

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I and the amendment of ARM 42.12.106, 42.12.111, 42.12.118, 42.12.133, 42.12.143, 42.12.145, 42.12.146, 42.12.147, 42.12.149, 42.12.209, 42.12.301, 42.13.106, 42.13.111, 42.13.405, 42.13.601, 42.13.802, 42.13.1102 through 42.13.1105, and 42.13.1202 pertaining to department implementation of legislation for House Bills 157, 226, 525, 705 and Senate Bill 320 enacted by the 2021 Montana Legislature) AMENDED NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On July 22, 2022, the Department of Revenue (department) published MAR Notice No. 42-1052 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1246 of the 2022 Montana Administrative Register, Issue Number 14. The department held the required public hearing on August 12, 2022.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on August 30, 2022. 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. Upon review of the Montana Tavern Association's letter of objection to the Economic Affairs Interim Committee regarding the department's proposed amendments to ARM 42.12.149(3), the department proposes to amend its proposed changes and the statement of reasonable necessity for ARM 42.12.149(3) as described in paragraphs 5 and 6.

4. The adoption of New Rule I and the amendments to ARM 42.12.106, 42.12.111, 42.12.118, 42.12.133, 42.12.143, 42.12.145, 42.12.146, 42.12.147, 42.12.209, 42.12.301, 42.13.106, 42.13.111, 42.13.405, 42.13.601, 42.13.802, 42.13.1102 through 42.13.1105, and 42.13.1202 contained in the original MAR notice remain as proposed.

MAR Notice No. 42-1052

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.