



**MONTANA
ADMINISTRATIVE
REGISTER**



DEPARTMENT OF REVENUE

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-304.1

Summary

Proposed New Rules and Rule Amendments to Implement Alcoholic Beverage Industry Legislation Enacted by the 69th Montana Legislature Under House Bills 123 (HB 123), 211 (HB 211), 491 (HB 491), and 882 (HB 882)

Hearing Date and Time

Monday, December 15, 2025, at 11:00 a.m.

Hearing Information

Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana

Comments

Comments may be submitted using the contact information below. Comments must be received by Monday, December 22, 2025, at 5:00 p.m.

Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Friday, November 28, 2025, at 5:00 p.m.

Contact

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Rulemaking Actions

AMEND

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

42.12.101 APPLICATION FOR LICENSE

- (1) All applications for licenses to sell, manufacture, or distribute alcoholic beverages shall be made to the department upon forms supplied by the department or through the department's licensing portal. An abbreviated application may be used for license modifications as specified in ARM 42.12.118. In all other cases, the application process specified below shall be followed.
- (2) Applications for licenses shall be in the names of all persons who will have an ownership interest in the business to be operated under the license, as required in 16-4-401, MCA.
- (3) In addition to the license application, as applicable, the applicant shall submit:
 - (a) any processing fees required by ARM 42.12.111 and the license fee required by 16-4-420 or 16-4-501, MCA;
 - (b) a copy of the proposed agreement to transfer an ownership interest;
 - (c) proof that the applicant has possessory interest in the premises;
 - (d) any source of funding documents including, but not limited to, loan documents, gifting statements, and finance institution statements;
 - (e) the premises floor plan, which for all license types includes accurate dimensions of the premises, the licensee or applicant's name, alcoholic beverage license number, physical address, and submission date, plus:
 - (i) for a retail license, illustrates all service areas, stationary drink preparation areas, self-pour devices, storage areas, patios/decks, doors, hallways, stairways, perimeter barriers, drive-through windows, and permanent floor-to-ceiling walls required between the premises and another business;

- (ii) for a distributor license, illustrates one or more permanent floor-to-ceiling walls required between the premises and another licensed alcoholic beverage business;
 - (iii) for a winery, brewery, or distillery license, identifies all manufacturing areas, storage areas, and as applicable: sample room, drink preparation areas, patios/decks, doors, hallways, stairways, perimeter barriers, drive-through windows, and permanent floor-to-ceiling walls required between the premises and another licensed alcoholic beverage business, except as otherwise provided in 16-3-311(8) and (9), MCA; or
 - (iv) for a colocated license, the respective manufacturing and retail areas are clearly marked with the floor plan criteria provided in (i) and (iii), as applicable, for both licenses.
- (f) bank account authorization and signature documents;
- (g) proof of assumed business name;
- (h) ~~proof that all filings and payments related to Montana income, corporation, withholding, business, and other taxes are current~~ a tax certificate issued by the department under ARM 42.2.402 for the applicant and any individual of the applicant who must meet the requirements of 16-4-401(2)(a), MCA;
- (i) two complete sets of fingerprints and a personal history statement for each person identified in 16-4-414, MCA, and ARM 42.12.212;
- (j) for any entity applicant:
 - (i) formation documents such as articles of organization, articles of incorporation, or registration/certificate of partnership. Foreign (non-Montana) entities are also required to provide proof of registration or certificate of authority issued by the Montana Secretary of State;
 - (ii) stock certificates or other unit ownership certificates that evidence underlying ownership of the entity, as applicable;
 - (iii) stock ledger or entity ownership register;
 - (iv) bylaws, operating agreement(s), partnership agreement(s), as applicable; and
 - (v) organizational meeting minutes, initial resolutions of shareholders, members, partners, as applicable; and
- (k) any other documents the department deems reasonably necessary to reach a final decision.
- (4) At any time during the application process, an applicant must notify the department of any changes in the information and documents submitted under (3) and

promptly provide the department with any corrected or updated information or documents. The department will toll the processing time of the applicant's license application in accordance with 16-4-402, MCA, until the corrected or updated documents are received.

- (5) An applicant who does not have a premises ready to operate may apply for an available license pursuant to 16-4-417, MCA. The applicant must electronically apply for the license through the department's licensing portal and submit any applicable information under (3) for the department to review the application. A license issued without an approved premises will be automatically placed on nonuse status by the department.
- (6) The department shall determine whether a complete application has been submitted. If a complete application has been submitted, the department shall arrange an investigation of the application and, if applicable, publish the notice of application for a license required by 16-4-207, MCA.
- (7) Failure of a licensee to fulfill the requirements of 16-4-417, MCA, shall subject the license to revocation.
- (8) The department may waive an application requirement set forth in this rule in its sole discretion.
- (9) The disqualification of any applicant to hold the license disqualifies all.
- (10) The department may issue a license in its sole discretion. A licensee remains bound by all requirements in statute and rule that apply at the time an application for license or an application for renewal is approved.

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

Implementing statute(s): 16-3-311, 16-4-105, 16-4-201, 16-4-204, 16-4-207, 16-4-210, 16-4-401, 16-4-402, 16-4-414, 16-4-417, 16-4-420, 16-4-501, 16-4-502, MCA

Reasonable Necessity Statement

As an extension of HB 123 and the department's proposal in NEW RULE 2(2), the department proposes to amend ARM 42.12.101(3)(e)(i) to require inclusion of self-pour devices on the floor plan for the licensed premises so the department and the Department of Justice know of the device locations, for compliance purposes, which may be shared with local law enforcement.

The department also proposes to amend (3)(h) to reflect simplification of the tax certificate process in ARM 42.2.402, adopted by the department's Business and Income Tax Division under MAR Notice No. 42-1082, and in response to stakeholder feedback.

Lastly, the department proposes to amend the implementing statutes for the rule to meet the requirements of 2-4-305, MCA.

42.12.106 DEFINITIONS

The following definitions apply to this chapter:

- (1) "Adjacent to," with regard to alcoholic beverage advertising limitations for premises suitability, means:
 - (a) the premises share a common internal or external wall with the building at issue; or
 - (b) there is an absence of another building between the premises and the building at issue; and
 - (c) the distance between the nearest exterior wall of the premises and the building at issue is equal to or less than 100 feet.
- (2) "Affiliation" means relationships wherein:
 - (a) an entity owns or controls another entity;
 - (b) entities are under common ownership or control; or
 - (c) an individual has decision-making authority or influence over business decisions for another entity.
- (3) "Alteration" means a structural change or modification to the premises other than a cosmetic change. Examples include adding a patio/deck or removing a half wall.
- (4) "Associated business" means a business that is not licensed by the state to keep or sell alcoholic beverages, but has an alcoholic beverages licensed business located within or on the premises owned or controlled by the "associated business." Examples of associated businesses are:
 - (a) a hotel that is not licensed to keep or sell alcoholic beverages, but leases space in the hotel to a licensee to sell alcoholic beverages; or
 - (b) a shopping mall that is not licensed to keep or sell alcoholic beverages, but leases space in the mall to a licensee to sell alcoholic beverages.
- (5) "Bona fide sale" means a transaction that completely transfers the property to a qualified purchaser for consideration.

- (6) "Building" means an enclosed structure with external walls and a roof that meets the requirements of 16-3-311, MCA. Buildings connected by skyways are not considered one building for licensing purposes.
- (7) "Business directly related to the on-premises consumption of alcoholic beverages" means a business that is readily associated with on-site alcoholic beverage consumption, such as a hotel, bowling alley, casino, or restaurant. It does not include alcoholic beverage manufacturers, grocery stores, or off-premises alcoholic beverage businesses, except as allowed under 16-3-311, MCA.
- (8) "Catered event" means a special event where the sale and service of alcoholic beverages is conducted by a licensee who has obtained a catering endorsement.
- (9) "Catered event service area" means the area in which the licensee with a catering endorsement may sell and serve alcoholic beverages at retail.
- (10) "Colocated license" means the same as the term defined in 16-4-401, MCA.
- (11) "Colocated premises" means the same as the term defined in 16-4-401, MCA.
- (12) "Complete application" means that the applicant has supplied all information and documentation requested on the license application forms or required by statute or rule and the necessary information and documentation requested by the department to complete the ~~application~~ application.
- (13) "Concession agreements" are agreements in which an on-premises consumption beer licensee or all-alcoholic beverages licensee provides the sale and service of alcoholic beverages for a non-licensed entity.
- (14) "Contiguous" means touching or sharing a common border.
- (15) "Cross collateralization" means collateral for one loan also serving as collateral for another loan.
- (16) "Drink preparation area" means the bar area on the premises where alcoholic beverages are stored and prepared for on-premises consumption and from which alcoholic beverages may be sold for off-premises consumption.
- (17) "Event barrier" means a barrier enclosing the perimeter of a catered event service area. The construction, installation, and use criteria of an event barrier is provided in ARM 42.12.128.
- (18) "Fair" means a county, state, or regional fair that occurs no more than once per year, is held on a publicly owned fairgrounds, and is officially sanctioned by a government entity.
- (19) "Family relationship" means a spouse, dependent children, or dependent parents.
- (20) "Floor plan" means a diagram with measurements of the premises as seen from above.

- (21) "Grocery store" means a self-service retail establishment where a variety of perishable and nonperishable food items and household goods are sold for use off the premises.
- (22) "Interior access" means entry that does not impede customer foot traffic from accessing any interior portion of the premises. Interior access is not found where a customer would be required to leave the interior portion of the premises.
- (23) "Licensee" means a person, partnership, association, or other entity holding a Montana retail alcoholic beverage license, a retail alcoholic beverage operation located on a U.S. military installation, an alcoholic beverage manufacturer, a table wine distributor, or a beer wholesaler within Montana.
- (24) "License fee" means a fee paid at the time a new license application is submitted and upon renewal of an existing license.
- (25) "Loan" means a written contract by which one delivers a sum of money to another with the agreement that the money be returned with interest within a specified period of time.
- (26) "Manufacturing area" means the portion of a manufacturing premises that is not designated as a sample room, or operating a retail license under 16-4-401(9), MCA.
- (27) "Noninstitutional lender" means a person other than a state or federally regulated banking or financial institution, a credit union, an investment company, a development company, or other regulated lender as defined in 31-1-111, MCA, who loans money to the applicant for a license or to the licensee.
- (28) "Ownership interest" means the involvement in the business operated under the license by someone who owns some or all of the assets of the business, shares any portion of the profits, or any portion of the losses or liabilities of the business. Someone with an ownership interest in a liquor license shares in the financial risks of the business and is entitled to the profits or suffers the losses. Ownership interest includes the right to control the location or ownership of a license. Examples of ownership interests would include the authority to participate in such business decisions as the sale of the license, relocation of the license, or change or creation of any financial arrangements for loan repayment or funding sources. Participation in business decisions does not include providing advice. A right of first refusal is not an ownership interest.
- (29) "Parties" means a:
 - (a) licensee;
 - (b) applicant;
 - (c) secured party;
 - (d) protestor; or

- (e) attorney representing the licensee, applicant, secured party, protestor, or other interested party.
- (30) "Patio/Deck" means an outdoor portion of the premises where the preparation, service, and consumption of alcoholic beverages is allowed.
- (31) "Perimeter barrier" means a barrier enclosing the perimeter of the patio/deck. The barrier shall be constructed in a manner that impedes foot traffic and clearly defines the boundary of the exterior portion of the premises. The barrier shall be at least three feet high at all points and may have a single entrance permitting public access from an unlicensed area to the patio/deck. Upon the department's determination that the barrier accomplishes its intended purpose, the barrier may:
 - (a) be constructed of materials such as lattice or wrought iron that do not form a solid structure;
 - (b) have a portion of it be water;
 - (c) have additional entrances permitting public access to the patio/deck; and
 - (d) be less than three feet in height.
- (32) "Permanent floor-to-ceiling wall" means a continuous structure spanning from floor to ceiling that remains in a fixed position and serves as a solid physical barrier. The wall may be constructed of brick, glass, stone, wood, and other materials as approved by the department. The wall may not be constructed of materials such as lattice or wrought iron that do not form a solid physical barrier.
- (33) "Premises" means the area identified in the floor plan approved by the department on which the activities authorized under the license may be conducted.
- (34) "Prepared serving" means the same as the term provided in 16-1-106, MCA.
- (35) "Registered vendor representative" means the same as provided in ARM 42.11.105.
- (36) "Retail alcoholic beverages license" means a license operated by an establishment for the retail sale of alcoholic beverage for either on- or off-premises consumption but does not include brewery, winery, or distillery licenses.
- (37) "Sacramental wine" means wine that is manufactured and sold exclusively for use as sacramental wine or for other religious purposes.
- (38) "Sample room" means the area of a manufacturer's premises where the service, sale, and on-premises consumption of alcoholic beverages are permitted.
- (39) "Self-pour device" means the same as an electronic or other technology-based device used to measure and supply customers with a predetermined volume of beer or wine, as described in 16-3-311(1)(a)(ii), MCA.
- ~~(39)~~(40) "Self-service of alcoholic beverages" means allowing persons other than the licensee or its employees, or a concessionaire or the concessionaire's employees, to

have access to alcoholic beverages prior to the licensee or its employees providing the alcoholic beverage to the person for on-premises consumption. The term does not include beer or wine that was provided in a pitcher, bucket, or bottle, and beer or wine dispensed through an approved self-pour device.

~~(40)~~(41) "Service area" means the area on the premises where the service, sale, and on-premises consumption of alcoholic beverages are permitted. The service area includes any patio/deck and drink preparation area.

~~(41)~~(42) "Service bar" means an area on a restaurant beer and wine licensee's premises where alcoholic beverages are stored and prepared for on-premises consumption.

~~(42)~~(43) "Ski hill," for the purpose of administering 16-3-302(4), MCA, means the site and permanent structures that have been developed for alpine or Nordic skiing.

~~(43)~~(44) "Special event," as it relates to special permits and catered events, means a short, infrequent, out-of-the-ordinary occurrence such as a picnic, fair, festival, reception, seasonal event, or sporting event for which there is an outcome, conclusion, or result.

~~(44)~~(45) "Stand-alone beer and/or table wine business" means a business in which 95 percent of the business's annual gross income comes from the sale of beer, table wine, or both.

~~(45)~~(46) "Storage area" means any portion of the premises that is accessible only by the licensee or its employees and where alcoholic beverages are stored in original packaging.

~~(46)~~(47) "Substantially different use" means a change great enough to create a new type of business operation at a premises which is easily distinguishable from the business currently operated or previously planned to be operated at the same premises.

~~(47)~~(48) "Temporary operating authority" means the authority granted to an applicant to operate a business pending final approval of the application.

~~(48)~~(49) "Undisclosed ownership interest" means a person with an ownership interest in a license who is not identified as an applicant, shareholder, or member of an applicant on an application for the license, or as a licensee on the face of the license.

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

Implementing statute(s): 16-1-106, 16-1-302, 16-3-311, MCA

Reasonable Necessity Statement

The department proposes to amend ARM 42.12.106(12) to correct a misspelling of the word “application” at the end of the definition which occurred during the department’s rulemaking promulgated under MAR Notice No. 42-1076 (2024).

The department proposes to adopt a definition for “self-pour device” in new (39) to continue implementation of HB 123 in NEW RULE 2 and provide an abbreviated, universal form of reference for the lengthier statutory term without diminishing the original reference, which the department believes will generally improve how well the rules read. Based on the proposed amendments, the department will renumber the remaining definitions.

The department also proposes to amend the definition of “self-service of alcoholic beverages” in proposed (40) to continue implementation of HB 123 in NEW RULE 2. Since HB 123 allows licensees to use department-approved self-pour devices, and the law specifically states that these devices do not constitute self-service, a premises suitability exception in the definition is necessary.

Lastly, the department proposes to amend the implementing statutes for the rule to meet 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) All-beverages license \$400
 - (b) Beer importer's license \$200
 - (c) Combined beer wholesaler and table wine distributor license \$200
 - (d) Combined beer wholesaler and table wine distributor subwarehouse license \$100
 - (e) Brewery license \$200
 - (f) Out of state brewery or beer importers registration \$200
 - (g) Brewery, winery, or distillery storage depot license \$100
 - (h) Domestic distillery license \$200
 - (i) Resort all-beverages license \$400
 - (j) Restaurant beer and wine license \$400
 - (k) Retail off-premises beer and table wine license \$200

- (l) Retail off-premises beer license \$200
 - (m) Retail off-premises table wine license \$200
 - (n) Retail on-premises beer and wine license \$400
 - (o) Sacramental wine license \$50
 - (p) Tour boat endorsement \$100
 - (q) Winery license \$200
 - (r) All-beverages, retail on-premises beer and wine, or restaurant beer and wine license delivery endorsement \$200
- (2) The fees to be charged for processing requests associated with an existing license are as follows:
- (a) Adding a catering endorsement \$100
 - (b) Adding a concession agreement \$100
 - (c) Adding an additional manufacturing location \$100
 - (d) Adding or changing mortgages, secured interests, or liens \$50
 - (e) Transferring ownership as a result of a foreclosure \$200
 - (f) Transferring location \$200
 - (g) Increasing current ownership interest from less than 15 percent to 15 percent or more \$200
 - (h) Changing the business entity type \$200
 - (i) Changing the alcohol beverage type \$200
 - (j) Adding a delivery endorsement \$100
 - (k) Adding an additional golf course building \$100
 - (l) Adding a noncontiguous storage area on the campus of a continuing care retirement community licensed premises \$100
 - (m) Adding additional buildings or service locations on the campus of a continuing care retirement community licensed premises \$100
- (3) The processing fee for determination of resort area is \$500.
- (4) Processing fees are not refundable.
- (5) A fingerprint processing fee, in the amount indicated on the application form, must accompany each application.

Authorizing statute(s): 16-1-303, 16-4-105, 16-4-201, 16-4-204, 16-4-420, MCA

Implementing statute(s): 16-1-302, 16-1-303, 16-3-302, 16-4-105, 16-4-201, 16-4-204, 16-4-303, 16-4-313, 16-4-315, 16-4-414, 16-4-420, MCA

Reasonable Necessity Statement

The department proposes to amend ARM 42.12.111 as follows:

- transfer the application fee references for all-beverages, retail on-premises beer and wine, or restaurant beer and wine license delivery endorsements, which are stated in ARM 42.13.1102 through 42.13.1104, to ARM 42.12.111(1), new (r), to complete the department's efforts to consolidate all application fees and processing fees into one rule which began under MAR Notice No. 42-1076 (2024).
- add two new license processing fees as proposed (2)(l) and (m) to implement HB 491, which allows continuing care retirement community licensees to apply for additional locations on the licensed campus to sell and serve alcoholic beverages and pay the fee prescribed in 16-3-302(2)(b), MCA; and a processing fee for an off-premises consumption licensee delivery endorsement.
- amend the implementing statutes for the rule to meet the requirements of 2-4-305, MCA.

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 and wine or all-beverage retailer proposes to operate a license, when a party applies to obtain a license, transfers 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, 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, or applies to operate as a colocated license. The requirements of this rule also apply to an on-premises consumption beer and wine or all-beverage retailer operating at a colocated premises.
- (2) The premises of an on-premises consumption beer and wine or all-beverage retailer may be considered suitable only if:

- (a) except as allowed in 16-3-311(1)(a), MCA, the applicant or licensee has possessory interest in the premises;
- (b) the applicant or licensee has adequate control over the premises;
- (c) except as allowed in 16-4-401, MCA, a single alcoholic beverage license of any kind will be operated at the premises;
- (d) the premises are identified by a unique address;
- (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 premises may also include the buildings and structures allowed in 16-3-302, MCA, and ARM 42.12.153. The interior portion of the premises must comply with the requirements of 16-3-311(3), MCA. Subject to the exceptions in 16-3-311(1)(a), (8), (9), and (10), 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), (9), and (10), MCA, the only access from the premises to another business may be through lockable doors in the permanent floor-to-ceiling wall;
- (f) building, health, and fire code approval is obtained;
- (g) the premises are located on regular police beats and can be properly policed by local authorities, which includes the premises being located on property to which law enforcement has unrestricted access, except as provided in 16-6-103, MCA;
- (h) the premises are not located where a local government ordinance prohibits the sale of alcoholic beverages;
- (i) the premises are either solely dedicated to the on-premises consumption of alcoholic beverages or are within a business directly related to the on-premises consumption of alcoholic beverages;
- (j) the type of business is readily determinable due to indoor and outdoor signage and the premises' general layout and atmosphere;
- (k) alcoholic beverages are advertised and displayed as being available for purchase;
- (l) there are no signs, posters, or advertisements displayed on the exterior portion of the premises that identify any brewer, beer importer, or wholesaler in any manner. This prohibition does not apply to temporary advertisements allowed under 16-3-244, MCA, or advertisements excepted in 16-3-244, MCA;

- (m) the interior premises include at least one stationary drink preparation area. The premises may have more than one drink preparation area, including drink preparation areas on the patio/deck and moveable drink preparation areas, subject to department approval;
 - (n) there is interior access to any interior portion of the premises;
 - (o) all storage areas are located in the interior portion of the premises, except as authorized by 16-3-311(1)(b) and (6), MCA;
 - (p) except as provided in 16-3-311(1), MCA, and [NEW RULE 2], the physical layout and equipment utilized provide sufficient physical safeguards to prevent the self-service of alcoholic beverages at any drink preparation area; and
 - (q) except as provided in 16-3-311(1), MCA, and [NEW RULE 2], self-service devices and vending machines are not used to serve alcoholic beverages.
- (3) A patio/deck, authorized under 16-3-311, MCA, may be considered suitable only if:
- (a) building, health, and fire code approval is obtained, as required by state or local law;
 - (b) subject to the exception in (c), the patio/deck is contiguous with and immediately accessible from the interior premises;
 - (c) any path connecting the interior premises and the patio/deck is under the possessory interest of the licensee, is clearly marked, and the department determines that sufficient physical safeguards are in place to ensure proper service and consumption of alcoholic beverages; and
 - (d) with the exception of a patio/deck at a golf course, a perimeter barrier or existing natural boundary clearly marks where the service and consumption of alcoholic beverages are allowed.
- (4) If a licensee leases or subleases its kitchen, or another specified area within its premises, to allow another business entity to operate a business within the licensed premises, as conditioned in 16-3-311(1)(a), MCA, then the licensee shall ensure adequate physical safeguards are in place to prevent access to the alcoholic beverage inventory by the other business entity. The area leased or subleased by the licensee shall be clearly marked on the floor plan, a copy of which shall be submitted to the department.
- (5) The premises must meet and maintain compliance with all suitability standards in place at the time the premises are inspected. The department may, at any time, verify that the premises remain in compliance with all suitability standards in place at the time the suitability of the premises was last determined. Upon determining that the premises do not meet all applicable suitability standards, the department

may deny an application or take administrative action against a licensee, including license revocation.

- (6) The privileges granted under a license extend only to the premises depicted in the floor plan approved by the department. The licensee shall follow the process in ARM 42.13.106 for a premises alteration.

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

Implementing statute(s): 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 Statement

The department proposes to amend ARM 42.12.145(1) to notify applicants and licensees that a licensed premises is subject to premises suitability requirements when seeking to operate as a colocated premises, which the department's rulemaking under MAR Notice No. 42-1076 (2024) inadvertently omitted. The amendments are necessary since two licenses will be operated out of a combined premises and the department must ensure the premises suitability requirements for both operations are met in order to protect public health and safety.

The department also proposes amendments in (1) which are necessary to correct minor punctuation or subject-verb errors made under the MAR Notice No. 42-1076 rulemaking.

The department also proposes to amend (2)(p) and (q) to continue implementation of HB 123 in NEW RULE 2. Since HB 123 allows licensees to use department-approved self-pour devices, and the law specifically states that these devices do not constitute self-service, it is necessary to state the suitability of premises exceptions.

42.12.146 RESTAURANT BEER AND WINE LICENSE - PREMISES SUITABILITY REQUIREMENTS

- (1) The department shall determine the suitability of the premises where a restaurant beer and wine retailer proposes to operate a license, when a party applies to obtain a license, transfers 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.
- (2) The premises of a restaurant beer and wine retailer may be considered suitable only if:

- (a) except as allowed in 16-3-311(1)(a), MCA, the applicant or licensee has possessory interest in the premises;
- (b) the applicant or licensee has adequate control over the premises;
- (c) a single alcoholic beverage license of any kind will be operated at the premises;
- (d) the premises are identified by a unique address;
- (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 comply with the requirements of 16-3-311(3), MCA. Subject to the exceptions in 16-3-311(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(1)(a), (8), and (9), MCA, the only access from the premises to another business may be through lockable doors in the permanent floor-to-ceiling wall;
- (f) building, health, and fire code approval is obtained;
- (g) the premises are located on regular police beats and can be properly policed by local authorities, which includes the premises being located on property to which law enforcement has unrestricted access;
- (h) the premises are not located where a local government ordinance prohibits the sale of alcoholic beverages;
- (i) the type of business is readily determinable due to indoor and outdoor signage and the premises' general layout and atmosphere;
- (j) alcoholic beverages are advertised and displayed as being available for purchase;
- (k) there are no signs, posters, or advertisements displayed on the exterior portion of the premises that identify any brewer, beer importer, or wholesaler in any manner. This prohibition does not apply to temporary advertisements allowed under 16-3-244, MCA;
- (l) there is seating for patrons totaling not more than the seating capacity for which the premises are licensed;
- (m) there is an interior service bar. The premises may have more than one service bar, including service bars on the patio/deck, subject to department approval;
- (n) there is interior access to any interior portion of the premises;

- (o) all storage areas are located in the interior portion of the premises, except as authorized by 16-3-311(6), MCA;
 - (p) except as provided in 16-3-311(1), MCA, and [NEW RULE 2], the physical layout and equipment utilized provide sufficient physical safeguards to prevent the self-service of alcoholic beverages at any service bar; and
 - (q) except as provided in 16-3-311(1), MCA, and [NEW RULE 2], self-service devices and vending machines are not used to serve alcoholic beverages.
- (3) A patio/deck, authorized under 16-3-311, MCA, may be considered suitable only if:
 - (a) building, health, and fire code approval is obtained;
 - (b) subject to the exception in (c), the patio/deck is contiguous with and immediately accessible from the interior premises;
 - (c) any path connecting the interior premises and the patio/deck is under the possessory interest of the licensee, is clearly marked, and the department determines that sufficient physical safeguards are in place to ensure proper service and consumption of alcoholic beverages; and
 - (d) a perimeter barrier clearly marks where the service and consumption of alcoholic beverages are allowed.
- (4) If a licensee leases or subleases its kitchen, or another specified area within its premises, to allow another business entity to operate a business within the licensed premises, as conditioned in 16-3-311(1)(a), MCA, then the licensee shall ensure adequate safeguards are in place to prevent access to the alcoholic beverage inventory by the other business entity. The area leased or subleased by the licensee shall be clearly marked on the floor plan, a copy of which shall be submitted to the department.
- (5) A licensee which leases or subleases its kitchen, or another specified area of its licensed premises, must still meet the definition of "restaurant" and fulfill the license requirements of 16-4-420, MCA.
- (6) The premises must meet and maintain compliance with all suitability standards in place at the time the premises are inspected. The department may, at any time, verify that the premises remain in compliance with all suitability standards in place at the time the suitability of the premises was last determined. Upon determining that the premises do not meet all applicable suitability standards, the department may deny an application or take administrative action against a licensee, including license revocation.
- (7) The privileges granted under a license extend only to the premises depicted in the floor plan approved by the department. The licensee shall follow the process in ARM 42.13.106 for a premises alteration.

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

Implementing statute(s): 16-3-244, 16-3-309, 16-3-311, 16-3-312, 16-4-402, 16-4-405, 16-4-421, MCA

Reasonable Necessity Statement

The department proposes to amend ARM 42.12.146(1) for the same reasons and under the authority expressed in the second paragraph of the statement of reasonable necessity for the proposed amendments to ARM 42.12.145.

The department proposes to amend ARM 42.12.146(2)(p) for the same reasons and under the authority expressed in the third paragraph of the statement of reasonable necessity for the proposed amendments to ARM 42.12.145.

42.12.149 WINERY, BREWERY, AND DISTILLERY - PREMISES SUITABILITY REQUIREMENTS

- (1) The department shall determine the suitability of the premises where an alcoholic beverage manufacturer proposes to operate a license, when a party applies to obtain a license, transfers 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 as a colocated license. The requirements of this rule also apply to an alcoholic beverage manufacturer operating at a colocated premises.
- (2) The premises of a manufacturer may be considered suitable only if:
 - (a) the applicant or licensee has possessory interest in the premises;
 - (b) the applicant or licensee has adequate control over the premises;
 - (c) a single alcoholic beverage license of any kind will be operated on the premises, except as authorized under an approved alternating proprietor arrangement;
 - (d) the premises are identified by a unique address;
 - (e) building, health, and fire code approval is obtained;
 - (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 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 lockable doors in the permanent floor-to-ceiling wall, except as provided in 16-3-311(8) and (9), MCA;

- (g) there is interior access to any interior portion of the premises;
 - (h) all storage areas are located in the interior portion of the premises;
 - (i) access by unauthorized persons to manufacturing areas is restricted; and
 - (j) it is readily determinable that a manufacturer operates at the premises due to outdoor signage and the existence of the equipment necessary to undertake the activities for which the premises are licensed.
- (3) The premises may include more than one building for manufacturing purposes only if 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) A domestic brewery, winery, or distillery may operate a warehouse anywhere in the state only if the warehouse is used exclusively for storage. To seek approval, the licensee shall submit a form provided by the department and include verification, if applicable, that the Alcohol and Tobacco Tax and Trade Bureau approved the licensee's registration to operate the warehouse. A licensee may seek approval for more than one warehouse. Each warehouse must have a separate storage depot license. All warehouses are subject to the suitability requirements in (2).
- (5) In addition to all other requirements, a manufacturer's premises with a sample room shall be considered suitable only if:
- (a) there is a single contiguous sample room;
 - (b) the sample room is located in the interior portion of the premises;
 - (c) the sample room is not located in a storage warehouse;
 - (d) the sample room contains a drink preparation area. The premises may have more than one drink preparation area, including drink preparation areas on the patio/deck, subject to department approval;

- (e) the physical layout and equipment utilized provide sufficient physical safeguards to prevent the self-service of alcoholic beverages at any drink preparation area; and
 - (f) except as provided in 16-3-311(1), MCA, and [NEW RULE 2], self-service devices and vending machines are not used to serve alcoholic beverages.
- (6) A manufacturing premises with a sample room may have a patio/deck. The patio/deck will be considered suitable only if:
 - (a) building, health, and fire code approval is obtained;
 - (b) the patio/deck is contiguous with and immediately accessible from the sample room, except where the department approves a path connecting the sample room and the patio/deck. The use of a path may only be approved if the licensee holds possessory interest in the path, the path is clearly marked, and the department determines that sufficient physical safeguards are in place to ensure proper service and consumption of alcoholic beverages;
 - (c) a perimeter barrier clearly marks where the service and consumption of alcoholic beverages is allowed; and
 - (d) the physical layout and equipment prevent the self-service of alcoholic beverages. This includes a prohibition against the service of alcoholic beverages through self-service devices and vending machines. Reach-in coolers and open shelving are prohibited unless they are located in a drink preparation area and the department determines that sufficient physical safeguards are in place to prevent the self-service of alcoholic beverages.
- (7) A distillery premises may only include one sample room, regardless of the number of manufacturing buildings the licensee operates.
- (8) The premises must meet and maintain compliance with all suitability standards in place at the time the premises are inspected. The department may, at any time, verify that the premises remain in compliance with all suitability standards in place at the time the suitability of the premises was last determined. Upon determining that the premises do not meet all applicable suitability standards, the department may deny an application or take administrative action against a licensee, including license revocation.
- (9) The privileges granted under a license extend only to the premises depicted in the floor plan approved by the department. The licensee shall follow the process in ARM 42.13.106 for a premises alteration.

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

Implementing statute(s): 16-3-311, 16-3-411, 16-4-102, 16-4-312, 16-4-402, MCA

Reasonable Necessity Statement

The department proposes to amend ARM 42.12.149(1) for the same reasons and under the authority expressed in the first and second paragraphs of the statement of reasonable necessity for the proposed amendments to ARM 42.12.145.

The department also proposes to amend ARM 42.12.149(5)(f) for the same reasons and under the authority expressed in the third paragraph of the statement of reasonable necessity for the proposed amendments to ARM 42.12.145.

42.12.151 LIMITED ALL-BEVERAGES LICENSE FOR CONTINUING CARE RETIREMENT COMMUNITY – CAMPUS AND PREMISES SUITABILITY REQUIREMENTS AND CONDITIONS FOR OPERATING

- (1) The department shall determine the suitability of the campus and premises when a continuing care retirement community applies to obtain a limited all-beverage license provided in 16-4-315, MCA, changes the ~~location~~campus where the license will be operated, or makes alterations to the department-approved premises. ~~The privileges granted under a license extend only to the premises depicted in the floor plan approved by the department except on premises consumption may extend across the continuing care retirement community's campus, as provided in 16-4-315, MCA.~~
- (2) The continuing care retirement community campus and premises may be considered suitable only if:
 - (a) the applicant or licensee has possessory interest in the campus and licensed premises;
 - (b) the applicant or licensee has adequate control over the premises;
 - (c) no other license authorized under Title 16, MCA, will be operated concurrently at the premises;
 - (d) ~~the premises are~~campus is identified by a unique address;
 - (e) ~~the premises are located within one building or a specific portion of one building. The interior 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~~the sales, service, storage, and delivery of alcoholic beverages are done within the boundaries of the continuing care retirement community campus and in department-approved buildings and structures in compliance with 16-4-315, MCA, ARM 42.12.153, and this rule;

- (f) building, health, and fire code approvals are obtained, as required by state or local law;
- (g) the premises are located on regular police beats and can be properly policed by local authorities, which includes the premises being located on property to which law enforcement has unrestricted access;
- (h) the premises are not located where a local government ordinance prohibits the sale of alcoholic beverages;
- (i) the premises complies with the licensing restrictions provided in 16-3-306, MCA;
- (j) there are no signs, posters, or advertisements displayed on the exterior of the premises that identify any brewer, beer importer, or wholesaler in any manner. This prohibition does not apply to temporary advertisements allowed under 16-3-244, MCA;
- (k) a plat of the continuing care retirement community campus is submitted to the department that shows the campus boundaries and any buildings and structures used in the sales, service, delivery, and storage of alcoholic beverages, including any noncontiguous storage areas;
- ~~(k)(l)~~ the one or more floor plans are submitted that accurately states the dimensions of the premises, includes the applicant or licensee's name; alcoholic beverage license number, if applicable; physical address and date of application; and identifies the central dining areas, any stationary drink preparation area service locations, and any storage areas. A plat of the continuing care retirement community campus must also be provided to the department that shows the campus boundaries and any other structures located on the campus;
- ~~(l)(m)~~ the interior of the premises includes at least one stationary drink preparation area. The central dining area service location but may have more than one drink preparation area, including moveable drink preparation areas portable bar or dispensing equipment, subject to department approval;
- ~~(m)~~ all storage areas are located in the interior of the premises;
- (n) alcoholic beverages will not be sold through a drive-up window;
- (o) the physical layout and equipment utilized provide sufficient physical safeguards to prevent the self-service of alcoholic beverages at any drink preparation area; and
- (p) self-service devices and vending machines are not used to serve alcoholic beverages, except for self-pour devices provided in 16-3-311(1), MCA, and [NEW RULE 2].

- (3) The premises must meet and maintain compliance with all suitability standards in place at the time the premises was last approved by the department. The department may, at any time, verify that the premises remain in compliance with those suitability standards. Upon determining that the premises does not meet all applicable suitability standards, the department may deny an application or take administrative action against the licensee, including license revocation.
- (4) The licensee shall follow the process in ARM 42.13.106 for a premises alteration. Alterations to residential areas or other areas where alcoholic beverages are not sold or served from do not require ~~submittal~~ or approval from the department.
- (5) In addition to all other alcoholic beverage licensing requirements, a limited all-beverages continuing care retirement community 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 for alcoholic beverages obtained elsewhere by residents of the continuing care retirement community for consumption in residential areas;
 - (b) sell or serve alcoholic beverages only from an approved drink preparation areas;
 - (c) prevent the sale or service of alcoholic beverages between 8 p.m. and 11 a.m.;
 - (d) prevent the consumption or possession of alcoholic beverages outside of residential areas between 2 a.m. and 11 a.m. by removing all alcoholic beverages from individuals' possession by 2 a.m.;
 - (e) prevent the consumption or possession of alcoholic beverages on the campus and premises by persons who are under 21 years of age, or actually, apparently, or obviously intoxicated, in accordance with 16-3-301, MCA; and
 - (f) prevent the on-premises consumption of alcoholic beverages not sold or provided at the premises except for alcoholic beverages obtained elsewhere by residents of the continuing care retirement community for consumption in residential areas.

Authorizing statute(s): 16-1-303, 16-4-315, MCA

Implementing statute(s): 16-3-244, 16-3-309, 16-3-311, 16-4-315, 16-4-402, 16-4-405, 16-6-303, MCA

Reasonable Necessity Statement

The department generally proposes to amend ARM 42.12.151 to continue the implementation of HB 491 which allows continuing care retirement community licensees with additional options for selling and serving alcoholic beverages on their campuses within designated buildings and ancillary areas within the campus, such as patios. The rule title is proposed for amendment to reflect HB 491's focus to define and incorporate the campus of a continuing care retirement community into alcoholic beverages service.

The department proposes to strike the last sentence of (1) and include necessary restatements of the revised law in the proposed amendments to (2)(e) and proposed (2)(k) for disclosure and to notify licensees that all buildings within a campus and service locations of the licensed premises must be included on the plat map and floor plan(s). Based on the proposed addition of (2)(k), remaining subsections in (2) will be renumbered.

The department's amendments to proposed (2)(m) are necessary to align the rule with the additional storage options for continuing care retirement community licensees under HB 491.

Lastly, the department proposes to amend (2)(p) for the same reasons and under the authority expressed in the third paragraph of the statement of reasonable necessity for the proposed amendments to ARM 42.12.145.

42.12.152 NONCONTIGUOUS ALCOHOLIC BEVERAGE STORAGE AREAS; RESORT ALTERNATE RETAIL ALCOHOLIC BEVERAGE STORAGE FACILITIES

- (1) The use of a noncontiguous alcoholic beverage storage area by an on-premises retail licensee is permissible, as provided in 16-3-311, MCA. Except for a noncontiguous storage area for a continuing care retirement community under 16-4-315, MCA, all other noncontiguous alcoholic beverage storage areas may be located within ten miles of the licensee's premises as measured in a straight line from the nearest entrance of the licensed premises to the nearest entrance of the noncontiguous storage area.
- (2) The use of resort alternate alcoholic beverage storage facilities ~~are~~is permissible, as provided in 16-3-311 and 16-4-213, MCA.
- (3) Except as provided in 16-3-311(7), MCA, a noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility may 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. A noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility may also be used for the storage of items related to the alcoholic beverage business including supplies, equipment, and vehicles.

- (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, as applicable;
 - (c) the processing fee provided in ARM 42.12.111, as applicable;
 - ~~(e)~~(d) 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)~~(e) documentation of the licensee's possessory interest in the noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility;
 - ~~(e)~~(f) 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)~~(g) 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)~~(h) 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.

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

Implementing statute(s): 16-3-301, 16-3-311, 16-4-213, MCA

Reasonable Necessity Statement

Similar to the department's proposed amendments to ARM 42.12.151, the department finds it necessary to amend ARM 42.12.152(1) to continue the implementation of HB 491 which allows continuing care retirement community licensees the ability to store alcoholic beverages in a noncontiguous storage area. However, the location of this noncontiguous storage area is statutorily different for this licensee type compared to other licensees, so the amendments reflect this noncontiguous storage area variation.

The department also proposes to add new (4)(c) which is discussed in the statement of reasonable necessity for the processing fees in ARM 42.12.111(2)(l) and (m). This fee is similar to fees imposed on other licensees for the same purpose and under the same authority. Based on the proposed addition of (4)(c), remaining subsections in (4) will be renumbered.

42.12.153 ADDITIONAL RETAIL SERVICE BUILDINGS OR STRUCTURES

- (1) In addition to the main licensed premises, a golf course beer and wine licensee or an all-beverages licensee operating a license at a golf course may use an additional building or structure, one per nine holes of the golf course that is designed to serve golfers alcoholic beverages during the course of play.
- (2) In addition to the main licensed premises, an all-beverages licensee or resort all-beverages licensee may sell alcoholic beverages for consumption on the premises in one or more of the following:
 - (a) ~~a building that constitutes the primary indoor lodging quarters of a hotel or other short-term lodging facility~~ up to two licensed alcohol service structures separate from the main licensed premises of a hotel, if the premises is not located within the quota area boundaries of an incorporated city or incorporated town;
 - (b) a permanent, licensed alcohol service structure in a swimming area separate from the main licensed premises;

- (c) up to two additional permanent structures on a ski hill separate from the main licensed premises; or
 - (d) an additional structure that constitutes the clubhouse or primary indoor recreational quarters of the golf course separate from the main licensed premises.
- (3) A continuing care retirement community licensee may sell alcoholic beverages for consumption on its campus and premises from the following locations:
- (a) any buildings or structures as long as those service locations are on the campus and include food service;
 - (b) patios, decks, or controlled lawn areas as long as those areas are immediately adjacent to the main licensed premises and located on the campus; and
 - (c) in a permanent, licensed alcohol service structure in a swimming pool area.
- ~~(3)~~(4) The department may approve a licensee for storage of alcoholic beverages at an additional retail service building if adequate physical safeguards prevent access by individuals other than the licensee or its employees.
- ~~(4)~~(5) A licensee must submit the following to the department via its online licensing portal for approval of an additional retail service building or structure:
- (a) a completed additional retail service building request form;
 - (b) the application fee provided in 16-3-302, MCA, as applicable;
 - (c) the processing fee provided in ARM 42.12.111, as applicable;
 - (d) a copy of the floor plan for each proposed additional retail service building or structure;
 - (e) a plat-style map showing the location of each proposed additional retail service building or structure on the licensee's property;
 - (f) documentation of the licensee's possessory interest in the proposed additional retail service building or structure;
 - (g) evidence of approvals from state or local officials that the proposed additional retail service building or structure meets building, health, and fire code requirements, as required by state or local law; and
 - (h) any additional documentation the department deems reasonably necessary to approve the licensee's request.
- ~~(5)~~(6) Upon its acceptance and review of a licensee's submissions in ~~(4)~~(5), the department will arrange an inspection of the proposed additional retail service building or structure and review the inspection findings.

~~(6)~~(7) The department will notify the licensee, in writing, within ten business days of the completed investigation of its approval or denial of the additional retail service building or structure.

~~(7)~~(8) Upon approval, an updated license will be issued and reflect the location of any additional retail service building or structure. The licensee must display a copy of the license in a prominent place at any additional retail service building or structure.

~~(8)~~(9) No alcoholic beverages may be stored or served by a licensee at a proposed additional retail service building or structure prior to receiving department approval.

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

Implementing statute(s): 16-3-302, 16-4-315, MCA

Reasonable Necessity Statement

The department proposes to amend ARM 42.12.153 to align the rule with statutory changes enacted under HB 882 and HB 491. HB 882 provides allowances for hotels to add additional structures to their licensed premises, and HB 491 allows continuing care retirement community licensees to serve alcoholic beverages from additional locations on the community's campus (as alluded to in the proposed amendments to ARM 42.12.151).

The proposed amendments to (2)(a) and proposed (3) seek to meet the revised additional building parameters for hotels and continuing care retirement communities, respectively. Based on the addition of proposed (3), the department will renumber the remaining sections of the rule.

Lastly, the department proposes to amend the implementing statutes for the rule to meet the requirements of 2-4-305, MCA.

42.13.111 DEFINITIONS

The following definitions apply to this chapter:

- (1) "Alteration" means a structural change or a modification to the premises other than a cosmetic change. Examples include adding a patio or removing a half wall.

- (2) "Building" means an enclosed structure with external walls and a roof. Separate structures or structures connected by skyways are not considered one building for licensing purposes.
- (3) "Contiguous" means touching or sharing a common border.
- (4) "Contract packaging" means blending, bottling, packing, and/or filling of a distilled spirits product by a domestic distilled spirits plant for another distilled spirits plant.
- (5) "Cosmetic change" means a nonstructural change to the premises. Examples include painting, carpeting, and other interior decorating.
- (6) "Coupons" are certificates or tickets entitling the holder to a specified right, as redemption for cash or gifts or reduced purchase price.
- (7) "Distilled at the microdistillery" means the process of vaporization and subsequent condensation of a beverage containing ethyl alcohol that occurs at the licensed premises.
- (8) "Distilled spirits" means alcoholic beverages that contain ethyl alcohol and generally are the result of distillation of fermented materials. Examples include whiskey, gin, vodka, cordials, liqueurs, and flavored brandies. Distilled spirits do not include alcoholic beverages that are defined as beer or wine by the Montana Alcoholic Beverage Code.
- (9) "Distilled spirits plant" means a plant at which distilled spirits are manufactured, produced, aged, stored, packaged, or bottled.
- (10) "Drink preparation area" means the bar area on the premises where alcoholic beverages are stored and prepared for on-premises consumption and from which alcoholic beverages may be sold for off-premises consumption.
- (11) "Flavors and nonbeverage ingredients containing alcohol" means any intermediate product containing alcohol that is used in the production of beer.
- (12) "Floor plan" means a diagram with measurements of the premises as seen from above.
- (13) "Fortified wine" means wine that contains more than 16 percent, but not more than 24 percent, of alcohol by volume. Fortified wine constitutes liquor for distribution purposes.
- (14) "Going establishment" means a business that:
 - (a) is open at least 20 hours per week for any four weeks in a 90-day period;
 - (b) maintains an inventory of at least ten cases of alcoholic beverages for each day that the establishment is open; and
 - (c) sells or provides a minimum of \$50, calculated at cost, of alcoholic beverages each week the establishment is open.

- (15) "Grocery store" means a self-service retail establishment where a variety of perishable and nonperishable food items and household goods are sold for use off the premises.
- (16) "Industry member" is any person engaged in business as a manufacturer, importer, or wholesaler of alcoholic beverages.
- (17) "Mitigating circumstances" means a justification for a violation that the department considers extenuating enough to warrant a reduction of the penalty that would otherwise be proposed.
- (18) "Original packaging" means the sealed container in which a manufacturer packages its product for retail sale. It includes bottles, cans, kegs, and growlers, but does not include lines or piping carrying product from a manufacturer's premises to a retailer's premises.
- (19) "Patio/deck" means an outdoor portion of the premises where the preparation, service, and consumption of alcoholic beverages is allowed.
- (20) "Perimeter barrier" means a barrier enclosing the perimeter of the patio/deck. The barrier shall be constructed in a manner that impedes foot traffic and clearly defines the boundary of the exterior portion of the premises. The barrier shall be at least three feet high at all points and may have a single entrance permitting public access from an unlicensed area to the patio/deck. Upon the department's determination that the barrier accomplishes its intended purpose, the barrier may:
 - (a) be constructed of materials such as lattice or wrought iron that do not form a solid structure;
 - (b) have a portion of it be water;
 - (c) have additional entrances permitting public access to the patio/deck; and
 - (d) be less than three feet in height.
- (21) "Portable satellite vehicle" or "other movable satellite device" as used in 16-3-302, MCA, may include:
 - (a) self-propelled wheeled vehicles such as golf carts, concession vans, or similar conveyances containing beverage dispensing and storage equipment; or
 - (b) wheeled devices such as concession wagons or vendors carts and other similar vehicles which may be towed, pushed, or transported to a temporary site and which contains beverage dispensing and storage equipment; and
 - (c) fixed booths or stands in which portable beverage dispensing and storage equipment may be temporarily installed and removed after use.

- (22) "Posted price" as it applies to liquor and fortified wine, means the wholesale price of liquor and fortified wine for sale to persons who hold liquor licenses as fixed and determined by the department.
- (23) "Premises" means the area in the floor plan approved by the department on which the activities authorized under the license may be conducted.
- (24) "Primary packaging" means the container that directly holds the alcoholic beverage. Examples of primary packaging include, but are not limited to, aluminum cans, glass bottles, kegs, and a box containing a plastic bladder or other soft flexible container of wine.
- (25) "Purchase price" means the ordinary, dine-in menu price for beer and wine and food items.
- (26) "Sale to an underage person" means a violation consisting of the unlawful sale, service, or delivery of an alcoholic beverage to a person under the age of 21.
- (27) "Sample room" means the area of a manufacturer's premises where the service, sale, and on-premises consumption of alcoholic beverages are permitted.
- (28) "Seasonal business" means a business closed for greater than 90 consecutive days due to climatic and other conditions.
- (29) "Self-pour device" means the same as an electronic or other technology-based device used to measure and supply customers with a predetermined volume of beer or wine, as described in 16-3-311(1)(a)(ii), MCA.
- ~~(29)~~(30) "Self-service of alcoholic beverages" means allowing persons other than the licensee or its employees to have access to alcoholic beverages prior to the licensee or its employees providing the alcoholic beverage to the person for on-premises consumption. The term does not include beer or wine that was provided in a pitcher, bucket, or bottle, and beer or wine dispensed through a self-pour device.
- ~~(30)~~(31) "Service area" means the area on the premises where the service, sale, and on-premises consumption of alcoholic beverages are permitted. The service area includes any patio/deck and drink preparation area.
- ~~(31)~~(32) "Service bar" means an area on a restaurant beer and wine licensee's premises where alcoholic beverages are stored and prepared for on-premises consumption.
- ~~(32)~~(33) "Stand-alone beer and/or table wine business" means a business in which 95 percent of the business's annual gross income comes from the sale of beer, table wine, or both.

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

Implementing statute(s): 16-1-302, 16-3-311, MCA

Reasonable Necessity Statement

Like the proposed amendment in ARM 42.12.106(39), the department proposes to amend ARM 42.13.111 to adopt a definition for “self-pour device” in new (29) to continue implementation of HB 123 in NEW RULE 2. The definition will provide an abbreviated, universal form of reference for the lengthier statutory term without diminishing the original reference, which the department believes will generally improve how well the rules read. Based on the addition of proposed (29), the department will renumber the remaining definitions in the rule.

The department also proposes to amend the definition of “self-service of alcoholic beverages” in proposed (30) to continue implementation of HB 123 in NEW RULE 2. Since HB 123 allows licensees to use department-approved self-pour devices, and the law specifically states that these devices do not constitute self-service, a premises suitability exception in the definition is necessary.

Lastly, the department proposes to amend the implementing statutes for the rule to meet 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 16-3-301(8), 16-3-302(5), 16-4-213(4)(a)(iii), 16-4-213(8), 16-4-401(9)(e), 16-4-404(7), and 16-6-306(3), MCA;
 - (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) offer liquor, beer, and wine for on-premises consumption;
 - (d) prevent the self-service of alcoholic beverages on the premises, except as provided in 16-3-311(1), MCA, and [NEW RULE 2];
 - (e) prevent the sale of alcoholic beverages for on-premises or off-premises consumption between 2 a.m. and 8 a.m.;

- (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 sold for off-premises consumption pursuant to (2) from individuals' possession by 2 a.m.;
 - (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; and
 - (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 under the following conditions:
 - (a) alcoholic beverages must be sold in original packaging, 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).
- (3) An all-beverages licensee may use curbside pickup, including a drive-through window, to sell alcoholic beverages that were ordered online, in person, 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 provided in ARM 42.12.111;
 - (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 purchase up to a total of six gallons of beer or table wine per day from in-state licensed retailers. The licensee shall maintain records

for any beer or table wine purchased from in-state retailers separate from those for inventory purchased through ordinary means of distribution. Records shall include:

- (a) the date of purchase;
 - (b) the type(s), brand(s), and quantity of beer or table wine purchased; and
 - (c) the identity of the retailer from whom the beer or table wine was purchased.
- (6) An all-beverages licensee may allow a customer to take a partially consumed bottle of table wine to go if the bottle is adequately sealed with the original cork or bottle top. This provision is not intended to supersede any jurisdiction's open container laws or contravene 61-8-1026, MCA, regarding open alcoholic beverage containers in motor vehicles.
- (7) If a licensee leases or subleases its kitchen, or another specified area within its premises, to allow another business entity to operate a business within the licensed premises, as conditioned in 16-3-311(1)(a), MCA, then the licensee shall ensure adequate safeguards are in place to prevent access to the alcoholic beverage inventory by the other business entity. The area leased or subleased by the licensee shall be clearly marked on the floor plan, a copy of which shall be submitted to the department.

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

Implementing statute(s): 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 Statement

The department proposes to amend 42.13.1102(1)(a) to implement other statutory changes that were enacted under HB 882. HB 882 amended statute to allow licensees located on resorts to have alcoholic beverages on their premises that were not purchased on site, which is an operational departure from prior policy. The exceptions are authorized in 16-3-302(5) and 16-4-213(4)(a)(iii), MCA. The department believes including the new exceptions in rule is necessary as (1) describes other statutory exceptions.

As provided in other proposed amendments in this rulemaking, the department also proposes to amend (1)(d) in this rule to continue implementation of HB 123 in NEW RULE 2. Since HB 123 allows licensees to use department-approved self-pour devices, and the law specifically states that these devices do not constitute self-service, it is necessary to state the premises suitability exception.

Lastly, the department proposes to move the stated application fee from (4)(a) to the department's consolidated fee rule, ARM 42.12.111, and provide the cross reference in this rule.

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 16-3-301(8), 16-3-302(5), 16-4-213(4)(a)(iii), 16-4-404(7), and 16-6-306(3), MCA;
 - (b) store alcoholic beverages only on the premises or in an approved noncontiguous alcoholic beverage storage area;
 - (c) offer beer and wine for on-premises consumption;
 - (d) serve beer and wine only to patrons who order food;
 - (e) state alcoholic beverage sales on the food bill;
 - (f) obtain at least 65 percent of its annual gross income from the sale of food, excluding the sale of nonalcoholic beverages;
 - (g) prevent the self-service of alcoholic beverages on the premises, except as provided in 16-3-311(1), MCA, and [NEW RULE 2];
 - (h) prevent the sale of alcoholic beverages between 11 p.m. and 11 a.m.;
 - (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).
- (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, in person, 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~~provided in ARM 42.12.111;
 - (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.
- (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) serve an evening dinner meal at least four days a week for at least two hours a day between 5 p.m. and 11 p.m.; and
 - (b) sell the majority of its food and drinks, excluding any carry-out business, in nondisposable containers.
- (5) A restaurant beer and wine licensee may purchase up to a total of six gallons of beer or table wine per day from licensed in-state retailers. The licensee shall maintain records for beer or table wine purchased from in-state retailers separate from those for inventory purchased through ordinary means of distribution. Records shall include:
 - (a) the date the beer or table wine was purchased;
 - (b) the type(s), brand(s), and quantity of beer or table wine purchased; and
 - (c) the identity of the in-state retailer from whom the beer or table wine was purchased.
- (6) A restaurant beer and wine licensee may allow a customer to take partially consumed bottles of wine to go if the bottle is adequately sealed with the original cork or bottle top. This provision is not intended to supersede any jurisdiction's

open container laws or contravene 61-8-1026, MCA, regarding open alcoholic beverage containers in motor vehicles.

- (7) If a licensee leases or subleases its kitchen, or another specified area, to allow another business entity to operate a business within the licensed premises, as conditioned in 16-3-311(1)(a), MCA, then the licensee shall ensure adequate safeguards are in place to prevent access to the alcoholic beverage inventory by the other business entity. The area leased or subleased by the licensee shall be clearly marked on the floor plan, a copy of which shall be submitted to the department.
- (8) A licensee which leases or subleases its kitchen, or another specified area of its licensed premises, must still meet the definition of "restaurant" and fulfill the license requirements stated in 16-4-420, MCA.

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

Implementing statute(s): 16-3-301, 16-3-305, 16-3-311, 16-3-312, 16-4-405, 16-4-420, 16-6-306, MCA

Reasonable Necessity Statement

The department proposes to amend 42.13.1103(1)(a) for the same reasons and under the authority expressed in the statement of reasonable necessity for the proposed amendments to ARM 42.13.1102(1)(a).

The department proposes to amend (1)(g) for the same reasons and under the authority expressed in the statement of reasonable necessity for the proposed amendments to ARM 42.13.1102(1)(d).

The department proposes to amend (3)(a) for the same reasons and under the authority expressed in the statement of reasonable necessity for the proposed amendments to ARM 42.13.1102(4)(a).

42.13.1104 ON-PREMISES CONSUMPTION BEER AND WINE LICENSE - CONDITIONS FOR OPERATING

- (1) In addition to all other alcoholic beverage licensing requirements, an on-premises consumption beer and wine licensee shall:
 - (a) only purchase and possess on the premises beer from a beer wholesaler or brewery, fortified wine from an agency liquor store, and table wine from a

table wine distributor or winery, except as permitted under 16-3-301(8), 16-3-302(5), 16-4-213(4)(a)(iii), 16-4-401(9)(e), 16-4-404(7), and 16-6-306(3), MCA;

- (b) store alcoholic beverages only on the premises or in an approved noncontiguous alcoholic beverage storage area;
 - (c) offer beer and wine for on-premises consumption;
 - (d) prevent the self-service of alcoholic beverages on the premises, except as provided in 16-3-311(1), MCA;
 - (e) prevent the sale of alcoholic beverages for on-premises or off-premises consumption between 2 a.m. and 8 a.m.;
 - (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 sold for off-premises consumption pursuant to (2) from individuals' possession by 2 a.m.;
 - (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; and
 - (h) prevent the on-premises consumption of alcoholic beverages not sold or provided at the premises and those sold for off-premises consumption pursuant to (2).
- (2) An on-premises consumption beer and wine licensee may sell alcoholic beverages for off-premises consumption under the following conditions:
- (a) alcoholic beverages must be sold in original packaging, 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 (4) and (5), the sale of alcoholic beverages must occur on the premises.
- (3) An on-premises consumption beer and wine licensee may use curbside pickup, including a drive-through window, to sell alcoholic beverages that were ordered online, in person, or through the phone.
- (4) An on-premises consumption 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 provided in ARM 42.12.111;
 - (b) alcoholic beverage delivery is limited to beer and wine 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 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 on-premises consumption beer and wine licensee may purchase up to a total of six gallons of beer or table wine per day from licensed in-state retailers. The licensee shall maintain records for beer or table wine purchased from in-state retailers separate from those for inventory purchased through ordinary means of distribution. Records shall include:
 - (a) the date the beer or table wine was purchased;
 - (b) the type(s), brand(s), and quantity of beer or table wine purchased; and
 - (c) the identity of the retailer from whom the beer or table wine was purchased.
- (6) An on-premises consumption beer and wine licensee may allow a customer to take partially consumed bottles of wine with them to go if the bottle is adequately sealed with the original cork or bottle top. This provision is not intended to supersede any jurisdiction's open container laws or contravene 61-8-1026, MCA, regarding open alcoholic beverage containers in motor vehicles.
- (7) If a licensee leases or subleases its kitchen, or another specified area within its premises, to allow another business entity to operate a business within the licensed premises, as conditioned in 16-3-311(1)(a), MCA, then the licensee shall ensure adequate safeguards are in place to prevent access to the alcoholic beverage inventory by the other business entity. The area leased or subleased by the licensee shall be clearly marked on the floor plan, a copy of which shall be submitted to the department.

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

Implementing statute(s): 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 Statement

The department proposes to amend 42.13.1104(1)(a) for the same reasons and under the authority expressed in the statement of reasonable necessity for the proposed amendments to ARM 42.13.1102(1)(a).

The department proposes to amend (1)(d) for the same reasons and under the authority expressed in the statement of reasonable necessity for the proposed amendments to ARM 42.13.1102(1)(d).

The department proposes to amend (4)(a) for the same reasons and under the authority expressed in the statement of reasonable necessity for the proposed amendments to ARM 42.13.1102(4)(a).

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) only purchase and possess on the premises beer from a beer wholesaler or brewery and table wine from a table wine distributor or winery except as permitted under 16-3-301(8) and 16-4-404(7), MCA;
 - (b) store beer and/or table wine only on the premises or in an approved noncontiguous alcoholic beverage storage area;
 - (c) sell beer and/or table wine for off-premises consumption only in their original packages;
 - (d) operate as a stand-alone beer and/or table wine business, grocery store, or drugstore licensed as a pharmacy; and
 - (e) prevent the sale of alcoholic beverages between 2 a.m. and 8 a.m.
- (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, in person, or through the phone.
- (3) In addition to the requirements in (1), an off-premises consumption beer and/or table wine licensee that operates in a grocery store shall maintain groceries with a retail value of at least \$3,000 at all times. The inventory must include at least three different types of items in each of the following categories: meats, vegetables, fruits, baked goods, dairy, and household supplies. For example, three different types of items in the dairy category would be cheese, milk, and butter, but skim milk, chocolate milk, and whole milk would not be considered as three different types of items in the dairy category.

- (4) The delivery of alcoholic beverages by an off-premises consumption beer and table wine licensee to the consumer off-site is prohibited.
- (5) An off-premises consumption beer and/or table wine licensee may purchase up to a total of six gallons of beer or table wine per day from licensed in-state retailers. The licensee shall maintain records for beer or table wine purchased from retailers separate from those for inventory purchased through ordinary means of distribution. Records shall include:
 - (a) the date the beer or table wine was purchased;
 - (b) the type(s), brand(s), and quantity of beer or table wine purchased; and
 - (c) the identity of the retailer from whom the beer or table wine was purchased.
- (6) An off-premises consumption beer and wine licensee that operates in conjunction with a grocery store or drugstore licensed as a pharmacy may use its own employees, who are 21 years of age or older, or an independent contractor to deliver beer and wine to a customer under the following conditions:
 - (a) the licensee must apply for the delivery endorsement, pay the required processing fee in ARM 42.12.111, and receive department approval for the endorsement; and
 - (b) delivery is limited to beer and wine in its original packaging only.
- (7) An off-premises consumption beer and wine licensee may also use a third-party delivery licensee to deliver beer and wine in its original packaging.

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

Implementing statute(s): 16-3-301, 16-3-304, 16-3-305, 16-3-312, 16-4-115, 16-4-307, 16-4-402, 16-4-405, MCA

Reasonable Necessity Statement

The department proposes to amend 42.13.1105 through the addition of new (6) and (7) to continue the department's implementation of HB 211. New (6) aligns the rule with HB 211's delivery options for off-premises consumption beer and table wine licensees, where delivery service is contemplated by the licensee using its own employees or an independent contractor of the licensee. Section (6) proposes that there is a delivery endorsement application, processing fee, and department approval process that is required before delivery can commence by the licensee.

New (7) is proposed to inform off-premises consumption beer and wine licensees of the option for delivery through the use of a third-party delivery licensee, also contemplated under HB 211, which does not require the off-premises consumption beer and wine licensee to obtain an endorsement or incur processing fees.

Lastly, the department proposes to amend the implementing statutes for the rule to meet the requirements of 2-4-305, MCA.

ADOPT

The rules proposed to be adopted are as follows:

NEW RULE 1 THIRD-PARTY DELIVERY LICENSE AND THIRD-PARTY DELIVERY DRIVERS

- (1) An application for a third-party delivery license shall be made through the department's online licensing portal. In addition to the license application, the applicant must pay the initial license fee required by 16-4-501, MCA.
- (2) A third-party delivery license expires on June 30 and can only be renewed by completing a renewal application through the department's licensing portal and paying the annual renewal fee. A third-party delivery licensee may not offer delivery service on an expired license.
- (3) A third-party delivery driver must verify the age of the recipient. A third-party delivery driver may use the following forms of identification to verify age:
 - (a) any state-issued driver's license or identification card;
 - (b) any Canadian government-issued driver's license or identification card;
 - (c) a passport;
 - (d) any federally recognized tribal identification card; and
 - (e) any government-issued identification in a hard-copy or digital version.
- (4) A third-party delivery driver may use scanning software technology to aid in the age verification of the recipient.

Authorizing statute(s): 16-1-303, 16-4-307, MCA

Implementing statute(s): 16-4-307, 16-4-501, MCA

Reasonable Necessity Statement

The department proposes to adopt NEW RULE 1 which is necessary to implement HB 211 that created a third-party delivery license. The rule provides basic application instructions, a renewal process, and cross-references the statutory fee schedule. NEW RULE 1 also provides some minimal operational guidance for third-party delivery drivers regarding acceptable forms of identification for customers receiving deliveries and reiterates the statutory allowance that third-party delivery drivers may use software technology to verify the age of customers.

Other proposed requirements for third-party delivery licensees and third-party delivery drivers regarding responsible sales and service training can be found under the department's proposed rulemaking under MAR Notice No. 2025-227.1 (proposal published October 10, 2025), which is subject to change prior to final adoption.

NEW RULE 2 SELF-POUR DEVICES

- (1) An on-premises consumption licensee who wants to use a self-pour device for customers to self-pour beer and wine, as provided in 16-3-311, MCA, must obtain department approval for the device prior to customer use.
- (2) The licensee must submit a completed form, provided by the department, and provide an updated floor plan of the licensed premises showing the location of each self-pour device for department review and approval.
- (3) Upon receipt of the items in (2), the department will notify the licensee within seven business days of the approval or denial of the self-pour device request.
- (4) The licensee and its employees, or a concessionaire and its employees, may provide customer access to a self-pour device if the customer is at least 21 years of age and is not actually, apparently, or obviously intoxicated.
- (5) A self-pour device shall not dispense more than 48 ounces of beer or 15 ounces of table wine per customer per purchase transaction.
- (6) A customer may purchase additional beer or wine through a self-pour device from the service staff subject to the conditions in (4) and (5).

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

Implementing statute(s): 16-3-311, MCA

Reasonable Necessity Statement

The department proposes NEW RULE 2 to implement HB 123. HB 123 allows an on-premises consumption licensee, subject to department approval, to provide customers with an electronic or other technology-based self-pour beer and table wine device. Proposed (1) reflects the

statutory requirement that a licensee's self-pour devices must be department approved, and proposed (2) and (3) contain the means of seeking approval and department processing times. Sections (4) and (5) seek to implement the required licensee monitoring of customers to prevent overservice and sets the maximum amount, in ounces, of beer and table wine that can be purchased by a customer under one transaction. The department opted for the proposed volume(s) to emphasize licensee involvement in customer consumption to prevent overservice.

Small Business Impact

With regard to the small business impact analysis requirements of 2-4-111, MCA, as amended by HB 592 (2025), the department has analyzed the proposed rule adoptions and amendments and the groups or class of businesses directly affected by this rulemaking if they meet the definition of a small business under 2-4-102(13), MCA.

The department contends that, with the exception of processing fees for optional license applications or endorsements which are discussed below, any direct small business impact does not arise from the proposed rulemaking but through the legislature's enactment of public policy given the legislation being implemented by the department was requested and supported by licensees or related parties within the alcoholic beverage industry.

FISCAL IMPACT: In accordance with 2-4-302(1)(c), MCA, the department is also required to estimate the fiscal impact through the payment and collection of fees proposed in ARM 42.12.111 and the number of persons affected.

The department estimates no fiscal impact to implement HB 123 as self-pour devices are not expected to change, increase, or decrease the sale and consumption of alcohol.

HB 211 creates a new third-party delivery fee with an annual license fee of \$1,000. The department anticipates that ten entities will seek the delivery license per year, resulting in annual general fund revenue of \$13,000.

The department cannot estimate fiscal impact related to the \$100 processing fees to implement HB 491 because there is no accurate way to estimate how many continuing care retirement communities will add either a noncontiguous storage area or any additional buildings.

HB 882 amended 16-3-302, MCA, to allow the sale of alcoholic beverages in up to two licensed alcohol structures separate from the main licensed premises, allow an on-premises consumption license operated within the boundaries of a resort area to allow for the on-premises consumption of alcoholic beverages from another license within the same resort area, and allow guest ranches to serve beverages in one or more permanent buildings. The request requires a floor plan of the licensed premises of each additional building and a statutory fee of \$100 payable to the department. The department anticipates that some licensees may seek to

license additional buildings; however, the exact number of applicants is not known and only a nominal impact is anticipated.

Documentation of the small business impact analysis is available upon request.

Bill Sponsor Notification

The primary bill sponsors of House Bills 123, 211, 491, and 882 were contacted by electronic mail on July 23, 2025 and on November 6, 2025. The department received no comments from the bill sponsors to incorporate into the proposal notice.

Interested Persons

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 contact person in this notice or may be made by completing a request form at any rules hearing held by the Department of Revenue.

Rule Reviewer

Todd Olson

Approval

Scott Mendenhall, Deputy Director of Revenue