

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rule I and the amendment of ARM) PROPOSED ADOPTION AND
42.12.106, 42.12.111, 42.12.118) AMENDMENT
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 .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)

TO: All Concerned Persons

1. On August 12, 2022, at 10:30 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 and amendment 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 July 29, 2022. Please contact Todd Olson, Department of Revenue, Director's Office, PO Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2021 Montana Legislature made several statutory changes regarding the regulation of the alcoholic beverages industry through the enactment of House Bills 157, 226, 525, 705 and Senate Bill 320. Collectively, the legislation revised licensee ownership thresholds, retailer and manufacturer operating conditions and premises proximity standards, licensed premises standards, and the department's authority to regulate certain licensee - and non-licensee activities - when the business activity involves alcoholic beverage service and consumption.

As a brief overview for necessary context and legislative attribution to this proposed rulemaking: House Bill 157 (HB 157) amended 16-4-401, MCA, to allow the spouse of on-premises consumption licensee to have an ownership interest in one or more manufacturers licenses and also amended 16-3-311, MCA, regarding premises suitability standards between a retail licensee and an adjacent brewery or a winery; House Bill 226 (HB 226) authorizes certain retail licensees and agency

liquor stores to use curbside pickup, including drive-through windows, to sell alcoholic beverages that were ordered online or through the phone and amended definitions in 16-1-106, MCA, for 'original packaging,' 'containers,' and 'prepared servings;' House Bill 525 (HB 525) substantially expanded alcoholic beverage concession agreements in statute and set new parameters for the department's processing and compliance authority for concession agreements, licensees, and the concessionaires who receive alcoholic beverages service through a retail on-premises consumption all-beverages or beer and wine licensee.

House Bill 705 (HB 705) generally revised many alcoholic beverage statutes in Title 16, Montana Code Annotated, regarding licensee ownership criteria, retail operations for licensees and non-licensees (i.e. bottle clubs), and premises suitability standards. HB 705 also created two new alcoholic beverage storage options: a noncontiguous alcoholic beverage storage area for retail licensees and a resort alternate alcoholic beverage storage facility for resort licensees. HB 705 also permits the ability for resort retail licensees to pre-stock resort accommodations units subject to department approval.

Finally, SB 320 amended 16-4-105, 16-4-201, and 16-4-420, MCA, and authorizes an all-beverage licensee, on-premises consumption beer licensee, or a restaurant beer and wine licensee to obtain a delivery endorsement from the department for the limited purpose of delivering alcoholic beverages to the licensees' customers as a part of a customer's food purchase delivery.

While this general statement of reasonable necessity covers the basis for the following proposed rule adoption and amendments, it is supplemented below, where necessary, to explain rule-specific proposals.

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

NEW RULE I NONCONTIGUOUS ALCOHOLIC BEVERAGE STORAGE AREAS; RESORT ALTERNATE RETAIL ALCOHOLIC BEVERAGE STORAGE FACILITIES (1) The use of a noncontiguous alcoholic beverage storage area by a retail licensee is permissible, as provided in 16-3-311, MCA.

(2) The use of a resort alternate alcoholic beverage storage facility is permissible, as provided in 16-4-213, MCA.

(3) 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: In addition to the general statement of reasonable necessity, the department proposes to adopt New Rule I to implement HB 705 amendments to 16-3-311 and 16-4-213, MCA, which expanded alcoholic beverage storage options for certain retail licensees. Section 16-3-311(6), MCA, permits a retail licensee to expand alcoholic beverage storage to a noncontiguous alcoholic beverage storage area after applying for, and obtaining, department approval. Section 16-4-213(8), MCA, permits a retail resort licensee or a retail all-alcoholic beverage licensee whose premises meet resort boundary criteria to expand alcoholic beverage storage to a resort alternate alcoholic beverage storage facility after applying for, and obtaining, department approval. New Rule I is necessary to implement the department's proposed request (application) process and the statutory application fee; to establish storage area suitability standards and inspections, and to inform licensees about general noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility compliance requirements.

Proposed (1) and (2) are provided for context and include necessary

statutory attribution for each of the alcoholic beverage storage areas. The cross-referencing also eliminates the need for the department to restate in rule that which is clearly provided in statute.

Section (3) is a statement of department interpretation of the statutory requirement that licensees must have adequate physical safeguards in place at the storage location and prohibit access by unauthorized persons.

Section (4) proposes to describe the application submission process and lists the documentation requirements and fee necessary for the department to process the application and render its approval.

Section (5) proposes to describe the inspection process for a licensee's proposed noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility. Like other alcoholic beverages premises matters, the department will have an inspection of a proposed area performed to determine suitability under the law, and report the inspection findings. Section (5) also includes building, health, and fire code compliance references because the department defers to the state and local authorities to determine what is required in their respective jurisdictions.

Section (6) proposes to provide for a written approval for a noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility.

Section (7) proposes to require a licensee to post a copy of their license, with the included storage area description, at the storage location. The department contends this is a necessary requirement for local law enforcement, department representatives, liquor store agents, beer wholesalers, and table wine distributors as confirmation that the storage area or facility has been approved by the department.

Section (8) is proposed, and is consistent with other license prohibitions, that department approval is required prior to a licensee's use of storing alcoholic beverages at a noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility.

Section (9) is proposed to prohibit non-storage activities (i.e. consumption) at a noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility because the intent of the respective laws was to permit additional alcoholic beverage storages areas only.

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

42.12.106 DEFINITIONS The following definitions apply to this chapter:

(1) through (19) remain the same.

~~(20) "Individual serving" means not more than 16 ounces of beer, not more than 2 ounces of liquor, not more than 7 ounces of wine, or a proportional combination thereof (for example, 1 ounce of liquor mixed with 8 ounces of beer).~~

(21) through (32) remain the same but are renumbered (20) through (31).

(32) "Prepared Serving" means the same as the term provided in 16-1-106,

MCA.

(33) through (45) remain the same.

AUTH: 16-1-303, MCA
IMP: 16-1-106, 16-1-302, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to remove the definition of 'individual serving' to implement a change in industry terminology adopted in HB 226. HB 226 allows for the curbside service of alcoholic beverages in original packaging, prepared servings, or growlers depending on the type of license. Amending the rule to remove 'individual serving' in favor of the definition of 'prepared serving' in 16-1-106, MCA, is necessary to clarify serving size.

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

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) through (u) remain the same.

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

(a) through (j) remain the same.

(k) Adding a delivery endorsement\$100

(3) through (5) remain the same.

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

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

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.12.111(2)(k), through the addition of a new processing fee, authorized under 16-3-303(2)(j), MCA, to defray department costs in processing SB 320 delivery endorsements. The department proposes a \$100 processing fee for adding a delivery endorsement which is consistent with the fee for processing a catering endorsement request. The department also proposes an application fee for delivery endorsement applications which is provided in the proposed amendments to ARM 42.13.1102, 42.13.1103, and 42.13.1104. The department also proposes to amend the catchphrase of the rule to more accurately reflect the nature of the fees that are included in the rule and to comply with ARM 1.2.214 and proposes to amend the authorizing statutory citations for the rule to comply with the requirements of 2-4-305, MCA.

FISCAL IMPACT: In accordance with 2-4-302(1)(c), MCA, the department is required to estimate the fiscal impact of the processing fees in proposed ARM 42.12.111(2)(k) together with the number of persons affected, if known.

Based on the fiscal note for SB 320, the department stated in 2021 that of the approximate 2,500 licensees that qualify for the delivery endorsement, 200

would seek approval for the endorsement. However, as of the filing of this rulemaking no licensees have applied or been approved for the endorsement, therefore, the department revises its initial estimate that 20 licensees will apply for the endorsement and the proposed processing fee would result in \$2,000 of general fund impact.

42.12.118 ABBREVIATED APPLICATION FOR LICENSE

MODIFICATION (1) remains the same.

(2) Licensees ~~shall~~ 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; ~~or~~

(b) adding an individual or entity as a less than ~~40~~ 15 percent owner; or

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

(3) Licensees ~~shall~~ must submit an abbreviated application prior to:

(a) and (b) remain the same.

(c) increasing the current ownership interest of any owner, member, partner, or shareholder from less than ~~40~~ 15 percent to ~~40~~ 15 percent or more;

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

(e) and (4) remain the same.

AUTH: 16-1-303, MCA

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

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.12.118 because HB 705 permits a licensee to change business entity type when no owner or ownership percentages change, yet department acknowledgement and approval are still required. HB 705 also amended 16-4-401, MCA, to increase ownership percentage thresholds for persons who are required to submit to, and meet, alcoholic beverages licensing criteria.

Since HB 705 did not specify a timeframe for department notification of an entity change when no owner or ownership percentages change, the department proposes new (2)(c) as an addition to those events under (2) which require licensee notice within 90 days of the change, which the department contends is a reasonable amount of time. Section (3) is proposed for amendment to clarify those instances when prior approval is still necessary.

The department proposes to amend the ownership percentage thresholds in (2)(b) and (3)(c) to reflect 16-4-401, MCA, as amended. Finally, the department proposes to change 'shall' to 'must' in (2) and (3) for consistency with the department's rule drafting style regarding compulsory acts.

42.12.133 CONCESSION AGREEMENTS (1) Concession agreements, authorized to the licensees specified under 16-4-213(7), and 16-4-418(1), MCA, are written agreements, which may be in the form of a standalone contract or a

department-provided, standard agreement, that provide the terms where formalize how a licensee will extend its licensed premises into the a concessionaire's business for the purpose of selling and serving the licensee's alcoholic beverages to the concessionaire's customers. A concession agreement may only be entered if the premises provided the suitability requirements in ARM 42.12.145 are met.

(2) All new, proposed concession agreements must be submitted to the department for review and approval prior to their execution or effective date, and must ~~include~~ be accompanied by the following:

(a) a completed concession agreement request form provided by the department, the application fee provided in 16-4-418, MCA, and the one-time processing fee described in ARM 42.12.111;

(b) and (c) remain the same.

(d) a completed alteration request form if the addition of the concessionaire's area will change the licensee's current floor plan that is on file with the department.

(e) The alteration request requirement in (d) does not apply to a new, proposed concession agreement when it is included in a license application submitted by an applicant pursuant to 16-4-402, MCA, and ARM 42.12.101.

~~(3) The concession agreement must provide that licensee and concessionaire agree:~~

~~(a) the licensee may operate in the concessionaire's area;~~

~~(b) the parties may share employees. In the event of shared employees, the licensee must retain the right to discipline or otherwise sanction any employee in relation to the service of alcoholic beverages;~~

~~(c) on the compensation to be paid for shared employees. The compensation may not be based on a percentage of alcoholic beverage sales;~~

~~(d) except for concessionaires who have been approved by the department as a location manager, alcoholic beverages may not be ordered, purchased, or received by the concessionaire;~~

~~(e) the licensee may terminate the agreement without cause;~~

~~(f) the proceeds from the sale of alcoholic beverages are the property of the licensee; and~~

~~(g) any proceeds of alcoholic beverage sales that are collected by the concessionaire must be returned to the licensee not less than every two weeks.~~

(4) (3) The department, upon receipt of the proposed concession agreement and any supporting documentation, will advise the licensee and concessionaire of its approval or denial of the agreement unless further documentation or an audit review is necessary. ~~Upon approval of the agreement, the license will reflect language that the licensee is also serving alcoholic beverages in the establishment.~~

~~(5)~~ (4) Upon approval of the proposed concession agreement, the license will reflect language that the licensee is also serving alcoholic beverages in the concessionaire's establishment. The concessionaire shall display in a prominent place, a copy of the license and a placard, issued by the department, stating the consequences for violations of the alcoholic beverage code by persons under 21 years of age.

(6) (5) A Except as provided in (6), licensee must submit any proposed modification or assumption of an existing concession agreement must be submitted for review and approval by the department. The licensee and concessionaire may continue to operate the business under the approved, existing concession pending approval by the department.

(6) A licensee and concessionaire may change the compensation arrangement under a concession agreement, without department approval, if it meets the requirements of 16-4-418(6)(a), MCA. The licensee and concessionaire must submit a copy of the new compensation terms on the concession agreement request form within 30 days of the change.

(7) All concession agreements must be renewed on or before June 30 of each year by completing and submitting a department prescribed renewal form and paying the renewal fee provided in 16-4-418, MCA. Failure to submit a completed renewal form and pay the renewal fee may result in the denial of renewal of the concession agreement.

(8) Failure of a licensee to submit a completed annual license renewal form to the department and pay the license's renewal fee may result in the denial of renewal of the concession agreement.

AUTH: 16-1-303, ~~16-4-418~~, MCA

IMP: 16-3-305, 16-3-311, 16-4-401, 16-4-402, 16-4-418, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.12.133 to implement the enactment of HB 525, which amended 16-4-418, MCA.

Section (1) proposes amendments to clarify the licensees eligible to enter into concession agreements under 16-4-418(1), MCA, and to implement the HB 525 directive that the department provide a standardized concession agreement that complies with the requirements of 16-4-418, MCA. Other amendments are directed to improve the clarity of the rule through improved verbiage.

Section (2) has proposed amendments for clarity of the rule through improved verbiage that applies to existing licensees and license applicants. Section (2)(a) has been amended to reflect the statutory \$500 application fee, which is added to the list of required submissions to the department, and a minor change to improve verbiage. Section (2)(e) is proposed to clarify that there are concession agreement proposals that do not involve existing licensees, and that license application transactions do not require the alteration request in (2)(d).

The department proposes to strike current (3) in its entirety because the content is now included in 16-4-418, MCA.

Proposed (3) reflects amendments to improve verbiage and department notification to a concessionaire regarding the approval or denial of a concession agreement since they are a party to the agreement. This department also proposes to strike a redundant sentence in proposed (3) to what exists in proposed (4).

Proposed (5) is amended to clarify modifications to existing concession agreements and cross reference the statutory exception in proposed (6) which allows compensation arrangement changes without department approval, but still

requires the parties to notify and document the change with the department. Proposed (6) also seeks to establish 30 days as a notification requirement for the licensee and concessionaire, which the department believes is a reasonable amount of time.

HB 525 also amended 16-4-418, MCA, to require annual renewal of concession agreements. Since a license year runs from July 1 to June 30, the department proposes (7) to make the renewal of the concession agreement due on or before June 30 of each year to mirror license renewals. The department also proposes to include that any failure to renew a concession agreement, which includes a completed renewal form and payment of the \$100 renewal fee, subjects the concession agreement to a possible denial of renewal. Similar to proposed (7), the department proposes (8) to inform parties to a concession agreement that the renewal the concession agreement is contingent upon a licensee's renewal its license.

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

42.12.143 RESTRICTION ON INTEREST IN OTHER LICENSES

(1) remains the same.

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

(a) and (b) remain the same.

(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; or

(ii) remains the same.

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

(a) remains the same.

(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; or

(ii) remains the same.

(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 beer wholesaler, Montana table wine distributor, and a Montana agency liquor store.

(4) through (6) remain the same but are renumbered (5) through (7).

AUTH: 16-1-303, MCA

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

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.12.143(2) and (3) to implement HB 157 changes to 16-4-401(2), MCA, which now allows the spouse of an on-premises consumption retailer to have ownership interest in one or more manufacturers licenses. Further, since 16-4-401(2)(a)(iii), MCA, only applies to an on-premises consumption licensee, the department proposes new (4) which is necessary to add off-premises retail licensees to this rule. The addition of proposed (4) completes the scope of the rule's purpose which is to provide a singular rule that contains similarly-themed statutory restrictions from multiple parts of the Alcoholic Beverage Code.

42.12.145 ON-PREMISES CONSUMPTION BEER AND ALL-BEVERAGE LICENSE - PREMISES SUITABILITY REQUIREMENTS (1) The department shall determine the suitability of the premises where an on-premises consumption beer 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, or 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.

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

(a) through (d) remain the same.

(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 ~~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~~ comply with the requirements of 16-3-311(3), MCA.

Subject to the exceptions in 16-3-311(2), (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 otherwise provided in 16-3-311(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) through (l) remain the same.

(m) the floor plan accurately states the dimensions of the premises, includes the entity name, alcoholic beverage license number, physical address, and submission date, and identifies any all service areas, ~~seating required under (e),~~ 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) remains the same.

~~(o) the interior premises include a service area containing not less than twelve seats, exclusive of any seats at gambling machines;~~

(p) remains the same but is renumbered (o).

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

~~(r) alcoholic beverages will not be sold through a drive-up window;~~

(s) and (t) remain the same but are renumbered (q) and (r).

(3) through (5) remain the same.

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: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.12.145 to implement the statutory changes made under HB 157, HB 226, HB 525, and HB 705.

The department proposes an amendment to (2)(e) because HB 525 and HB 705 changed premises suitability requirements in 16-3-311, MCA. 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. Section (2)(e) is 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 proposed amendments to (2)(m) implement 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.

The department proposes to strike the seating requirement in current (2)(m) and (o) since HB 705's amendments to 16-3-311, MCA, do not require a certain number of seats in a licensed establishment for premises suitability.

The department proposes amendments in proposed (2)(p) to reflect HB 705's creation of noncontiguous alcoholic beverage storage areas and resort alternate alcoholic beverage storage facilities.

The department proposes to strike current (2)(r) since 16-3-312, MCA, permits certain licensees to use a drive-through window for curbside pickup.

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

42.12.146 RESTAURANT BEER AND WINE LICENSE - PREMISES SUITABILITY REQUIREMENTS (1) remains the same.

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

(a) through (d) remain the same.

(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 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 comply with the requirements of 16-3-311(3), MCA.

Subject to the exceptions in 16-3-311(2), (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(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) through (k) remain the same.

(l) the floor plan accurately states the dimensions of the premises, includes the entity name, alcoholic beverage license number, physical address, and submission date, and identifies any 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) through (o) remain the same.

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

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

(r) self-service devices and vending machines are not used to serve alcoholic beverages; and,

~~(s) the sale of alcoholic beverages will not occur through a drive-up window.~~

(3) through (5) remain the same.

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: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.12.146 to implement the statutory changes made under HB 157, HB 226, HB 525, and HB 705.

The department proposes an amendment to (2)(e) because HB 525 and HB 705 changed premises suitability requirements in 16-3-311, MCA. 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. Section (2)(e) is 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 proposed amendments to (2)(l) implement HB 226's curbside pickup and use of a drive-through window, provided the window is noted on the floor plan and all other premises suitability and service requirements are met.

The department proposes amendments in (2)(p) to reflect HB 705's creation of noncontiguous alcoholic beverage storage areas for this license type.

The department proposes to strike current (2)(s) since 16-3-312, MCA, permits certain licensees to use a drive-through window for curbside pickup.

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

42.12.147 OFF-PREMISES BEER AND TABLE WINE LICENSE - PREMISES SUITABILITY REQUIREMENTS (1) remains the same.

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

(a) through (d) remain the same.

(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 ~~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~~ comply with the requirements of 16-3-311(3), MCA.

Subject to the exceptions in 16-3-311(2), (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(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) through (l) remain the same.

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

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

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

~~(p) the sale of alcoholic beverages will not occur through a drive-up window.~~

(3) and (4) remain the same.

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: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.12.147 to implement the statutory changes made under HB 226 and HB 705.

The department proposes an amendment to (2)(e) because HB 525 and HB 705 changed premises suitability requirements in 16-3-311, MCA. 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. Section (2)(e) is 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 proposed amendment to (2)(m) is necessary to implement HB 226's creation of 16-3-312, MCA, which authorizes certain licensees to use a drive-through window for curbside pickup, provided the window is noted on the floor plan and all other suitability requirements are met.

The department also proposes to amend (2)(o) to reflect House Bill 705's introduction of noncontiguous alcoholic beverage storage areas for this license type.

The department proposes to strike current (2)(p) since 16-3-312, MCA, permits certain licensees to use a drive-through window for curbside pickup.

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

42.12.149 WINERY, BREWERY, AND DISTILLERY - PREMISES SUITABILITY REQUIREMENTS (1) remains the same.

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

(a) through (e) remain the same.

(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 ~~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~~ 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 door, 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, and submission date and identifies any 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) through (k) remain the same.

(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 the same.

AUTH: 16-1-303, MCA

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

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. Sections (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.

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

42.12.209 TRANSFER OF A LICENSE TO ANOTHER PERSON

(1) and (2) remain the same.

(3) A current ownership interest of less than ~~40~~ 15 percent may not be increased to ~~40~~ 15 percent or more until an application reflecting the proposed increase is submitted to the department and the department approves the application.

(4) through (7) remain the same

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

(a) remains the same

(b) addition of an individual or entity as a less than ~~40~~ 15 percent owner;

(c) through (11) remain the same.

AUTH: 16-1-303, MCA

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

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.12.209(3) and (8)(b) to implement HB 705 amendments to 16-4-401, MCA, which increased ownership percentage thresholds for persons who are required to submit to, and meet, alcoholic beverages licensing criteria.

42.12.301 RESORT LICENSES; NON-RESORT LICENSES OPERATING ON RESORTS; DELIVERY AND CURBSIDE PICKUP (1) and (2) remain the same.

~~(3) The delivery of alcoholic beverages to guests staying in accommodation units located on the resort area is permissible provided the employees of the holder of the resort license deliver the alcoholic beverages. A resort all-beverages licensee may deliver alcoholic beverages to guests staying in accommodation units, as provided in 16-4-213, MCA, after obtaining department approval and paying the statutory application fee.~~

~~(4) The delivery of alcoholic beverages to a resort area accommodation units on a resort area is not permissible:~~

~~(a) by any non-resort licensee whose business is located on the resort area;~~

~~(b) to any other location on the resort area other than accommodation units; or~~

~~(c) where otherwise prohibited by retail sales restrictions provided in Title 16, chapters 3, 4, and 6, MCA. A non-resort on-premises consumption licensee may deliver alcoholic beverages anywhere within the resort area if the licensee has complied with the delivery endorsement requirements of ARM 42.13.1102, 42.13.1103, or 42.13.1105, as applicable.~~

(5) Both resort and non-resort licensees may conduct the sale of alcoholic beverages via curbside pickup, which may include the use of a drive-up window, provided the licensee's premise comply with the premises suitability requirements of 16-3-311, MCA, and the applicable rules of the department.

AUTH: 16-1-303, MCA

IMP: 116-3-312, 6-4-201, 16-4-213, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.12.301(3) to

improve the sentence structure relating to a resort licensee's ability to deliver alcoholic beverages to guests staying in accommodation units and to reflect the statutory application fee added by HB 705. The department's amendments to (4) improve the sentence structure and also implement SB 320's allowance for non-resort licensees to conduct alcoholic beverage delivery that is distinguishable from resort licensee delivery because it requires the licensee to obtain a delivery endorsement and comply with delivery endorsement requirements in the cross-referenced rules. Proposed (5) 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. The department proposes to amend the rule's catchphrase based on the additional rule content and to comply with ARM 1.2.214, and amend the implementing statutory citations for the rule to comply with the requirements of 2-4-305, MCA.

42.13.106 ALTERATION OF PREMISES (1) Any alteration to licensed premises, other than a cosmetic change, must be ~~pre~~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) Prior to making alterations,~~ a licensee must submit a request to alter the premises and provide copies of the current and proposed floor plans.

(3) Upon receipt of the items in (2), the department will ~~advise~~ notify the licensee within seven ~~working~~ 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. Any alterations ~~that are~~ not completed within one year must be resubmitted to the department for another approval.

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

(6) through (8) remain the same.

(9) Any alteration to licensed premises, other than a cosmetic change, without ~~prior~~ 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: In addition to the general statement of reasonable necessity, the department also proposes amendments to ARM 42.13.106 for improved clarity through better phrasing, such as changing (3) to reflect the department will 'notify' an applicant versus 'advise,' and referring to 'business' days instead of 'working' days for the calculation of alteration request processing times.

42.13.111 DEFINITIONS The following definitions apply to this chapter:

(1) through (25) remain the same.

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

(26) through (33) remain the same but are renumbered (27) through (34).

AUTH: 16-1-303, MCA

IMP: 16-1-302, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.13.111 to add a definition of 'purchase price' in proposed (26) which correlates to licensee compliance that a consumer's purchase price of beer and wine does not exceed the purchase price of the food items being delivered by the licensee in contravention of 16-4-105(6)(a), 16-4-201(11), and 16-4-420(13)(b), MCA.

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

(a) through (d) remain the same.

(e) ~~sell and deliver its products for off-premises sales to distributors or~~ retailers only in original packaging;

(f) through (h) remain the same.

(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 ~~purchased in original packaging~~ sold for off-premises consumption pursuant to (3), from individuals' possession by 2 a. m.;

(j) through (2) remain the same.

(3) A winery may sell alcoholic beverages on its premises to a consumer for off-premises consumption ~~only as follows~~ under the following conditions:

~~(a) the sale may not be conducted through a drive-up window;~~

~~(b) (a) all alcoholic beverages must be in original packaging, prepared servings, or growlers; and~~

~~(c) (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 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: In addition to the general statement of reasonable necessity, the department also proposes amendments to ARM 42.13.405 for improved clarity through improved word choice/phrasing and section transitions. Proposed (3)(c) 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. Lastly, the department proposes to amend the implementing statutory citations for the rule to comply with the requirements of 2-4-305, MCA.

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

(a) through (c) remain the same.

(d) prevent the consumption of alcoholic beverages in the manufacturing area or storage area except as authorized by federal law;

(e) 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 100 barrels shall:

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

(b) only provide samples without charge;

~~(d) sell and deliver its product for off-premises sales only in original packaging;~~

(1)(e) and (f) remain the same but are renumbered (3)(c) and (d).

~~(g) (e) 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 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.; and

(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 or through the phone.

~~(h) prevent the consumption of alcoholic beverages in the manufacturing area or storage area except as authorized by federal laws;~~

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

~~(j) 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) A brewery may sell alcoholic beverages on its premises to a consumer for off-premises consumption only as follows:~~

~~(a) the sale may not be conducted through a drive-up window;~~

~~(b) all alcoholic beverages must be in original packaging;~~

- ~~(c) alcoholic beverages may only be sold in an approved sample room; and~~
- ~~(d) the sale of alcoholic beverages is prohibited between 2 a.m. and 8 a.m.~~

(4) In addition to all other requirements, a small brewery with an annual nationwide production of not less than 100 barrels or more than 60,000 barrels that operates a sample room shall:

(a) remains the same.

(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 on the premises, 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.; ~~and~~

(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 purchased in original packaging 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 or through the phone.

(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: In addition to the general statement of reasonable necessity, the department also proposes amendments to ARM

42.13.601 which are necessary for improved organization and clarity of the rule. As proposed, the amended content in (1) and (2) applies to all in-state breweries; in proposed (3) applies to breweries which produce less than 100 barrels; in proposed (4) applies to breweries which produce between 100 and 60,000 barrels; and in proposed (5) applies to breweries which produce 60,000 barrels or more. The department's non-substantive amendment to (4)(c) is necessary for consistency in language used in the department's rules.

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

42.13.802 DISTILLERY - CONDITIONS FOR OPERATING (1) and (2) remain the same.

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

(a) and (b) remain the same.

(c) prevent the consumption of alcoholic beverages in the manufacturing area or storage area except as authorized by federal laws;

(d) through (h) remain the same.

(4) In addition to all other requirements, a microdistillery that operates a sample room shall:

(a) and (b) remain the same.

(c) prevent the consumption or possession of alcoholic beverages on the premises between 8 p.m. and 10 a.m. by removing all alcoholic beverages other than those ~~purchased in original packaging~~ sold for off-premises consumption pursuant to (5) from individuals' possession by 8 p.m.; and

(d) 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) not sell alcoholic beverages through a drive-up window;~~

(b) remains the same but is renumbered (a).

~~(c) (b) sell alcoholic beverages only in an approved sample room~~ except for curbside pickup, including a drive-through window, that were ordered online or through the phone;

(d) through (f) remain the same but are renumbered (c) through (e).

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

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

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department also proposes amendments to ARM 42.13.802 for improved clarity through improved word choice/phrasing and section transitions. Proposed (4)(d) and (5)(b) implement 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. Lastly, the department proposes

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

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 16-4-213 and 16-6-306, 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) through (e) remain the same.

(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 purchased in original packaging or growlers sold for off-premises consumption pursuant to (2) from individuals' possession by 2 a.m.;

(g) remains the same.

(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 only as follows under the following conditions:

(a) alcoholic beverages must be sold in original packaging, or individual servings, except that the retailer may fill and sell growlers with beer and table wine 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) the delivery of alcoholic beverages to the consumer off-site is prohibited.

(3) An all-beverages licensee may use curbside pickup, including a drive-through window, to sell alcoholic beverages that were ordered online 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.

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: In addition to the general statement of reasonable necessity, the department also proposes amendments to ARM 42.13.1102 for improved clarity through improved word choice/phrasing and section transitions, to implement HB 705's expanded alcoholic beverage storage options in (1)(b) and expanded permissible bottle club activities for on-premises consumption retail licensees in (1)(a) and (5). Sections (1)(f) and (h) and (2) implement HB 226's servings definitions, curbside pickup including use of a drive-through window - provided the window is noted on the floor plan and all other suitability and service requirements are met - and clarify the sale of alcoholic beverages for off-premises consumption.

Proposed (4) implements the department's SB 320 delivery endorsement application process for an all-beverage licensee, establishes an application fee, and provides compliance criteria as a reiteration of the statute, as amended by SB 320.

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 16-6-306, MCA, and described in (5);

(b) store alcoholic beverages only on the premises or in an approved noncontiguous alcoholic beverage storage area;

(c) through (h) remain the same.

(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); and.

~~(l) prohibit the sale of beer and wine for off-premises consumption.~~

(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 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.

~~(2)~~ (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) and (b) remain the same.

(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.

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: In addition to the general statement of reasonable necessity, the department also proposes amendments to ARM 42.13.1103 for improved clarity through improved word choice/phrasing and section transitions, to implement HB 705's expanded alcoholic beverage storage options in (1)(b) and expanded permissible bottle club activities for on-premises consumption retail licensees in (1)(a) and (5). Sections (1)(i) and (2) implement HB 226's servings definitions, curbside pickup including use of a drive-through window - provided the window is noted on the floor plan and all other suitability and service requirements are met - and clarify the sale of alcoholic beverages for off-premises consumption.

Proposed (3) implements the department's SB 320 delivery endorsement application process for a restaurant beer and wine licensee, establishes an application fee, and provides compliance criteria as a reiteration of the statute, as amended by SB 320.

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

42.13.1104 ON-PREMISES CONSUMPTION BEER LICENSE - CONDITIONS FOR OPERATING (1) In addition to all other alcoholic beverage licensing requirements, an on-premises consumption beer licensee shall:

(a) only purchase and possess on the premises beer from a beer wholesaler

or brewery, except as permitted under 16-6-306, MCA, and described in (6);

(b) store alcoholic beverages only on the premises or in an approved noncontiguous alcoholic beverage storage area;

(c) through (e) remain the same.

(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 purchased in original packaging or growlers sold for off-premises consumption pursuant to (3) from individuals' possession by 2 a.m.;

(g) remains the same.

(h) prevent the on-premises consumption of alcoholic beverages not sold or provided at the premises and those sold in original packaging or growlers for off-premises consumption pursuant to (3).

(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) and (c) remain the same.

(3) An on-premises consumption beer licensee and an on-premises consumption beer licensee with a wine amendment may sell alcoholic beverages for off-premises consumption only as follows under the following conditions:

(a) alcoholic beverages must be sold in original packaging, or individual servings, except that the retailer may fill and sell growlers with beer and table wine 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) and (6), the sale of alcoholic beverages must occur on the premises; the delivery of alcoholic beverages to the consumer off-site is prohibited.

(4) An on-premises consumption beer 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 or through the phone.

(5) An on-premises consumption beer 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) 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.

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: In addition to the general statement of reasonable necessity, the department also proposes amendments to ARM 42.13.1104 for improved clarity through improved word choice/phrasing and section transitions, to implement HB 705's expanded alcoholic beverage storage options in (1)(b) and expanded permissible bottle club activities for on-premises consumption retail licensees in (1)(a), (2)(a), and (6). Sections (1)(f) and (h), (3), and (4) implement HB 226's servings definitions, curbside pickup including use of a drive-through window - provided the window is noted on the floor plan and all other suitability and service requirements are met - and clarify the sale of alcoholic beverages for off-premises consumption.

Proposed (5) implements the department's SB 320 delivery endorsement application process for a beer licensee or beer licensee with a wine amendment, establishes an application fee, and provides compliance criteria as a reiteration of the statute, as amended by SB 320.

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

FISCAL IMPACT: In accordance with 2-4-302(1)(c), MCA, the department is required to estimate the fiscal impact of the application fees in its amendments to ARM 42.13.1102, 42.13.1103, and 42.13.1104 together with the number of persons affected, if known.

Based on the fiscal note for SB 320, the department stated in 2021 that of the approximate 2,500 licensees that qualify for the delivery endorsement, 200 would seek approval for the endorsement. However, as of the filing of this rulemaking no licensees have applied or been approved for the endorsement, therefore, the department estimates 20 licensees will apply for the endorsement and the proposed processing fee would result in \$4,000 of general fund impact.

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) remains the same.

(b) store beer and/or table wine only on the premises or in an approved noncontiguous alcoholic beverage storage area;

(c) through (e) remain the same.

(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 or through the phone.

(2) remains the same but is renumbered (3).

(4) The delivery of alcoholic beverages by an off-premises consumption beer and table wine licensee to the consumer off-site is prohibited.

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: In addition to the general statement of reasonable necessity, the department also proposes amendments to ARM 42.13.1105 to implement HB 705's expanded alcoholic beverage storage options in (1)(b). Proposed (2) implements HB 226's curbside pickup including use of a drive-through window - provided the window is noted on the floor plan and all other suitability and service requirements are met. The department proposes (4) as a necessary reiteration of the statutory restriction that delivery of alcoholic beverages excludes off-premises consumption beer and table wine licensees.

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

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) through (c) remain the same.

(d) except as provided in ~~(2)~~ 16-3-219 and 16-3-418, MCA, deliver alcoholic beverages using its own employees, trucks, and equipment;

(e) remains the same.

(f) sell and deliver beer, table wine, and sacramental wine under its Montana license only to other licensed wholesalers or distributors, licensed alcoholic beverage retailers, catered events of a licensed alcoholic beverage retailer, agency liquor stores, ~~and special events for a special permit holder, and approved~~ noncontiguous alcoholic beverage storage areas or resort alternate alcoholic beverage storage facilities. This does not in any way prohibit the licensee from operating in compliance with other state or federal law;

(g) through (i) remain the same.

~~(2) When a beer wholesaler or table wine distributor's trucks and equipment are incapable of delivering alcoholic beverages to a retail licensee's premises due to the unique physical location of the retail licensee's premises - examples of which are premises located on an island or atop a mountain - the beer wholesaler or table wine distributor and retail licensee may seek prior department approval for an alternative delivery arrangement on a form provided by the department. If the department approves the alternative delivery arrangement request, the department shall provide the beer wholesaler or table wine distributor and the retail licensee a written summary of the conditions of the approved delivery arrangement. Failure to comply with the approved alternative delivery arrangement may subject the beer wholesaler,~~

~~table wine distributor, or retail licensee to administrative action.~~

(3) and (4) remain the same but are renumbered (2) and (3).

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: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.12.1202(1)(d) to reflect HB 226's amendments to 16-3-219 and 16-3-418, MCA, regarding dock sales restrictions and exceptions. Amendments to (1)(f) are necessary to reflect HB 705's expanded alcoholic beverage storage options. The department also proposes to remove ARM 42.13.1202(2) because that content is contained in the statutes cross-referenced in (1)(d) and is unnecessarily redundant in the rule.

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, PO 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., August 22, 2022.

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 www.mtrevenue.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 sponsors of House Bills 157, 226, 525, 705 and Senate Bill 320 were contacted by email on the following dates:

(1) Representative Marshall, sponsor of HB 157, was notified via email on July 21, 2021 and on July 8, 2022.

(2) Representative Zolnikov, sponsor of HB 226, was notified via email on July 21, 2021 and on July 8, 2022.

(3) Representative Buttrey, sponsor of HB 525 and HB 705, was notified via email on July 21, 2021 and on July 8, 2022.

(4) Senator Boldman, sponsor of SB 320, was notified via email on July 21, 2021 and on July 8, 2022.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and amendment of the above-referenced rule may significantly and directly impact small businesses, but any such impact is tied to the department's implementation of the underlying legislation and not the rulemaking itself, excepting the fiscal impact of the SB 320 delivery endorsement application and processing fees which the department contends is reasonable and consistent with other license endorsement fees.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State July 12, 2022