

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

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

TO: All Concerned Persons

1. On August 24, 2017, at 3 p.m., the Department of Revenue will hold a public hearing in the Third Floor East Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the amendment of the above-stated rules. The hearing room is most readily accessed by entering through the east doors of the building facing Sanders Street.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5 p.m. on August 14, 2017, to advise us of the nature of the accommodation you need. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

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

42.13.601 BREWERY - CONDITIONS FOR OPERATING (1) through (3) remain the same.

(4) In addition to all other requirements, a small brewery with an annual nationwide production of not less than 100 barrels or more than ~~40,000~~ 60,000 barrels that operates a sample room shall:

(a) and (b) remain the same.

(c) provide not more than 2,000 barrels of beer annually for consumption on the premises, including the premises of any affiliated manufacturers as defined in 16-3-213, MCA;

(c) and (d) remain the same, but are renumbered (d) and (e).

~~(5) In addition to all other requirements, a brewery with an annual nationwide production of more than 10,000 but less than 60,000 barrels shall:~~

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

~~(b) only provide samples without charge on its premises between 8 a.m. and 2 a.m.;~~

~~(c) prevent the sale of alcoholic beverages for off-premises consumption between 2 a.m. and 8 a.m.; and~~

~~(d) prevent the consumption or possession of alcoholic beverages on the premises between 2 a.m. and 8 a.m. by removing all alcoholic beverages other than those purchased in original packaging for off-premises consumption from individuals' possession by 2 a.m.~~

AUTH: 16-1-303, MCA

IMP: 16-3-211, 16-3-213, 16-3-214, 16-3-242, 16-3-301, 16-3-304, 16-3-305, MCA

REASON: The department proposes amending ARM 42.13.601 due to the enactment of House Bill (HB) 541, L. 2017, which revised the definition of a small brewery, increased the number of barrels a small brewery may produce, and revised production taxes imposed on brewers.

House Bill 541 revised the definition of a small brewery by increasing the allowable annual nationwide production from 10,000 barrels to 60,000 barrels. The 60,000 barrel threshold includes beer produced by the brewery, beer purchased by the brewery for resale, and beer produced by any affiliated manufacturers. The department proposes amending (4) to reflect this statutory change in the number of barrels.

Additionally, HB 541 limits the amount of beer a brewer and its affiliated manufacturers may provide for on-premises consumption. The department proposes incorporating this language into (4), as new (c), to ensure licensees are familiar with the requirement to help with compliance.

Furthermore, the department proposes striking (5), as the content of that section became outdated with the change allowing small brewers to produce up to 60,000 barrels of beer annually.

42.13.701 PRODUCTION THRESHOLD (1) remains the same.

(2) In situations where a brewer produces over ~~20,000~~ 10,000 barrels nationally and internationally in the first month of the fiscal year, all of its production will be taxed at \$4.30 for the year.

(3) and (4) remain the same.

~~(5) A brewery that sells directly to a retailer is responsible for the payment of the tax.~~

AUTH: 16-1-303, MCA

IMP: 16-1-406, 16-1-409, MCA

REASON: The department proposes amending ARM 42.13.701 due to the enactment of House Bill 541, L. 2017, which revised the definition of a small brewery, increased the number of barrels a small brewery may produce, and revised production taxes imposed on brewers.

House Bill 541 reduced the annual production threshold for the highest beer tax rate from 20,000 barrels to 10,000 barrels. The department proposes amending (2) to create continuity with this change in 16-1-406, MCA.

Furthermore, the department proposes striking (5), because a brewer's tax responsibility and reporting requirements will now be provided for in ARM 42.13.702,

as proposed to be amended in this same notice.

42.13.702 BEER REPORTING REQUIREMENTS (1) ~~Each brewery located outside of Montana shall file with the department monthly reports, provided by the department, with the following information:~~

~~(a) A~~ On or before the 15th of each month, a brewery that sells beer directly to a retailer located or consumer in Montana must pay the shall pay any tax due, pursuant to 16-1-406, MCA, on or before the 15th of each month for beer sold in the previous month and complete Montana Form BET; and file the following reports with the department for the preceding month:

(a) Form BET, 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) A brewery that sells beer directly to a retailer shall report on or before the 15th of each month the amount of beer sold directly to retailers in the previous month on Form BET-3; or~~ Form BET-3, reporting the names of the retailers and quantity of beer the retailer purchased; and

~~(c) Each retailer that purchases beer from an out-of-state brewery shall report the amount of beer purchased on Form BET-2~~ Form BSM, reporting the amount of beer shipped directly to each beer wholesaler.

~~(2) Each brewery located in Montana selling directly to consumers or retailers must pay tax for beer sold in the previous month pursuant to 16-1-406, MCA, and complete Montana Form BET~~ On or before the 15th of each month, a retailer shall file Form BET-2, reporting the amount of beer purchased from out-of-state breweries.

AUTH: 16-1-303, MCA

IMP: 16-1-406, ~~16-3-213, 16-4-401~~ 16-3-211, MCA

REASON: The department proposes amending ARM 42.13.702 to make the reporting requirements for beer sold within the state by a brewery clearer for the industry. The proposed amendments will create continuity with the reporting requirements for wineries, as provided for in ARM 42.13.404. The proposed amendments are intended to more clearly outline what is required of the brewery in an effort to reduce confusion and increase compliance.

Additionally, the department proposes incorporating reporting requirements into (1), as new (a), to track production and on-premises sales to consumers to ensure small brewers stay within the statutory limits for operating a sample room.

Furthermore, the department reviewed the current implementing statutes cited for the rule and proposes striking two that serve no purpose or no longer apply, and proposes adding one in support of the rule as amended.

The amendments proposed for this rule are unrelated to other rulemaking actions being proposed in this same notice to implement new legislation.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box

7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than September 5, 2017.

5. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct this hearing.

6. 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 that 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 a particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 4 above, faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

7. An electronic copy of this notice is available on the department's web site at revenue.mt.gov/rules, or through the Secretary of State's web site at sos.mt.gov/ARM/register.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of House Bill 541, L. 2017, Representative Adam Hertz, was contacted by regular mail on June 14, 2017 and July 7, 2017.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses. Documentation of the department's determination is available at revenue.mt.gov/rules or upon request from the person in 4.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State July 24, 2017.