

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 42.13.601, 42.13.701, and )  
42.13.702 pertaining to the conditions )  
for operating a brewery, production )  
threshold, and beer reporting )  
requirements )

TO: All Concerned Persons

1. On August 4, 2017, the Department of Revenue published MAR Notice No. 42-2-974 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1286 of the 2017 Montana Administrative Register, Issue Number 15.

2. On August 24, 2017, a public hearing was held to consider the proposed amendment. Sam Hoffman, Red Lodge Ales Brewing Company; Patrick Kainz, MAP Brewing Company; and Brian Smith, Blackfoot River Brewing Company, appeared and testified at the hearing. Other members of the public attended the hearing but did not testify. Written comments were received from Matt Leow, Montana Brewers Association and Kristi Blazer, Montana Beer and Wine Distributors' Association.

3. The department amends ARM 42.13.601 and 42.13.701 as proposed.

4. Based upon the comments received, the department amends ARM 42.13.702 as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

42.13.702 BEER REPORTING REQUIREMENTS (1) On or before the 15th of each month, a brewery that sells beer directly to a retailer or consumer in Montana shall pay any tax due and file ~~the following reports with the department for the preceding month:~~

~~(a) Form BET-2, reporting the amount of beer sold directly to retailers and consumers, the amount of beer produced within the reporting period, and the amount of beer sold to consumers for on-premises consumption;~~

~~(b) Form BET-3, reporting the names of the retailers and quantity of beer the retailer purchased; and~~

(e)(2) On or before the 15th of each month, each licensed brewer and beer importer located outside of Montana shall file Form BSM, reporting the amount of beer shipped directly into the state to each Montana beer wholesaler.

(2) remains as proposed, but is renumbered (3).

5. The department has considered the comments received. A summary of the comments received and the department's responses are as follows:

COMMENT 1: Mr. Hoffman, Mr. Kainz, and Mr. Leow all expressed concern that requiring self-distributing breweries to fill out Form BET-3, as proposed for ARM 42.13.702(1)(b), will create a substantial amount of additional paperwork for brewers. They commented that the existing reporting system, using the Form BET, is simple, sufficient, and working well and they would like the department to continue using it. The department's proposed amendments add, rather than reduce, confusion. The proposed reporting requirements, which impose additional burdens on breweries, are not the best way to achieve the department's stated goals.

RESPONSE 1: The department appreciates these comments. Because 16-3-211, MCA, already authorizes the department to examine a brewer's books and premises to verify the accuracy of any return, the department has reconsidered and determined it is unnecessary to require brewers to file Form BET-3. The department has further amended ARM 42.13.702 to remove this proposed language.

COMMENT 2: Mr. Hoffman, Mr. Kainz, and Mr. Leow also commented that the language proposed for ARM 42.13.702(1)(c), which requires brewers to file Form BSM, will be time consuming. Brewers already comply with current reporting requirements and they would like the department to continue using the existing reporting system. Requiring breweries to also submit a Form BSM is unnecessary. Breweries that self-distribute could have hundreds of invoices in a given month. While breweries already maintain records of the invoices, requiring them to enter and report detailed information from the invoices would be overly burdensome.

RESPONSE 2: The department agrees. The intent of the Form BSM is to capture shipments of beer into Montana by out-of-state breweries and beer importers. Therefore, the department has further amended the rule to make it clear that only licensed brewers and beer importers located outside of Montana are required to file Form BSM.

COMMENT 3: Mr. Hoffman, Mr. Kainz, and Mr. Leow all expressed concern that the department is proposing to make the brewery reporting requirements consistent with winery reporting requirements. They disagree with this approach because the two manufacturing types are regulated differently by statute. Further, the department's reason statement appears to suggest there is a need to address a compliance issue with brewery reporting. Montana breweries fully support compliance and take their reporting requirements seriously. There would be little reward and significant risk for failing to report fully and accurately.

RESPONSE 3: The department has further amended ARM 42.13.702 to remove the requirement for all brewers to file Form BET-3, and for in-state brewers to file Form BSM. Although there are similarities between the reporting requirements of breweries and wineries, the department agrees that each manufacturing license type is different and the reporting should reflect these unique statutory requirements.

COMMENT 4: Mr. Leow commented that the additional reporting requirements for Montana breweries are being applied too broadly in the proposed changes to ARM 42.13.702. The vast majority of Montana breweries will come nowhere near the 2,000 barrel limit for their on-premises sales. Ensuring brewers don't overreach the 2,000 barrel limit in a tasting room is of concern and reporting what is sold in-house versus wholesale would be simpler. The Form BET should be amended to require brewers to report total beer provided for on-premises consumption. Ms. Blazer commented that the Montana Beer and Wine Distributors' Association supports accountability and transparency in recordkeeping and the reporting of certain information to the department. The system needs to ensure the barrel limit on sample room sales is trackable and enforceable by the department.

RESPONSE 4: The department agrees that tracking the 2,000 barrel limitation for on-premises consumption by a brewer is important. Therefore, the department has updated its Form BET, beginning with the October 2017 reporting period, to require brewers to report the amount of beer they provided for on-premises consumption during each reporting period.

COMMENT 5: Mr. Leow offered suggestions for what the department might ask for on the existing Form BET, such as the total amount of beer produced in the month, total barrels of beer shipped to wholesalers, total barrels of beer sold to retailers, total barrels of beer donated, total barrels of beer sold for off-premises consumption, and total barrels of beer sold for on-premises consumption. Additionally, the department should require breweries to maintain records of sales to retailers and shipments to wholesalers that can be produced upon the department's request. Mr. Smith recommended the department ask brewers to report the total amount self-distributed to ease the regulatory burden on brewers, and encouraged the department to streamline the reporting process to a single document if possible.

RESPONSE 5: The department appreciates these suggestions from members of the industry and the recommendations for additional questions to ask on the Form BET. The department has updated the form to require brewers to report the amount of beer provided for on-premises consumption, the total amount of beer sold to beer wholesalers, the total amount of beer produced, and the on-hand inventory of finished beer at the end of each reporting period. These additional questions coincide with the reporting requirements in 16-3-211, MCA, and House Bill 541, L. 2017, and eliminates the need for additional forms to be submitted. Finally, because 16-3-211, MCA, already provides for the department's inspection of a brewer's or beer importer's books or premises for determining the accuracy of a return, the department believes it would be redundant to also include this requirement in the rule language.

/s/ Laurie Logan  
Laurie Logan  
Rule Reviewer

/s/ Eugene Walborn  
Eugene Walborn  
Deputy Director of Revenue

Certified to the Secretary of State October 30, 2017.