

Montana Code Annotated 2021

TITLE 16. ALCOHOL, TOBACCO, AND MARIJUANA

CHAPTER 12. MARIJUANA REGULATION AND TAXATION

Part 2. Licensing and Regulation

Testing Laboratories -- Licensing -- Inspection -- Dual Licensure -- State Laboratory Responsibility

16-12-202. (Effective January 1, 2022) **Testing laboratories -- licensing -- inspection -- dual licensure -- state laboratory responsibility.** (1) (a) A person who obtains a testing laboratory license or is an employee of a licensed testing laboratory is authorized to possess and test marijuana as allowed by this chapter.

(b) A person who is a controlling beneficial owner of a testing laboratory or holds a financial interest in a licensed testing laboratory may not be a controlling beneficial owner or have a financial interest in any entity involved in the cultivation, manufacture, or sale of marijuana or marijuana products for whom testing services are performed.

(2) (a) The state laboratory shall endorse a testing laboratory to perform the testing required under **16-12-206** and **16-12-209** before a testing laboratory may apply for licensure or renewal with the department.

(b) (i) The state laboratory shall inspect a testing laboratory before endorsing a testing laboratory for licensure or renewal and may not endorse a testing laboratory for licensure or renewal if the applicant does not meet the requirements of **16-12-206** and this section.

(ii) The state laboratory may not issue a temporary license while an inspection is pending.

(3) An inspection conducted for licensure or renewal of a license must include a review of an applicant's or testing laboratory's:

- (a) physical premises where testing will be conducted;
- (b) instrumentation;
- (c) protocols for sampling, handling, testing, reporting, security and storage, and waste disposal;
- (d) raw data on tests conducted by the laboratory, if the inspection is for renewal of a license; and
- (e) vehicles used for transporting marijuana or marijuana product samples for testing purposes.

(4) Upon receiving an endorsement from the state laboratory for licensure or annual renewal, a testing laboratory must apply for licensure or renewal with the department by submitting to the department:

- (a) the information required by **16-12-203**; and
- (b) a fee that the department shall establish by rule.

(5) The state laboratory shall:

(a) measure the tetrahydrocannabinol, tetrahydrocannabinolic acid, cannabidiol, and cannabidiolic acid content of marijuana and marijuana products;

(b) test marijuana and marijuana products for pesticides, solvents, moisture levels, mold, mildew, and other contaminants; and

(c) establish and enforce standard operating procedures and testing standards for testing laboratories to ensure that consumers and registered cardholders receive consistent and uniform information about the potency and quality of the marijuana and marijuana products they receive. The state laboratory shall:

(i) consult with independent national or international organizations that establish testing standards for marijuana and marijuana products;

(ii) require testing laboratories to follow uniform standards and protocols for the samples accepted for testing and the processes used for testing the samples; and

(iii) track and analyze the raw data for the results of testing conducted by testing laboratories to ensure that the testing laboratories are providing consistent and uniform results.

(6) The department may retain the services of the analytical laboratory provided by the department of agriculture pursuant to 80-1-104 for the testing contemplated in this section.

(7) If an analysis of raw testing data indicates that licensees are providing test results that vary among testing laboratories by an amount determined by the state laboratory by rule, the department shall investigate the inconsistent results and determine within 60 days the steps the testing laboratories must take to ensure that each testing laboratory provides accurate and consistent results.

(8) If the analysis of raw testing data indicates a testing laboratory may be providing inconsistent results, the state laboratory may suspend the testing laboratory's license. A suspension must be based on rules adopted by the state laboratory.

(9) The department shall revoke a testing laboratory's license upon a determination that the laboratory is:

(a) providing test results that are fraudulent or misleading; or

(b) providing test results without having:

(i) the equipment needed to test marijuana, marijuana concentrates, or marijuana products; or

(ii) the equipment required under this chapter to conduct the tests for which the laboratory is providing results.

(10) A revocation under this section is subject to judicial review.

History: En. Sec. 7, I.M. No. 190, approved Nov. 3, 2020; amd. Sec. 50, Ch. 576, L. 2021.

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Testing Laboratories -- Licensing Inspections

16-12-206. (Effective January 1, 2022) **Testing laboratories -- licensing inspections.** (1) A testing laboratory may:

(a) measure the tetrahydrocannabinol, tetrahydrocannabinolic acid, cannabidiol, and cannabidiolic acid content of marijuana and marijuana products; and

(b) test marijuana and marijuana products for pesticides, solvents, moisture levels, mold, mildew, and other contaminants. A testing laboratory may transport samples to be tested.

(2) A licensed testing laboratory shall employ a scientific director who is responsible for ensuring the achievement and maintenance of quality standards of practice. A scientific director must have the following minimum qualifications:

(a) a doctorate in chemical or biological sciences from a college or university accredited by a national or regional certifying authority and a minimum of 2 years of postdegree laboratory experience; or

(b) a master's degree in chemical or biological sciences from a college or university accredited by a national or regional certifying authority and a minimum of 4 years of postdegree laboratory experience.

(3) All owners and employees of a testing laboratory shall submit fingerprints to the department to facilitate a fingerprint and background check as set forth in **16-12-129**. A testing laboratory may not be owned, operated, or staffed by a person who has been convicted of a felony offense.

(4) To qualify for licensure, a testing laboratory shall demonstrate that:

(a) staff members are proficient in operation of the laboratory equipment; and

(b) the laboratory:

(i) maintains the equipment and instrumentation required by rule;

(ii) has all equipment and instrumentation necessary to certify results that meet the quality assurance testing requirements established by rule, including the ability to certify results at the required level of sensitivity;

(iii) meets insurance and bonding requirements established by rule;

(iv) has the capacity and ability to serve rural areas of the state; and

(v) has passed a proficiency program approved by the state laboratory that demonstrates it is able to meet all testing requirements.

(5) Except as provided in **16-12-209**, a testing laboratory shall conduct tests of:

(a) samples of marijuana and marijuana products submitted by cultivators and manufacturers pursuant to **16-12-209** and related administrative rules prior to sale of the marijuana or marijuana products;

(b) samples of marijuana or marijuana products collected by the department during inspections of licensed premises; and

(c) samples submitted by consumers or registered cardholders.

History: En. Sec. 12, I.M. No. 190, approved Nov. 3, 2020; amd. Sec. 53, Ch. 576, L. 2021.

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TITLE 16. ALCOHOL, TOBACCO, AND MARIJUANA CHAPTER 12. MARIJUANA REGULATION AND TAXATION Part 2. Licensing and Regulation

Manufacturer -- Requirements -- Limitations -- Fees

16-12-221. (Effective January 1, 2022) **Manufacturer -- requirements -- limitations -- fees.** (1) A person licensed as a manufacturer shall:

- (a) prepare marijuana products at a licensed premises exclusively; and
 - (b) use equipment that is used exclusively for the manufacture and preparation of marijuana products.
- (2) All licensed premises on which marijuana products are manufactured must meet any applicable standards set by a local board of health for a retail food establishment as defined in **50-50-102**.
- (3) An applicant for a manufacturer license shall demonstrate that the local government approval provisions contained in **16-12-301** have been satisfied in the jurisdiction where each proposed manufacturing facility is located if a proposed facility would be located in a county in which the majority of voters voted against approval of Initiative Measure No. 190 in the November 3, 2020, general election.
- (4) When evaluating an initial or renewal application, the department shall evaluate each proposed manufacturing facility for compliance with the provisions of **16-12-207** and **16-12-210**.
- (5) Marijuana products may not be considered a food or drug for the purposes of Title 50, chapter 31.
- (6) (a) The department shall charge a manufacturer license fee for an initial application and at each renewal. The license fee is based on the amount of concentrate produced at a manufacturing facility on a monthly basis. The annual fees for licensees are:
- (i) \$5,000 for each manufacturing facility that produces, on a monthly basis, less than 1 pound of concentrate and up to 10 pounds of concentrate;
 - (ii) \$10,000 for each manufacturing facility that produces, on a monthly basis, between 10 pounds of concentrate and 15 pounds of concentrate; and
 - (iii) \$20,000 for each manufacturing facility that produces, on a monthly basis, 15 pounds or more of concentrate.
- (b) The department may create additional fee levels as necessary.
- (c) A manufacturer may apply to advance to the next licensing level in conjunction with a regular renewal application by demonstrating that its proposed additional or expanded manufacturing facility or facilities are located in a jurisdiction where the local government approval provisions contained in **16-12-301** have been satisfied or that they are located in a county in which the majority of voters voted to approve Initiative Measure No. 190 in the November 3, 2020, general election.
- (7) The department may adopt rules:
- (a) for the inspection of proposed manufacturing facilities;

- (b) for investigating the amount of concentrate produced at a manufacturing facility; and
- (c) for investigating owners or applicants for a determination of beneficial ownership or financial interest.

History: En. Sec. 10, I.M. No. 190, approved Nov. 3, 2020; amd. Sec. 52, Ch. 576, L. 2021; Sec. 16-12-204, MCA 2020; redes. 16-12-221 by Code Commissioner, 2021.

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Licensing Of Marijuana Transporters

16-12-222. (Effective January 1, 2022) **Licensing of marijuana transporters.** (1) (a) A marijuana transporter license may be issued to a person to provide logistics, distribution, delivery, and storage of marijuana and marijuana products. A marijuana transporter license is valid for 2 years. A licensed marijuana transporter is responsible for the marijuana and marijuana products once it takes control of the marijuana or marijuana product.

(b) A marijuana transporter may contract with multiple licensed marijuana businesses.

(c) On or after March 1, 2022, and except as otherwise provided in this section, all persons who transport marijuana or marijuana products shall hold a valid marijuana transporter license. The department shall begin accepting applications on or after January 1, 2022. The department may allow for a reasonable grace period for complying with this requirement.

(d) The department shall establish by rule the requirements for licensure and the applicable fee for a marijuana transporter license or the renewal of a transporter license. The department may not license a person to be a marijuana transporter if the applicant meets any of the criteria established for denial of a license under **16-12-203(2)**.

(2) A person who is not licensed under this chapter must apply for and obtain a marijuana transporter license in order to transport marijuana or marijuana products.

(3) A registered cardholder or consumer is not required to possess a marijuana transporter license when purchasing marijuana or marijuana products at a dispensary.

(4) A person who obtains a cultivator license, manufacturer license, adult-use dispensary license, medical marijuana dispensary license, or testing laboratory license or is an employee of one of those licensees, may:

(a) transport marijuana or marijuana products between other licensed premises without a transporter license so long as the transportation:

(i) complies with rules implementing the seed-to-sale tracking system set forth in **16-12-105**; and

(ii) includes a printed manifest containing information as required by the department; and

(b) deliver marijuana from a dispensary to a registered cardholder provided that the person delivering the marijuana or marijuana products:

(i) complies with rules adopted by the department; and

(ii) includes a printed delivery manifest from a dispensary to a registered cardholder containing the registered cardholder's address and cardholder number and the dispensary's address and license number.

(5) (a) A marijuana transporter licensee may maintain a licensed premises to temporarily store marijuana and marijuana products and to use as a centralized distribution point in a jurisdiction where the local government approval provisions contained in **16-12-301** have been satisfied or in a county in which the majority of voters

voted to approve Initiative Measure No. 190 in the November 3, 2020, general election.

(b) The licensed premises must be located in a jurisdiction that permits the operation of a marijuana business and comply with rules adopted by the department.

(c) A marijuana transporter may store and distribute marijuana and marijuana products from this location. A storage facility must meet the same security requirements that are required to obtain a license under this chapter.

(6) A marijuana transporter shall use the seed-to-sale tracking system developed pursuant to **16-12-105** to create shipping manifests documenting the transport of retail marijuana and retail marijuana products throughout the state.

(7) A marijuana transporter may deliver marijuana or marijuana products to licensed premises or registered cardholders only and may not make deliveries of marijuana or marijuana products to individual consumers.

(8) A person delivering marijuana or marijuana products for a marijuana transporter must possess a valid marijuana worker permit provided for under **16-12-226** and be a current employee of the marijuana transporter licensee.

History: En. Sec. 3, Ch. 576, L. 2021.

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Licensing Of Cultivators

16-12-223. *(Effective January 1, 2022)* **Licensing of cultivators.** (1) (a) The department shall license cultivators according to a tiered canopy system. Except as provided in subsection (6), all cultivation that is licensed under this chapter may only occur at an indoor cultivation facility.

- (b) Except as provided in subsection (6), the system shall include, at a minimum, the following license types:
 - (i) A micro tier canopy license allows for a canopy of up to 250 square feet at one indoor cultivation facility.
 - (ii) A tier 1 canopy license allows for a canopy of up to 1,000 square feet at one indoor cultivation facility.
 - (iii) A tier 2 canopy license allows for a canopy of up to 2,500 square feet at up to two indoor cultivation facilities.
 - (iv) A tier 3 canopy license allows for a canopy of up to 5,000 square feet at up to three indoor cultivation facilities.
 - (v) A tier 4 canopy license allows for a canopy of up to 7,500 square feet at up to four indoor cultivation facilities.
 - (vi) A tier 5 canopy license allows for a canopy of up to 10,000 square feet at up to five indoor cultivation facilities.
 - (vii) A tier 6 canopy license allows for a canopy of up to 13,000 square feet at up to five indoor cultivation facilities.
 - (viii) A tier 7 canopy license allows for a canopy of up to 15,000 square feet at up to five indoor cultivation facilities.
 - (ix) A tier 8 canopy license allows for a canopy of up to 17,500 square feet at up to five indoor cultivation facilities.
 - (x) A tier 9 canopy license allows for a canopy of up to 20,000 square feet at up to six indoor cultivation facilities.
 - (xi) A tier 10 canopy license allows for a canopy of up to 30,000 square feet at up to seven indoor cultivation facilities.
 - (xii) A tier 11 canopy license allows for a canopy of up to 40,000 square feet at up to eight indoor cultivation facilities.
 - (xiii) A tier 12 canopy license allows for a canopy of up to 50,000 square feet at up to nine indoor cultivation facilities.

(c) A cultivator shall demonstrate that the local government approval provisions in **16-12-301** have been satisfied for the jurisdiction where each proposed indoor cultivation facility or facilities is or will be located if a proposed facility would be located in a county in which the majority of voters voted against approval of Initiative Measure No. 190 in the November 3, 2020, general election.

(d) When evaluating an initial or renewal license application, the department shall evaluate each proposed indoor cultivation facility for compliance with the provisions of **16-12-207** and **16-12-210**.

(e) (i) Except as provided in subsection (1)(e)(iii), a cultivator who has reached capacity under the existing license may apply to advance to the next licensing tier in conjunction with a regular renewal application by demonstrating that:

(A) the cultivator is using the full amount of canopy currently authorized;

(B) the tracking system shows the cultivator is selling at least 80% of the marijuana produced by the square footage of the cultivator's existing license over the 2 previous quarters or the cultivator can otherwise demonstrate to the department that there is a market for the marijuana it seeks to produce; and

(C) its proposed additional or expanded indoor cultivation facility or facilities are located in a jurisdiction where the local government approval provisions contained in **16-12-301** have been satisfied or that they are located in a county in which the majority of voters voted to approve Initiative Measure No. 190 in the November 3, 2020, general election.

(ii) Except as provided in subsection (1)(e)(iii), the department may increase a licensure level by only one tier at a time.

(iii) Between January 1, 2022, and June 30, 2023, a cultivator may increase its licensure level by more than one tier at a time, up to a tier 5 canopy license, without meeting the requirements of subsections (1)(e)(i)(A) and (1)(e)(i)(B).

(iv) The department shall conduct an inspection of the cultivator's registered premises and proposed premises within 30 days of receiving the application and before approving the application.

(f) A marijuana business that has not been issued a license before July 1, 2023, must be initially licensed at a tier 2 canopy license or lower.

(2) The department is authorized to create additional tiers as necessary.

(3) The department may adopt rules:

(a) for inspection of proposed indoor cultivation facilities under subsection (1);

(b) for investigating owners or applicants for a determination of financial interest; and

(c) in consultation with the department of agriculture and based on well-supported science, to require licensees to adopt practices consistent with the prevention, introduction, and spread of insects, diseases, and other plant pests into Montana.

(4) Initial licensure and annual fees for these licensees are:

(a) \$1,000 for a cultivator with a micro tier canopy license;

(b) \$2,500 for a cultivator with a tier 1 canopy license;

(c) \$5,000 for a cultivator with a tier 2 canopy license;

(d) \$7,500 for a cultivator with a tier 3 canopy license;

(e) \$10,000 for a cultivator with a tier 4 canopy license;

- (f) \$13,000 for a cultivator with a tier 5 canopy license;
 - (g) \$15,000 for a cultivator with a tier 6 canopy license;
 - (h) \$17,500 for a cultivator with a tier 7 canopy license;
 - (i) \$20,000 for a cultivator with a tier 8 canopy license;
 - (j) \$23,000 for a cultivator with a tier 9 canopy license;
 - (k) \$27,000 for a cultivator with a tier 10 canopy license;
 - (l) \$32,000 for a cultivator with a tier 11 canopy license; and
 - (m) \$37,000 for a cultivator with a tier 12 canopy license.
- (5) The fee required under this part may be imposed based only on the tier of licensure and may not be applied separately to each indoor cultivation facility used for cultivation under the licensure level.
- (6) A former medical marijuana licensee who engaged in outdoor cultivation before November 3, 2020, may continue to engage in outdoor cultivation.

History: En. Sec. 4, Ch. 576, L. 2021.

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Licensing Of Dispensaries

16-12-224. (Effective January 1, 2022) **Licensing of dispensaries.** (1) Except as provided in **16-12-201(2)**, an applicant for a dispensary license shall demonstrate that the local government approval provisions in **16-12-301** have been satisfied in the jurisdiction where each proposed dispensary is located if the proposed dispensary would be located in a county in which the majority of voters voted against approval of Initiative Measure No. 190 in the November 3, 2020, general election.

(2) When evaluating an initial or renewal application, the department shall evaluate each proposed dispensary for compliance with the provisions of **16-12-207** and **16-12-210**.

(3) An adult-use dispensary licensee may operate at a shared location with a medical marijuana dispensary if the adult-use dispensary and medical marijuana dispensary are owned by the same person.

(4) A medical marijuana dispensary is authorized to sell exclusively to registered cardholders marijuana, marijuana products, and live marijuana plants.

(5) An adult-use dispensary is authorized to sell marijuana, marijuana products, and live marijuana plants to consumers or registered cardholders.

(6) The department shall charge a dispensary license fee for an initial application and at each renewal. The dispensary license fee is \$5,000 for each location that a licensee operates as an adult-use dispensary or a medical marijuana dispensary.

(7) The department may adopt rules:

(a) for inspection of proposed dispensaries;

(b) for investigating owners or applicants for a determination of financial interest; and

(c) establishing or limiting the THC content of the marijuana or marijuana products that may be sold at an adult-use dispensary or medical marijuana dispensary.

(8) (a) Marijuana and marijuana products sold at a dispensary are regulated and sold on the basis of the concentration of THC in the products and not by weight.

(b) Except as provided in subsection (8)(c), for purposes of this chapter, a single package is limited to:

(i) for marijuana sold as flower, 1 ounce of usable marijuana. The total potential psychoactive THC of marijuana flower may not exceed 35%.

(ii) for a marijuana product sold as a capsule, no more than 100 milligrams of THC per capsule and no more than 800 milligrams of THC per package.

(iii) for a marijuana product sold as a tincture, no more than 800 milligrams of THC;

(iv) for a marijuana product sold as an edible or a food product, no more than 100 milligrams of THC. A single serving of an edible marijuana product may not exceed 10 milligrams of THC.

(v) for a marijuana product sold as a topical product, a concentration of no more than 6% THC and no more than 800 milligrams of THC per package;

(vi) for a marijuana product sold as a suppository or transdermal patch, no more than 100 milligrams of THC per suppository or transdermal patch and no more than 800 milligrams of THC per package; and

(vii) for any other marijuana product, no more than 800 milligrams of THC.

(c) A dispensary may sell marijuana or marijuana products having higher THC potency levels than described in subsection (8) to registered cardholders.

(9) A licensee or employee is prohibited from conducting a transaction that would result in a consumer or registered cardholder exceeding the personal possession amounts set forth in 16-12-106 and 16-12-515.

History: En. Sec. 5, Ch. 576, L. 2021.

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Combined-Use Marijuana Licensing -- Requirements

16-12-225. *(Effective January 1, 2022)* **Combined-use marijuana licensing -- requirements.** (1) The department may issue a total of eight combined-use marijuana licenses to entities that are:

- (a) a federally recognized tribe located in the state; or
- (b) a business entity that is majority-owned by a federally recognized tribe located in the state.

(2) A combined-use marijuana license consists of one tier 1 canopy license and one dispensary license allowing for the operation of a dispensary. Cultivation and dispensary facilities must be located at the same licensed premises.

(3) A combined-use marijuana licensee shall operate its cultivation and dispensary facilities on land that is located:

(a) within 150 air-miles of the exterior boundary of the associated tribal reservation or, for the Little Shell Chippewa tribe only, within 150 air-miles of the tribal service area; and

(b) in a county that has satisfied the local government approval provisions in **16-12-301** if the majority of voters in the county voted against approval of Initiative Measure No. 190 in the November 3, 2020, general election.

(4) An applicant under this section must satisfy all licensing requirements under this chapter and is subject to all fees and taxes associated with the cultivation and sale of marijuana or marijuana products provided for in this chapter.

(5) A license granted under this section must be operated in compliance with all requirements imposed under this chapter.

(6) After a tribe or a majority-owned business of that tribe is licensed under this section, that tribe or another majority-owned business of that tribe may not obtain another combined-use license until the prior license is relinquished, lapses, or is revoked by the department.

History: En. Sec. 6, Ch. 576, L. 2021.