



**MONTANA
ADMINISTRATIVE
REGISTER**



DEPARTMENT OF REVENUE

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-86.1

Summary

Amendment of tobacco-related rules to provide or revise definitions supportive of 16-11-102 and 16-12-103, MCA, and to clarify tobacco manufacturer requirements and department processes

Hearing Date and Time

Monday, November 3, 2025, at 10:30 a.m.

Hearing Information

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

Comments

Comments may be submitted using the contact information below. Comments must be received by Monday, November 10, 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, October 17, 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:

42.31.201 DEFINITIONS

The ~~following~~ definitions below apply to this subchapter:

- (1) “Characterizing nontobacco flavor” means an additive, compound, or ingredient that gives a specific taste, including, but not limited to, grape, strawberry, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, coffee, mint, rosemary, coriander, menthol, herb, or spice.
 - (a) Characterizing nontobacco flavor does not include:
 - (i) any process or change that brings out the natural flavor of tobacco, such as a fire curing; or
 - (ii) any aging process which enhances tobacco flavor without introducing any additive, compound, or ingredient, such as aging tobacco leaves inside a wooden barrel that used to contain alcoholic spirits.
 - (b) The department assumes that a product contains characterizing nontobacco flavor if a manufacturer shows or suggests, explicitly or implicitly on the label, packaging, or advertising, that the product has this kind of flavor.
- (2) “Cigar” means a roll of tobacco wrapped in 100% natural leaf tobacco or:
 - (a) is wrapped in any substance that contains 75 percent or more tobacco which did not in the reconstitution process lose its tobacco character (taste, aroma, identifiable chemical components) and is of a color consistent with that of the natural leaf tobaccos traditionally used as a wrapper for American cigars; and
 - (b) does not meet the tobacco product criteria in ARM 42.31.206(1).
- ~~(1) “Interstate commerce” means the transportation of tobacco products intended for delivery to a person licensed by the department to receive unstamped or untaxed tobacco products in Montana or intended for delivery into another state.~~

~~(2)~~(3) "Montana Department of Justice current tobacco product directory" means the list of tobacco manufacturers and brands directory as required by 16-11-504, MCA.

(4) "Premium cigar" means the same as the definition provided in 16-11-102, MCA.

~~(3)~~(5) "Reporting entity" means any Montana cigarette wholesaler or licensed Montana retailer acting as a tobacco wholesaler who brings tobacco products into Montana for sale to consumers.

~~(4)~~(6) "Retailer acting as a tobacco wholesaler" means a licensed retailer ~~who purchases~~buying other tobacco products from a manufacturer, distributor, or importer who ~~has~~did not ~~prepaid~~prepay the tax on tobacco products.

~~(5)~~(7) "Statutory discount" means the amount ~~the~~a wholesaler or retailer ~~is allowed~~may use to defray cover their ~~administrative expenses~~costs.

~~(6)~~(8) "Tobacco products" include, but are not limited to:

- (a) cigarettes;
- (b) cigars;
- (c) smoking, chewing, and snuff tobaccos; and
- (d) moist snuff.

~~(7)~~(9) "Wholesale price" means the comparable arm's-length price for which a manufacturer sells a tobacco product to a wholesaler or ~~any~~ other person before applying any discount or ~~other~~ reduction.

Authorizing statute(s): 16-11-103, MCA

Implementing statute(s): 16-11-102, 16-11-202, MCA

Reasonable Necessity Statement

The department proposes to amend ARM 42.31.201 to incorporate the definition of "premium cigar" found in 16-11-102, MCA, as amended by Senate Bill 122 (2023) (SB 122), and to provide an additional definition for what constitutes "characterizing nontobacco flavor."

Defining "characterizing nontobacco flavor" is necessary because the premium cigar definition uses this unique phrase to differentiate premium cigars, and its rate of taxation, versus non-premium (i.e., regular) cigars. The proposed definition was prepared by the department after its receipt of input from stakeholders involved in the enactment of SB 122.

The department proposes to relocate the existing definition of “cigar” from ARM 42.31.206 to 42.31.201 because the department’s current practice is to provide definitions in one rule, to the greatest extent practicable. The department also proposes to remove the definition of “interstate commerce” as it has not ever been used in the subchapter. Based on the proposed amendments, it is necessary for the department to renumber existing definitions.

The department also notes that certain phrasing or drafting style in the rule lacks brevity, necessary subject modifiers, or is grammatically deficient. So several amendments are proposed to improve clarity, grammar, or phrasing of the rules with the goal(s) of simplifying and improving the content, which is a goal of Governor Gianforte's Red Tape Relief Initiative (to lessen or improve administrative regulation), where possible.

42.31.206 A TOBACCO PRODUCT LABELED AS ANYTHING SOMETHING OTHER THAN A CIGARETTE

- (1) A tobacco product labeled as ~~anything~~something other than a cigarette, ~~or not bearing a~~with no label, including but not limited to little cigars, may be considered a cigarette, as provided described in ARM 42.31.207, and under 16-11-102, MCA, if it meets two or more of the following criteria:
 - (a) the product is sold in packs ~~containing~~with 20 or 25 sticks;
 - (b) the product is ~~available for sale~~sold in cartons of ten packs;
 - (c) the product is sold in soft packs, hard packs, flip-top boxes, clam shells, or other cigarette-type boxes;
 - (d) the product is ~~of the same~~ length and ~~diameter~~width found in commercially-manufactured cigarettes;
 - (e) the product has a cellulose acetate or ~~other integrated~~similar built-in filter;
 - (f) the product weighs less than three pounds per thousand sticks;
 - (g) the product is marketed or advertised to consumers as a cigarette or cigarette substitute; or
 - (h) other ~~evidence~~proof that the product ~~fits within the definition of~~ is a cigarette ~~in~~ under 16-11-102, MCA.
- (2) Tobacco products ~~that are~~ determined to be cigarettes must meet the requirements of 16-11-307, MCA.
- ~~(3) A cigar is a roll of tobacco that is wrapped in 100% natural leaf tobacco or:~~
 - ~~(a) is wrapped in any substance that contains 75% or more tobacco which did not in the reconstitution process lose its tobacco character (taste, aroma,~~

identifiable chemical components) and is of a color consistent with that of the natural leaf tobaccos traditionally used as a wrapper for American cigars; and
(b) ~~does not meet the criteria stated in (1).~~

Authorizing statute(s): 16-11-103, MCA

Implementing statute(s): 16-11-102, MCA

Reasonable Necessity Statement

As provided in the department's statement of reasonable necessity for the amendment to ARM 42.31.201, the proposed amendment to ARM 42.31.206 reflects the necessary relocation of the definition of "cigar" to ARM 42.31.201.

The department also notes that certain phrasing or drafting style in the rule lacks brevity, necessary subject modifiers, or is grammatically deficient. So several amendments are proposed to improve clarity, grammar, or phrasing of the rules with the goal(s) of simplifying and improving the content, which is a goal of Governor Gianforte's Red Tape Relief Initiative (to lessen or improve administrative regulation), where possible.

42.31.207 DEPARTMENT DETERMINATIONS OF TOBACCO PRODUCTS

- (1) A tobacco manufacturer may request ~~a determination from the department as to determine whether~~ its product is a cigarette ~~within the meaning of defined in 16-11-102, MCA.~~
- (2) ~~Upon receipt of a manufacturer's request for determination, When the department shall determine if a product is a cigarette within the meaning of 16-11-102, MCA, using~~ receives a manufacturer's request to determine whether a product is a cigarette under (1), it will apply the criteria in ARM 42.31.206 ~~and the characteristics of the tobacco product, its packaging and labeling, and the totality of the circumstances.~~
- (3) If the department receives information from a source other than the manufacturer that a tobacco product may qualify as a cigarette ~~under 16-11-102, MCA, from a source other than the manufacturer, the department may conduct a review and issue a determination in accordance with (4) through (6)~~ consider that information.
- (4) ~~Along with a request for determination, or upon request by the department, the~~ A manufacturer ~~shall submit~~ must provide the department with the following for a determination request:

- (a) product samples of at least 20 sticks of each style within each brand family for which a determination is requested;
- (b) the weight per one thousand sticks of the product;
- (c) all advertisements, ~~and labels, and in-store display material~~ that mention or ~~depict~~show the product ~~and point of sale merchandising material for the product; and~~
- (d) the package and any larger container ~~such as~~like a carton, or detailed ~~graphics~~images for any ~~unprinted or proposed packaging that is not printed yet or planned for future use.~~
- (5) The manufacturer may ~~submit~~include any other relevant ~~evidence~~information for the department to consider ~~when making the determination in its determination.~~
- (6) The department ~~shall~~will notify the ~~tobacco product manufacturer of its determination,~~ in writing, within ten days ~~after the department makes the~~ of its determination.
- ~~(7) ARM 42.31.206 and 42.31.207 are not effective until July 1, 2007.~~

Authorizing statute(s): 16-11-103, MCA

Implementing statute(s): 16-11-102, MCA

Reasonable Necessity Statement

The department proposes to amend ARM 42.31.207 because the department notes that certain phrasing or drafting style in the rule lacks brevity, necessary subject modifiers, or is grammatically deficient. So several amendments are proposed to improve clarity, grammar, or phrasing of the rules with the goal(s) of simplifying and improving the content, which is a goal of Governor Gianforte's Red Tape Relief Initiative (to lessen or improve administrative regulation), where possible. Other proposed changes reflect grammatical improvements for improved clarity of processes.

The department proposes to amend the title of the rule to clarify what kind of determinations apply to the rule. The department also proposes to amend (1) to clarify that “cigarette” is a defined term and is an improvement of the existing text.

The proposed amendments in (2) through (6) seek to remove unnecessarily redundant text and to improve sentence grammar within the rule sections.

Finally, the department proposes to strike (7) because the rule provision is outdated and inaccurate in its inclusion of an effective date for ARM 42.31.206.

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 determined that no group or class of businesses directly affected by this rulemaking meets the definition of “small business” found in 2-4-102, MCA, nor does the rulemaking represent a significant departure from existing department practices for the out-of-state tobacco manufacturers in light of the changes enacted under SB 122.

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

Bill Sponsor Notification

The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

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

Brendan Beatty, Director of Revenue