



ADMINISTRATIVE RULES OF MONTANA



42.11.305 OPENING A NEW AGENCY LIQUOR STORE

- (1) The number of agency liquor stores that may be located in a community may vary as prescribed in 16-2-109, MCA. For example, there may be no more than:
 - (a) one agency liquor store if the population is 0 – 12,000;
 - (b) two agency liquor stores if the population is 12,001 – 52,000;
 - (c) three agency liquor stores if the population is 52,001 – 92,000;
 - (d) four agency liquor stores if the population is 92,001 – 132,000; or
 - (e) five agency liquor stores if the population is 132,001 – 172,000; and
 - (f) one additional agency liquor store within increments of population of 40,000 inhabitants above 172,000.
- (2) The department shall use the most recent data available from the United States Census Bureau to determine a community's population.
- (3) A new agency liquor store will be operated by an agent.
- (4) The department shall conduct a public hearing to open a new agency liquor store when all of the following conditions are met:
 - (a) The department receives a petition signed by at least the minimum qualified petitioners to open a new agency liquor store in the community. The petition must clearly state that its purpose is to have the department open a new agency liquor store in the community. The petition must show the printed name, mailing address, and signature of each person signing the petition.
 - (b) The department receives a letter from a person willing to submit a proposal or bid to operate a new agency liquor store in the community. Agency liquor stores may only be located at premises in which the agent has possessory interest.
 - (c) The number of agency liquor stores currently operating in the community does not exceed the limit in 16-2-109, MCA.
 - (d) The nearest community with an operating agency liquor store is more than 35 miles, as measured from the nearest community boundaries along the shortest route on a paved road between the two communities, unless the new agency liquor store is to be located in a community eligible for more than one agency liquor store pursuant to 16-2-109, MCA.
 - (e) The department has not solicited for an agent in the community within the previous three years.

- (f) The petition identified in (a) and the letter from a potential agent in (b) must be received within six months of each other.
- (5) When all of the conditions in (4) are met, the department may hold a public hearing to receive comments from interested parties concerning the department's intention to advertise for proposals or bids for a new agency liquor store. The procedures to determine if a public hearing will be held, and if so, the location of the public hearing are:
 - (a) the department will publish a notice to the public that will contain the following:
 - (i) the department's intent to open a new agency liquor store and the community it intends to open it in; and
 - (ii) an outline of how the public can provide written protests; and
 - (b) notice of the department's intent will be advertised twice during a two-week period in the legal section of:
 - (i) the nearest daily newspaper in general circulation for the affected area; and
 - (ii) in the local community newspaper, if there is one.
- (6) If the department receives no written public protests from residents in the county or adjoining counties, the department may solicit to open a new agency liquor store in the proposed community without holding a public hearing.
- (7) If the department receives at least one written public protest from residents in the county or adjoining counties, the department shall schedule a public hearing to determine whether the protest presents sufficient cause to deny the request.
- (8) If the department receives a specified number of written public protests from residents in the county or adjoining counties, the public hearing will be held in the community in which the new agency liquor store is proposed. The specified number of written public protests from residents shall equal:
 - (a) a quantity greater than 25 percent of the number of all-beverage licenses determined for that quota area according to 16-4-201, MCA; and
 - (b) no less than two.
- (9) If the provisions in (8) are not met, the hearing will be held in Helena.
- (10) If the need for a public hearing is determined, all qualified protesters will be notified of:
 - (a) the date, time, and place where the public hearing will be conducted; and
 - (b) the name and address of the hearing officer appointed by the department to conduct the hearing.
- (11) The hearing officer will preside over the hearing, which is not a contested case proceeding as defined in 2-4-102, MCA, and collect the information presented. The hearing will address the following:
 - (a) whether the department should proceed with its intention to advertise for a new agency liquor store for the community;

- (b) whether any limitations or restrictions on the location and operation of the new agency liquor store should be considered; and
 - (c) whether any other issues directly related to the operation of the proposed new agency liquor store in the community or its possible effects on the community should be considered in the department's determination of whether to proceed with its intention to advertise for a new agency liquor store in the community.
- (12) Within six weeks following the public hearing, the hearing officer will submit a report to the department. This report will:
- (a) identify all issues raised at the hearing;
 - (b) recommend whether proceeding with the advertisement for a new agency liquor store is in the best interest of the state and the community; and
 - (c) recommend whether any limitations or restrictions on the location and operation of the new agency liquor store should be considered.
- (13) The department shall decide what action will be taken in response to the hearing officer's recommendations within 30 business days of receipt of the hearing officer's report.
- (14) Notice of the department's decision will be mailed to all parties who signed the petition, submitted a written protest, or attended the public hearing and provided a mailing address.
- (15) If the decision is to proceed with advertising for a new agency liquor store, the agent will be selected by competitive sealed bids according to the procedures under the Montana Procurement Act, Title 18, chapter 4, MCA. To be eligible for consideration, a bid must meet all requirements set forth in the department's notice, including but not limited to an initial commission rate not to exceed 16 percent.
- (16) If no bids are received or none of the bids received meet the minimum requirements specified in the request, the department will make no further solicitation for a new agency liquor store in the community for three years. If the conditions in (4) and (5) are met after the three-year period, the department will begin the solicitation process to open a new agency liquor store in the community.

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

Implementing statute(s): 2-4-102, 16-2-101, 16-2-109, 16-4-201, MCA

History: NEW, 1993 MAR p. 2418, Eff. 10/15/93; AMD, 1998 MAR p. 2498, Eff. 9/11/98; AMD, 2012 MAR p. 2631, Eff. 12/21/12; AMD, 2015 MAR p. 2162, Eff. 12/11/15.