MONTANA
ADMINISTRATIVE
REGISTER

DEPARTMENT OF REVENUE

NOTICE OF ADOPTION

MAR NOTICE NO. 2025-249.2

Summary

Amendment of ARM 42.13.203 to reorganize rule content, to remove certain redundancies in content, and to clarify circumstances when distinct beer collaborations require label approvals

Previous Notice(s) and Hearing Information

On August 22, 2025, the Department of Revenue published MAR Notice No. 2025-249.1 pertaining to the public hearing on the proposed amendment of the above-stated rule in the 2025 Montana Administrative Register, Issue Number 16. The department held a public hearing on September 16, 2025. No interested persons appeared at the hearing, but the department did receive written comments from Michael Lawlor, Lawlor & Co., PLLC, and Matt Leow, Executive Director, Montana Brewers Association (MBA).

Final Rulemaking Action – Effective October 25, 2025

AMEND WITH CHANGES

The agency has amended the following rules with the following changes from the original proposal, stricken matter interlined, new matter underlined:

42.13.203 BEER LABEL APPROVALS

(1) All beer or malt beverage products that a brewer or beer importer desires to sell in the state of Montana must be approved by the department and conform to ARM 42.13.201 prior to the product entering the Montana market. In order to consider the product for approval, the department must receive copies of:

(a) the primary packaging, unless a traditional container is used. Traditional containers include aluminum cans, glass bottles, kegs, and boxes that are typically associated with alcoholic beverages; and

(b) the Certificate of Label Approval for products that are regulated by the Alcohol and Tobacco Tax and Trade Bureau (TTB); or

(c) the label for products that are regulated by the U.S. Food and Drug Administration.

(2) Any changes to the product packaging or labels described in (1)(a) through (c) require department approval prior to the product entering the Montana market.

(3) A brewer of malted beverages who has an annual nationwide production of less than 10,000 barrels is exempt from the requirements in (1)(a) through (1)(c).

(4) Beer containing more than 8.75 percent but not more than 14 percent alcohol by volume must:

(a) meet the definition of beer provided in 16-1-106(5)~~(a)~~, MCA;

(b) be approved by the department prior to being sold or distributed within the state; and

(c) note the alcohol content by volume on the label.

(5) In addition to the requirements in (1)(a) through (1)(c), for beer or formula changes that meet the criteria in (4), the following documents are also required:

(a) The brewer or beer importer must file a form, supplied by the department, attesting that the formula meets the requirements in (4).

(b) If the brewer or beer importer is required by federal law or regulations to file its formula with TTB, the brewer or beer importer is also required to send a copy of the formula filed with the TTB to the department.

(c) At the department's request and sole discretion, brewers or beer importers must file a formula for verification of its compliance with Montana statutes.

(d) All formulas filed with the department are protected by the privacy act and will not be released by the department unless otherwise required by law or by court order.

(6) The department will process the request and provide approval or denial in writing within 30 days of receipt of all required information.

(7) Each brewer actively involved in a distinct beer collaboration pursuant to 16-3-213(4), MCA, must file for a beer label approval if the collaboration beer meets the criteria provided in (4).

Authorizing statute(s): 16-1-303, MCA

Implementing statute(s): 16-1-102, 16-1-106, 16-1-302, 16-4-105, MCA

Statement of Reasons

The agency has considered the comments and testimony received. A summary of the comments received, and the agency's responses are as follows:

Comment 1: Mr. Lawlor commented that the department should consider changing the citation in new (4)(a) from "the definition of beer provided in 16-1-106(5)(a), MCA," to "the definition of beer provided in 16-1-106(5), MCA." Because if the reference is limited to (5)(a), and thus fails to include (5)(b), then the rule would seem to contradict the statute by allowing for 8.75-14% caffeinated or stimulant-enhanced malt beverages, which Mr. Lawlor does not believe is the intent of the statute or of the department.

Response 1: The department agrees that removing the pinpoint cite to (5)(a) in favor of (5) will include more beer products under the rule and is preferred reference. In response to the comment, the department has amended the rule section upon adoption.

Comment 2: Mr. Lawlor also recommended a clarifying change in new (7) noting that the under 10,000 barrels exemption from (3) still applies to the breweries involved in making a collaboration beer.

Response 2: The department disagrees with Mr. Lawlor's suggestion for (7) on the basis that including the cross reference to the exemption in (3) is substantively irrelevant as the department requires all strong beer to be approved regardless of the size of the brewery. The department declines to make the amendment.

Comment 3: Mr. Leow and the MBA provided comments in support of the department's efforts to reorganize rule content and provide clarity to the rule's requirements. However, Mr. Leow requested confirmation of the MBA's understanding that breweries that participate in a collaboration by sending staff to another brewery to brew the beer, but do not serve/sell that beer (either on-premises or in package for off-premises consumption), should not be required to file for label approval. Further, that a brewery that participates in a collaboration by sending staff to another brewery to brew the beer and the visiting brewery will then serve/sell that beer in their own premises under a retail license, that brewery should not be required to file for label approval. As Mr. Leow notes, in the first case, they are not selling the beer at all. In the second case, they are simply purchasing the beer through regular and legal distribution channels, and serving it just as they do any other product they have purchased from another manufacturer.

Response 3: The department appreciates the positive feedback regarding the rulemaking. As to Mr. Leow's comments, the department agrees with both statements and his conclusions that neither scenario necessitates the visiting brewery obtaining label approval for the stated reasons. The department also believes this response is a sufficient statement of understanding and future guidance on the matter and will not further amend the rule upon adoption.

During the course of this rulemaking, the department became aware of an oversight in proposed (7) which inadvertently omits the word "in" before the cross-reference to (4) at the end of the sentence. Accordingly, the department has added that word to improve sentence coherence.

Contact

Todd Olson, Rule Reviewer - Department of Revenue, Legal Services Office
(406) 444-7905
todd.olson@mt.gov

Rule Reviewer

Todd Olson

Approval

Brendan Beatty, Director of Revenue