25,000 gallons to 200,000 proof gallons. The amendments in these subsections are necessary for consistency with the statute, as amended.

Subsection (9)(c) is also proposed for amendment to correct an internal cross-reference to another administrative rule. The cross-reference should be to ARM 42.13.802, not ARM 42.13.805(3).

5. The department proposes to repeal the following rules:

42.12.317 SACRAMENTAL WINE MONTHLY REPORTS AND TAX RETURNS

AUTH: 16-1-303, MCA

IMP: 16-1-411, 16-4-313, MCA

REASONABLE NECESSITY: The department proposes repealing ARM 42.12.317 and incorporating the content into proposed New Rule I. New Rule I, as proposed, will include the filing requirements for entities that sell table wine, sacramental wine, or hard cider in Montana into one rule. The department believes the proposed repeal is necessary and advisable, for efficiency, because it will eliminate the registrant or licensee from referring to multiple rules as those entities are typically filing a combination of these tax returns and related reports.

42.13.404 WINE REPORTING REQUIREMENTS

AUTH: 16-1-303, MCA

IMP: 16-1-411, 16-3-411, 16-4-107, 16-4-1101, 16-4-1102, 16-4-1103, MCA

REASONABLE NECESSITY: The department proposes repealing ARM 42.13.404 and incorporating the content into proposed New Rule I. New Rule I includes the filing requirements for entities that sell table wine, sacramental wine, or hard cider in Montana into one rule. Consistent with its statement of reasonable necessity for the repeal of ARM 42.12.317, the department also believes the proposed repeal of this rule is necessary and advisable, for efficiency, because it will eliminate the registrant or licensee from referring to multiple rules as those entities are typically filing a combination of these tax returns and related reports.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: 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., October 4, 2019.

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

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, 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 6 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

9. An electronic copy of this notice is available on the department's web site at revenue.mt.gov, or through the Secretary of State's web site at sosmt.gov/ARM/register.

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

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

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Gene Walborn
Gene Walborn
Director of Revenue

Certified to the Secretary of State August 27, 2019.