BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through XIII pertaining to the implementation of compliance and enforcement requirements of the Montana Marijuana Regulation and Taxation Act and local-option marijuana excise taxation	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On November 30, 2021, at 9:00 a.m., the Department of Revenue (department) will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption of the above-stated rules. The auditorium is most readily accessed by entering through the north (basement) doors of the building.

2. The department 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, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on November 12, 2021. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY The 67th Montana Legislature passed House Bill 701 (HB 701), which amends the Montana Marijuana Regulation and Taxation Act (Act), codified at 16-12-101, *et. seq.*, MCA. The department proposes New Rules I through XII to implement necessary compliance and enforcement portions of the Act. The proposed new rules provide a uniform system for license and licensed premises compliance and enforcement within the authority of the department under the Act, which recognize the due process rights afforded to licensees under the Act, and provide for the impartial resolution of marijuana matter disputes between the department and licensees. New Rule XIII is proposed in this rulemaking to provide necessary guidance for localities and affected dispensaries of the department's proposed procedures and requirements for a local-option marijuana excise tax, authorized under Sections 94 through 98, HB 701 - codified as 16-12-309 through 16-12-317, MCA.

While this general statement of reasonable necessity covers the basis for the following proposed rule adoptions, it is supplemented below, where necessary, to explain rule-specific proposals.

4. The rules as proposed to be adopted provide as follows:

NEW RULE I MARIJUANA DISPENSARY - POINT-OF-SALE SYSTEM REQUIRED (1) A marijuana dispensary licensee must utilize a computer-based point-of-sale system when selling marijuana or marijuana products to a consumer or a registered cardholder. This point-of-sale system must accurately capture the following information for every transaction:

(a) date of the sale;
(b) name and type of product sold;
(c) product category used in the seed-to-sale tracking system;
(d) unit price of the marijuana or marijuana product that was sold;
(e) quantity of marijuana or marijuana product sold;
(f) amount and type of discounts applied, if applicable;
(g) total amount of the sale;
(h) tax collected - by type, rate, and amount;
(i) registered cardholder number, if applicable; and
(j) the identity of the employee who completed the transaction.

(2) The marijuana dispensary's point-of-sale system must be capable of interfacing with the seed-to-sale tracking system, and it must capture, in a readily accessible format, and in real time, the data described in (1)(a) through (j).

(3) A marijuana dispensary licensee must not retain any metadata captured by its point-of-sale system in accordance with 16-12-104, MCA.

(4) A licensed marijuana dispensary must have the required point-of-sale system in place and operational by April 1, 2022.

AUTH: 16-12-112, MCA
IMP: 16-12-101, 16-12-112, 16-12-210, 16-12-224, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt New Rule I to establish the requirement of a computer-based point-of-sale system and the information that a marijuana dispensary must capture for every purchase transaction.

The proposed rule requires a licensee to input inventory tracking data to evidence compliance with the retail sales restrictions described in 16-12-207, MCA; for inspection and information reporting purposes as required under 16-12-210, MCA; and to meet the public policy goals of the Act regarding the legal amounts of marijuana and marijuana products sold to consumers and registered cardholders in Montana.

NEW RULE II LICENSED PREMISES – MANDATORY SIGNAGE (1) A marijuana business licensee must conspicuously display and make available its site identification certificate at each licensed premises.

(2) All marijuana business licensees, except for marijuana dispensaries, must conspicuously post a notice at each entry to a licensed premises that contains all of the following: "Persons under twenty-one years of age not permitted on these premises without a valid worker permit."

(3) All marijuana dispensaries must conspicuously post a notice or notices at each entry to the licensed premises that contains all of the following language:

(a) "Persons under twenty-one years of age not permitted on these premises without a valid registry identification card or valid worker permit. Registered cardholders under the age of 18 must be accompanied by a legal guardian."

(b) "No on-site consumption of marijuana or marijuana products." and

(c) "No on-site opening of marijuana or marijuana products."

(4) A marijuana business licensee that is not permitted to sell marijuana or marijuana products to adult use consumers, or a marijuana business licensee that elects not to sell marijuana or marijuana products to adult use consumers, must conspicuously post a notice at the entry to the licensed premises visible from outside that contains all of the following language: "This dispensary is licensed for medical marijuana sales only. No sales will be permitted without a valid registry identification card."

AUTH: 16-12-112, MCA
IMP: 16-12-101, 16-12-112, 16-12-203, 16-12-207, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt New Rule II to establish mandatory signage requirements for all marijuana businesses and to provide for license-specific variation.

The proposed signage requirements are authorized under the department's rulemaking authority for security and operating requirements for all licensees under the Act and are a compilation, such as the purpose of the Act found in 16-12-101(2)(d), MCA (to prevent the distribution of marijuana sold under this chapter to persons under 21 years of age). The basis and necessity for the requirements in proposed (2) and (3)(a) can be found in 16-12-207, MCA. The requirement in proposed (4) is necessary to clarify the operating conditions for a non-former medical marijuana licensee.

NEW RULE III LICENSED PREMISES – SECURITY REQUIREMENTS

(1) All licensees must have a written, proactive security plan maintained on the licensed premises that safeguards against theft, diversion, or tampering of marijuana or marijuana products both on the licensed premises and during transit, if applicable. The security plan must, at a minimum, contain the following policies or procedures of how a licensee:

(a) restricts access to the areas of the licensed premises containing marijuana or marijuana products to authorized persons only;

(b) provides for identification of authorized persons to be in the areas of the marijuana business that contain marijuana or marijuana products; and

(c) provides electronic monitoring of the licensed premises.

(2) A licensed premises must have only one single secure entrance to the building or licensed premises for public ingress and egress.

(3) A licensed premises must have a security alarm system on all perimeter entry points and perimeter windows, as applicable.

(4) A licensed premises must have a video monitoring system with cameras that:

(a) have a minimum digital resolution of 640 x 470 pixels or pixel equivalent for analog;

(b) record continuously twenty-four hours per day at a minimum of ten frames per second;

(c) are placed to allow for optimal identification of any person and activities in limited access areas; and

(d) are placed to record all entrances and exits to an indoor facility from both indoor and outdoor vantage points.

(5) The video monitoring system described in (4) must also:

(a) include a recording storage device secured on the licensed premises in a lockbox, cabinet, closet, or secured in another manner to protect against employee tampering or criminal theft;

(b) keep all recordings for a minimum of 90 days; and

(c) record images with clear and accurate date and time display.

(6) All monitoring system videos are subject to inspection by the department and must be copied and provided to the department upon request.

(7) Sections (3) through (6) will not be required until April 1, 2022.

AUTH: 16-12-112, MCA
IMP: 16-12-101, 16-12-112, 16-12-202, 16-12-207, 16-12-222, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt New Rule III to implement the portions of the Act which require minimum premises security systems of all marijuana businesses.

Section 16-12-101, MCA, lists a purpose of the Act is to ensure the security of a licensed premises. Section 16-12-112, MCA, also authorizes the department to adopt rules in connection with safety and security requirements for licensees.

The department proposes (1) to require all licensees adopt a written security plan that details the licensee's efforts to prevent loss of marijuana and marijuana products and deter unauthorized entrance. The requirement implements the security measures described throughout the Act, but are specifically mentioned in 16-12-207 and 16-12-222, MCA.

Similarly to proposed (1), proposed (2) reiterates the premises requirement for a single, secured entrance found in 16-12-207(9), MCA, and clarifies that it is for public ingress and egress.

Section (3) is proposed to require licensees to install security alarm systems which are an extension of electronic monitoring of a licensed premises.

Section 16-12-207(10), MCA, also requires that each marijuana business install a video monitoring system that must, at a minimum, allow for the transmission and storage, by digital means, of a video feed that displays the interior and exterior of the marijuana business. The department proposes to adopt these requirements in proposed (4) through (6).

Section (7) proposes a deferred date of requirement for (3) through (6) to provide licensees sufficient time to bring a licensed premises into compliance.

NEW RULE IV VIOLATIONS, PROCEDURES, AGGRAVATING AND MITIGATING CIRCUMSTANCES (1) Evidence of violation by a licensee, a licensee's agent, or an employee of a licensee of any of the provisions of the marijuana laws is sufficient grounds for a warning, reprimand, suspension, revocation, and/or the assessment of a civil penalty in accordance with 16-12-109, MCA.

(2) Whenever the department seeks to impose a reprimand, suspension, revocation, and/or the assessment of a civil penalty in accordance with 16-12-109, MCA, the department shall serve a licensee with a notice of proposed department action. The notice of proposed department action shall, at a minimum:

(a) state the allegations;

(b) identify dates or approximate dates of the alleged incident;

(c) cite the specific statute, rule, or local ordinance that the alleged incident violates;

(d) list each alleged violation as a separate count;

(e) identify the penalty that the department seeks to impose; and

(f) provide the licensee with appeal rights, including the right to request an administrative hearing before the department's Office of Dispute Resolution.

(3) Notwithstanding the provisions of (2)(f), whenever the department proposes revocation of a marijuana testing laboratory license, that proposed department action is subject to judicial review in accordance with 16-12-202(10), MCA.

(4) Aggravating circumstances may result in the imposition of maximum monetary penalties, maximum suspension time, or revocation. In addition to those identified in 16-12-109, MCA, aggravating circumstances include, but are not limited to:

(a) no effort on the part of a licensee to prevent a violation from occurring;

(b) a licensee's failure to report a violation at the time of renewal;

(c) involvement of a licensee in the violation;

(d) repeated violations for sales to underage or intoxicated persons;

(e) providing marijuana or marijuana products to a person under 18 years of age that is not a registered cardholder;

(f) lack of cooperation by a licensee in an investigation;

(g) a violation's significant negative effect on the health and welfare of the community in which a licensee operates; and

(h) prior violations of the marijuana laws.

(5) Mitigating circumstances may result in the adjustment of monetary penalties, amount of suspension time, or in a determination not to revoke. In addition to those identified in 16-12-109, MCA, mitigating circumstances include, but are not limited to:

(a) the admissions of a licensee regarding violations of the marijuana laws prior to the department commencing investigation of the licensee;

(b) the existence of written policies that govern the conduct of a licensee's employees; or

(c) three or more years without a violation of the marijuana laws.

(6) Ignorance of the law is not considered a mitigating circumstance.

(7) In the event a reprimand is issued:

(a) the incident shall be considered a prior violation; and

(b) the department shall assess a civil penalty, described in [NEW RULE VIII].

AUTH: 16-12-112, MCA
IMP: 16-12-109, 16-12-112, 16-12-210, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt New Rule IV to provide license violation and department procedures, including the department's consideration of aggravating and mitigating circumstances.

Section (1) provides the types of violation penalties that are described in 16-12-109, MCA, and clarifies that violations are considered based on the evidence.

Section (2) is proposed and necessary as guidance to describe that the department will issue a notice of proposed department action (PDA) and the subsections of (2) contain the elements of a PDA.

Proposed (3) reflects the statutory appeal rights exception for a marijuana testing laboratory, and that an adverse department action is subject to judicial review.

Sections (4) through (6) are necessary guidance for licensees and the department and describe the general criteria that are applied to violation matters, and when aggravating or mitigating circumstances will be considered. In particular, (4)(e) is a standalone aggravating circumstance because public safety policies of the Act address sales to minors under 18 years of age more harshly than sales to minors between 18 and 21 years of age.

Section (7) provides a simple process that describes the procedural aspects of how the department proposes to resolve violations through a licensee reprimand and provides a necessary cross reference to the civil penalties described in NEW RULE VIII which are related to the issuance of a reprimand in a violation.

<u>NEW RULE V SUSPENSION AND REVOCATION OF A LICENSE</u> (1) The department may suspend a license for any period of time not to exceed one year.

(2) The department shall revoke the license or licenses of a licensee that commits the offenses stated in 16-12-109(5), MCA, and for a marijuana testing laboratory, the offenses stated in 16-12-202(9), MCA. The department may revoke the license or licenses of a licensee that commits other violations of the marijuana laws.

(3) When determining the length of suspension or whether to revoke a license or licenses, the department shall consider aggravating and mitigating circumstances and the severity of the violation or violations as set forth in [NEW RULE IV].

(4) A license suspension shall be effective at each licensed premises that is the subject of the violation or violations resulting in the suspension.

(5) During a suspension, a licensee and its employees may not operate the licensed premises that is subject to the suspension. The suspended licensee may not sell, deliver, service, remove, transport, or receive marijuana or marijuana products or otherwise engage in business from the licensed premises. The

department may negotiate terms with a licensee to prevent the potential loss of marijuana or marijuana products during a suspension.

(6) During a suspension, a licensee and its employees must obey the marijuana laws, including compliance with the tax and reporting laws provided in 15-64-102 through 15-64-106, MCA.

(7) A suspended licensed premises remains subject to inspection under 16-12-210, MCA.

(8) If a license is due for renewal during a suspension, a licensee must submit a renewal application including payment of applicable fees to avoid lapse of the license. The department shall not approve a renewal application with respect to the suspended licensed premises until the suspension has expired.

(9) If the department receives an application for renewal during a suspension, the time allowances in 16-12-104, MCA, will not begin with respect to the suspended licensed premises until the suspension expires.

(10) A suspension does not alter a license's renewal date.

(11) The department shall inspect all suspended licensed premises before a licensee can resume operations.

(12) When a license has been revoked, the department shall not accept an application from the person or persons qualified for licensure pursuant to 16-12-109(6), MCA, for three years from the date of revocation. After the three-year moratorium, an application will only be accepted if the applicant demonstrates to the department that sufficient steps have been taken to prevent future violations of the marijuana laws.

AUTH: 16-12-112, 16-12-210, MCA
IMP: 16-12-210, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt New Rule V to describe the process when the department pursues either the suspension or revocation of a license as the penalty for license violation(s).

Section (1) contains the authorization in 16-12-210, MCA, that a suspension of a license can be for a period of up to one year. Section (2) is proposed to recognize and affirm the statutory offenses involved in license revocations and reserves the department's right to pursue revocation for other violations of the marijuana laws.

Section (3) affirms that aggravating and mitigating circumstances and the severity of the violation are considerations in determining a suspension like other proposed penalties. Section (4) is necessary to describe what suspension means for licensees with multiple licensed premises. Section (5) provides necessary guidance regarding operational restrictions for a licensee during any suspension, and (6) and (7) require continued compliance of the marijuana laws and tax reporting laws by a licensee during the suspension and confirm the opportunity for inspection during the inspection.

Proposed (8) through (10) are necessary to address logistics of license suspensions during a license renewal period. Section (11) requires inspection of a licensed premises at the conclusion of a suspension to ensure that the licensee has

cured the violation(s) that gave rise to the suspension or to confirm that the licensee is otherwise in full compliance with the marijuana laws. Section (12) is proposed as necessary reiteration of the statutory application moratorium for applicants whose license has been revoked by the department. The reference in rule is intended to provide licensees with improved understanding of the subject matter.

NEW RULE VI SERVICE OF NOTICES (1) A notice of proposed department action issued pursuant to 16-12-112, MCA, shall be served upon the licensee by sending a copy of the notice to the licensee by electronic means to the email address on file with the department.

(2) Service shall be considered complete upon transmission but is not effective if the department learns that the notice did not reach the licensee, in which case the department will proceed with service of notice provided in (3).

(3) If a licensee has previously opted out of receiving department communications by electronic means, the notice shall be served by sending a copy of the notice to the licensee by certified mail to the mailing address on file with the department. Whenever the department serves a notice via certified mail:

(a) service shall be considered complete three days after mailing the notice;

(b) service shall not be considered incomplete because of refusal to accept delivery of the notice.

(4) A licensee must respond to the department in writing within 20 days of service of the notice of proposed department action. Failure to respond will result in enforcement of the administration action proposed in the notice.

AUTH: 16-12-112, MCA
IMP: 2-4-601, 16-12-112, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt New Rule VI to inform marijuana licensees of its method of service of notices, such as proposed department actions (PDAs) used in adverse licensing matters (i.e., violations). Section 16-12-112(1)(f), MCA, allows the department to prescribe the manner of giving and serving notices. Section 2-4-601, MCA, requires reasonable notice for a licensee to respond to a proposed adverse action notice.

Sections (1) and (2) are necessary to prescribe that the service of department notices shall be by electronic means and when delivery is considered complete. Section (3) describes service when the licensee has opted out of electronic communications.

Section 2-4-601, MCA, requires that reasonable notice be provided to parties against whom administrative action is proposed. The department considers 20 days to be reasonable notice and proposes that time period in (4). Section (4) also provides information to a licensee of the consequences for failure to respond to the department's notice.

NEW RULE VII SUSPENSION OR REVOCATION OF WORKER PERMITS

(1) Whenever the department seeks to suspend or revoke the permit of any marijuana worker, the department shall serve the marijuana worker with a notice of

proposed department action, as provided in [NEW RULE IV]. The notice of proposed department action shall, at a minimum:

(a) identify dates or approximate dates of the alleged incident;

(b) cite the specific statute, rule, or local ordinance that the alleged incident violates;

(c) list each alleged violation as a separate count;

(d) identify which penalty that the department seeks to impose; and

(e) provide the marijuana worker with appeal rights, including the right to request an administrative hearing before the department's Office of Dispute Resolution.

(2) The following are grounds for suspension or revocation of a worker permit:

(a) conviction, guilty plea, or plea of no contest to a criminal offense within three years of the application or renewal;

(b) conviction, guilty plea, or plea of no contest to a citation for selling or dispensing alcohol or tobacco products to a minor;

(c) conviction, guilty plea, or plea of no contest to violating a marijuana law of any other state; or

(d) violation of any provision of the marijuana laws.

(3) The department shall revoke a marijuana worker permit if the worker knowingly sells, delivers, transfers, or makes available marijuana or a marijuana product to a person under 21 years of age. This section does not apply to sales, deliveries, or transfers to registered cardholders.

AUTH: 16-12-112, MCA
IMP: 16-12-109, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt New Rule VII to provide marijuana worker permit violation and department procedures.

Section (1) provides the department's authority to suspend or revoke a marijuana worker permit under 16-12-109, MCA, and describes that the department will issue a notice of proposed department action (PDA) and the subsections of (1) contain the elements of a PDA.

Section (2) is proposed and necessary as guidance to the department's implementation of 16-12-226, MCA.

Proposed (3) provides guidance to marijuana workers that unlawful sales of marijuana or a marijuana product to a person under 21 years of age will subject the marijuana worker's permit to revocation pursuant to 16-12-109(5)(f), MCA.

<u>NEW RULE VIII CIVIL PENALTIES</u> (1) When determining the amount of civil penalty imposed pursuant to 16-12-109, MCA, and rules of the department, the department shall consider aggravating and mitigating circumstances and the severity of the violation or violations as set forth in [NEW RULE IV].

(2) Upon reprimand or suspension of a license, the department shall also impose a civil penalty of not less than $100 and not more than $3,000 per violation.

(3) If a civil penalty is imposed in conjunction with a suspension, the licensee may not resume operations until it has paid the penalty in full.

(4) Failure to pay a civil penalty shall be considered a violation of department rule and could subject the licensee to further administrative proceedings.

AUTH: 16-12-112, MCA
IMP: 16-12-109, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt New Rule VIII to describe those instances when payment of a civil penalty shall be imposed by the department on a licensee in addition to the reprimand or suspension of license. Section (1) is necessary guidance for licensees and the department and describes the general criteria that are applied to a violation matter when civil penalties are pursued by the department and when aggravating or mitigating circumstances will be considered.

The penalty amounts in proposed (2) are authorized under 16-12-109, MCA, and are necessary to include in the implementation of this rule.

Sections (3) and (4) are proposed and provide necessary compliance measures to ensure a licensee's payment of a civil penalty.

NEW RULE IX NOTICE POSTING PROCEDURE UPON REVOCATION OR SUSPENSION OF LICENSE (1) When any marijuana business license is suspended or revoked by the department, the department shall provide a written notice to the licensee and require the licensee to post the notice on the inside of the licensed premises so that it can be seen from the outside. The notice shall state, for the benefit of the public, that the license has been suspended or revoked. The notice must identify the name of the licensee, the reason for the suspension or revocation, and the period of suspension. The suspension or revocation notice must be dated and signed. In the case of a license suspension, the notice must be posted at all times during the suspension. In the case of a revocation, the notice must be posted on the licensed premises for ten days.

(2) If a notice is removed or caused to be removed by a licensee or its employee or agent during a suspension, the license shall be subject to revocation. A licensee or its employees may not place or permit the placement of any statement on the licensed premises indicating that the premises have been closed for any reason other than what is stated on the notice.

(3) The license or licenses suspended will be held by the department during the period of suspension.

AUTH: 16-12-112, MCA
IMP: 16-12-109, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt New Rule IX to provide required department procedures pertaining to the public notice of a licensee's suspension or revocation. Similar to alcoholic beverage or gambling

operator license suspensions or revocations, the department believes New Rule IX is necessary and advisable for public notification through posting of a notice of suspension or revocation on the licensee's place of business. If public notice of a licensee's suspension or revocation were absent, the public would not know if the licensee with whom they are conducting business is in good standing with the department or the reasons why the license has been suspended or revoked.

NEW RULE X INSPECTIONS (1) Subject to the authority and restrictions under 16-12-210, MCA, the department may conduct inspections to determine compliance with the marijuana laws.

(2) The department may conduct the following types of inspections:

(a) initial application;

(b) renewal application;

(c) licensure level increase;

(d) complaint;

(e) deficiency follow-up; and

(f) suspension expiration.

(3) A licensee and its employees must cooperate with the department during an inspection. A licensee must allow inspectors full access to the licensed premises, provide requested copies of documents or videos, and allow inspectors to complete an inspection. Failure on the part of a licensee to cooperate could result in denial, reprimand, suspension, or revocation of a license.

(4) If a department inspection reveals that an applicant or licensee is not in compliance with the marijuana laws, the department shall:

(a) issue a deficiency report pursuant to [NEW RULE XI] to notify the applicant or licensee of the specific deficiencies or errors; or

(b) issue a notice of proposed department action.

AUTH: 16-12-112, 16-12-224, MCA

IMP: 16-12-101, 16-12-202, 16-12-203, 16-12-204, 16-12-208, 16-12-210, 16-12-223, 16-12-224, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt New Rule X to fulfill the purpose of the Act to " . . . establish inspection requirements for licensees. . ." See 16-12-101(2)(h), MCA. The department is proposing general inspections requirements that are authorized under the Act and which are described in the implementing statutes for the rule.

Section (1) describes that the department inspections are inspections of a licensee or licensee's premises to determine compliance with the marijuana laws. Section (2) is necessary to describe the types of inspections authorized by the department. Section (3) requires licensing compliance, through a degree of cooperation, when a department inspector presents themselves. Section (3) defines what cooperation is for the purpose of this rule, the lack of which may constitute a violation against the license. Lastly, proposed (4) provides procedural context for licensees as to possible next steps after inspection reveals noncompliance with the marijuana laws.

NEW RULE XI DEFICIENCY REPORTS (1) The department may issue a deficiency report to a licensee whenever a department inspection or compliance audit reveals a licensee is in violation of the marijuana laws. The purpose of the deficiency report is to afford licensees with an opportunity to cure deficiencies and avoid administrative proceedings before the department's Office of Dispute Resolution.

(2) A deficiency report shall, at a minimum:

(a) identify the date of the inspection;

(b) identify the name of the inspector;

(c) identify the deficiencies discovered during the inspection; and

(d) cite the specific statute, rule, or local ordinance that the deficiency violates.

(3) A licensee shall have ten days from the date of the deficiency report to cure any deficiencies.

(a) If a licensee can show proof of having cured the deficiencies through photographs, document submissions, or through other correspondence, the licensee shall submit the proof to the department.

(b) If an inspection is required to determine whether a licensee has cured deficiencies, the licensee shall contact the department to schedule a follow-up inspection within ten days from the date of the deficiency report.

(4) If a licensee cures the identified deficiencies, the department will send the licensee a deficiency resolution letter which informs the licensee that the department will close out the deficiency and take no further action on the deficiency report.

(5) If a licensee fails to respond to a deficiency report within ten days, the department may issue a notice of proposed department action.

(6) Nothing in this rule prevents the department from proceeding immediately to administrative proceedings without issuing a deficiency report.

AUTH: 16-12-112, MCA
IMP: 16-12-101, 16-12-210, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt New Rule XI to formalize a prior informal Department of Public Health and Human Services marijuana program procedure regarding deficient licensee inspections. As stated in (1), the purpose of the deficiency report procedure - and of the rule - is to afford licensees with an opportunity to cure deficiencies and avoid more formal corrective proceedings with the department. Because the procedure was widely supported by licensees and inspectors, the department proposes formal adoption of the procedure through rulemaking.

Section (2) is necessary to describe what minimum information a deficiency report shall contain. Without this necessary information, a licensee will not know which deficiencies have been discovered during the inspection.

Section (3) provides a proposed amount of time for the licensee to cure the stated deficiencies. The department contends that ten days is sufficient time to cure the types of deficiencies that are covered under this type of a report.

Section (4) describes what occurs when a licensee has cured the deficiencies stated in their report and that the department will close the matter.

In the event the deficiency is greater in scope, is more serious, or the licensee fails to respond to the deficiency report, the department proposes in (5) that it may proceed with a notice of proposed department action, or in (6), that the department reserves the right to immediately proceed to administrative proceedings against the license.

NEW RULE XII GENERAL LICENSEE REQUIREMENTS (1) A licensee must ensure that all employees wear a department-issued worker permit in a clearly visible manner on the outermost layer of clothing while working on behalf of the licensee. A licensee is responsible for the security of all marijuana and marijuana products on a licensed premises, during transit, and under the supervision of the licensee or its employee until the marijuana or marijuana product is sold.

(2) A licensee is responsible for ensuring the department has a current and working email address and a current and valid mailing address on file to receive department correspondence.

(3) A licensee is responsible for providing the department with its hours of operation for each licensed premises. A licensee or its employee must be on-site during hours of operation and must make the licensed premises available to department inspectors during those hours.

(4) A licensee must use a weighing device pursuant to 30-12-203, MCA, and ARM 24.351.101 whenever marijuana is:

(a) packaged for sale by weight;

(b) bought and sold by weight; and

(c) weighed for entry into the seed-to-sale tracking system.

(5) A licensee must establish and maintain and make available for department inspection at all licensed premises written emergency procedures to be followed in case of a fire, chemical spill, or other emergency.

(6) A licensee must maintain and make available for department inspection at all licensed premises the following documentation or information in a single binder, file, or other organized and readily accessible format:

(a) proof that any signage at the licensed premises complies with local jurisdiction sign ordinances and regulations;

(b) proof that licensees and employees of licensees are current on the required trainings;

(c) the emergency procedures required by (5);

(d) the written security plan required by [NEW RULE III(1)];

(e) for marijuana manufacturer licensees, the written standard operating procedures required by [MAR Notice No. 42-1033, NEW RULE II(16)]; and

(f) for marijuana cultivator licensees, the written standard operating procedures required by [MAR Notice No. 42-1033, NEW RULE III(8)].

AUTH: 16-12-112, MCA
IMP: 16-12-112, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt New Rule XII to provide general licensee requirements guidance that applies to all marijuana business licensees, excepting those items in (6)(e) and (f) which specifically cross reference manufacturers and cultivators.

The adoption of New Rule XII provides all licensees, in a single rule, with a requirements and documentation inventory that corresponds to operational compliance under the marijuana laws.

Sections (1) through (3) are necessary extensions of operational and security authority of the department under 16-12-112, MCA.

Section (4) requires conforming weights and measures devices under the authority of the Department of Labor and Industry whenever the measurement of marijuana is weight-based, such as described in (4)(a) through (c). The requirement for licensed weighing machines is routine for consumer protection because it ensures greater accuracy in the measurement.

Sections (5) and (6) represent the documents and disclosures that a licensee is most often requested to produce by a department inspector or local government official. Department notification of these requirements in the rule is necessary and advisable.

NEW RULE XIII LOCAL-OPTION MARIJUANA EXCISE TAX; NOTIFICATION REQUIREMENTS OF A LOCALITY; AFFECTED DISPENSARY REPORTING AND TAX PAYMENT REQUIREMENTS (1) If a locality adopts a local-option marijuana excise tax pursuant to 16-12-309 through 16-12-317, MCA, the taxes are imposed on the purchaser, as defined in 15-64-101(5), MCA, and must be collected by an affected dispensary at the time of sale. For the purpose of this rule, an "affected dispensary" means a dispensary located within the jurisdiction of a locality with a local-option marijuana excise tax.

(2) A locality is required to notify the department of the adoption of a local-option marijuana excise tax at least 90 days prior to its effective date.

(a) If the locality complies with this requirement, then an affected dispensary's reporting and payment requirement begins with the filing date associated with the end of the calendar quarter in which the tax became effective. As an example, if a locality's local-option marijuana excise tax is effective November 1, 2022, and the locality notified the department at least 90 days prior, then an affected dispensary's first reporting and payment obligation date is December 31, 2022.

(b) If a locality fails to comply with this requirement, then an affected dispensary's reporting and payment requirement begins with the filing date associated with the end of the subsequent calendar quarter in which the tax became effective. As an example, if a locality's local-option marijuana excise tax is effective November 1, 2022, but the locality did not notify the department at least 90 days prior, then an affected dispensary's first reporting and payment obligation is March 30, 2023.

(3) How, or whether, a locality fulfills (2) does not change an affected dispensary's obligation to collect a local-option marijuana excise tax from all purchasers as of the effective date of the tax.

(4) When filing a quarterly report pursuant to 15-64-102(4), MCA, and submitting payment of quarterly taxes pursuant to 15-64-102(5), MCA, an affected dispensary must also specify the local-option marijuana excise tax rate the dispensary applied to its sales during the subject calendar quarter together with the total dollar amount of local-option taxes that were collected.

(5) A local-option marijuana excise tax and related interest and penalties are a personal debt of the person required to file a return from the time that the liability arises, regardless of when the time for payment of the liability occurs.

(6) For the purpose of determining liability for the filing of statements and the payment of taxes, penalties, and interest:

(a) the officer of a corporation whose responsibility it is to truthfully account for and pay to the state the local-option marijuana excise tax provided in 16-12-309 through -16-12-317, MCA, and this rule, who fails to pay the tax is liable to the state for the taxes and the penalty and interest due on the amounts;

(b) each officer of the corporation, to the extent that the officer has access to the requisite records, is individually liable along with the corporation for filing statements and for unpaid taxes, penalties, and interest upon a determination that the officer:

(i) possessed the responsibility to file reports and pay taxes on behalf of the corporation; and

(ii) possessed the responsibility on behalf of the corporation for directing the filing of statements or the payment of other corporate obligations and exercised that responsibility, resulting in the corporation's failure to file statements or pay taxes due required by statute and this rule;

(c) each partner of a partnership is jointly and severally liable, along with the partnership, for any statements, taxes, penalties, and interest due while a partner;

(d) each member of a limited liability company that is treated as a partnership or as a corporation for income tax purposes is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest due while a member;

(e) the member of a single-member limited liability company that is disregarded for income tax purposes is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest due while a member; and

(f) each manager of a manager-managed limited liability company is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest due while a manager.

(7) In determining which corporate officer is liable, the department may consider any other available information and is not limited to this rule to establish individual liability.

(8) In the case of a bankruptcy, the liability of the individual remains unaffected by the discharge of penalty and interest against the corporation. The individual remains liable for any statements and the amount of taxes, penalties, and interest unpaid by the entity.

(9) The periods of limitations and procedures relating to deficiency assessments, estimating taxes, refunds, and collection of delinquent local-option

marijuana excise taxes are the same as those provided in 15-64-104 through 15-64-106, and 15-64-110, MCA.

(10) An affected dispensary which does not file a timely report or does not pay all local-option marijuana excise taxes when due, as required by statute and this rule, is subject to the penalty and interest provisions contained in 15-1-216, MCA.

(11) In addition to any other remedy, the department may collect delinquent local-option marijuana excise taxes in accordance with the procedures set forth in ARM 42.2.520. An affected dispensary has the right to a review of the tax liability prior to any offset by the department.

(12) If all or any part of the local-option marijuana excise taxes imposed by 16-12-309 through 16-12-317, MCA, are not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7, MCA.

AUTH: 15-1-201, 16-12-312, MCA
IMP: 15-64-104, 15-64-105, 15-64-106, 16-12-309, 16-12-310, 16-12-311, 16-12-312, 16-12-317, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt New Rule XIII to implement the department's administration of a local-option marijuana excise tax. Section 16-12-312, MCA, requires the department to adopt rules to ensure that the local-option marijuana excise tax is timely collected by the affected dispensary and remitted to the agency.

New Rule XIII links the collection, remittance, and payment of local-option marijuana excise tax to the other marijuana taxes that an affected dispensary will be collecting and does so by adopting a quarterly reporting and remittance schedule. An affected dispensary will, therefore, be remitting local-option taxes to the department at the same time, and on the same form as the other marijuana taxes. New Rule XIII also provides the administrative procedures governing the local-option excise tax, identifies the responsible parties, and explains the implications for failing to comply with these regulatory requirements. For consistency purposes, these procedures mirror those that exist for the other marijuana taxes imposed on the business.

5. 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: Todd Olson, 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 todd.olson@mt.gov and must be received no later than 5:00 p.m., December 6, 2021.

6. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

7. 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 person in number 5 above or 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.

8. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at sosmt.gov/ARM/register.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Representative Hopkins, was contacted by email on October 26, 2021.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rules may significantly and directly impact small businesses, but any such significant or direct small business impact is attributable to the department through the implementation of the statutory requirements of HB 701 and the Act.

/s/ Todd Olson	/s/ Brendan Beatty
Todd Olson	Brendan Beatty
Rule Reviewer	Director of Revenue

Certified to the Secretary of State October 26, 2021.