

5. ARM 42.12.149 is being amended from the original proposal notice, new matter underlined, deleted matter interlined:

42.12.149 WINERY, BREWERY, AND DISTILLERY - PREMISES SUITABILITY REQUIREMENTS (1) and (2) remain as proposed.

(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) through (9) remain as proposed.

AUTH: 16-1-303, MCA

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

6. The statement of reasonable necessity for ARM 42.12.149 is being amended as follows, new matter underlined, deleted matter interlined:

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.12.149 to implement the statutory changes made under HB 157, HB 226, HB 525, and HB 705.

The department proposes an amendment to (2)(f) because HB 525 and HB 705 changed premises suitability requirements in 16-3-311, MCA, and the department desires that manufacturer premises suitability requirements have the greatest degree of parity with on-premises consumption license requirements as is possible. Section 16-3-311(3), MCA, requires the interior portion of the premises to be a continuous area under the control of the licensee and addresses multiple floors and common area shared by multiple building tenants in the same building, including entryways, hallways, stairwells, and elevators. Subsections (2)(f) and (g) are also proposed to contain amendments which refer to the suitability of premises exception that was created by HB 157's amendments to 16-3-311, MCA, regarding a retail on-premises licensee being adjacent to a brewery and winery.

The department's other proposed amendment to (2)(g) implements HB 226's curbside pickup and use of a drive-through window, provided the window is noted on the floor plan and all other suitability and service requirements are met.

While not connected to any legislation, the department also proposes a minor amendment to (3) which is necessary for manufacturing premises conformity with Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations for continuity of plant premises located at 27 CFR 19.53, to which the department gives deference on the matter. This amendment will reflect the ability of a manufacturer to pursue more than one building for manufacturing in accordance with TTB regulations and this

rule. The department proposes to revert the text in (3) to that of the existing rule section.

Lastly, the department proposes to amend the implementing statutory citations for the rule to comply with the requirements of 2-4-305, MCA.

7. No additional public hearing will be held to consider this amended proposal notice. The department is extending the comment period for this proposed rulemaking in accordance with 2-4-305, MCA, as described in paragraph 8.

8. 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. September 2, 2022.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State August 16, 2022.