

Section (6) is a revision of existing licensee requirements found in ARM 42.39.111 and is proposed as a part of the department's reorganization of the rules and for familiarity and administrative consistency regarding cultivation, canopy measurement, and multiple canopy operations. Section (7) is proposed as necessary notification to a marijuana cultivator licensee that operating beyond canopy licensure levels may constitute a violation of the marijuana cultivator license.

Sections (8) through (11) represent minor revisions of existing licensee requirements found in ARM 42.39.111 and 42.39.310 and are proposed as a part of the department's reorganization of the rules and for familiarity and administrative consistency regarding a marijuana cultivator licensee's written standard operating procedures, material safety data sheets, logging pesticides, fertilizers, or other agricultural chemicals in the seed-to-sale tracking system, and describing required marijuana and marijuana products waste disposal protocols. The information may be used by the department and testing laboratories in the analysis of marijuana and marijuana products for pesticides, solvents, moisture levels, mold, mildew, and other contaminants.

Sections (12) and (13) are proposed for inclusion of license-specific requirements for marijuana cultivator licensees. Without this information in the rule, the department believes critical operational information for a marijuana cultivator licensee may be overlooked given the general construction of HB 701 and the amendments to the Act.

Lastly, the department proposes (14) for ease of reference to the provision in the Act that permits marijuana cultivator licensees, among others, to transport marijuana or marijuana products between other licensed premises without a transporter license so long as the transportation otherwise complies with the Act and the transporter rules of the department. The cross-reference to the transporter rule is also provided for necessary guidance to those requirements.

NEW RULE IV MARIJUANA DISPENSARY LICENSES (1) A marijuana dispensary license allows a marijuana dispensary to sell marijuana and marijuana products to registered cardholders and to consumers 21 years of age and older and to purchase marijuana and marijuana products from licensed cultivators, licensed manufacturers, and other licensed dispensaries.

(2) The department shall begin accepting applications for marijuana dispensaries from applicants that are not former medical marijuana licensees as defined in 16-12-102, MCA, on July 1, 2023.

(3) A former medical marijuana licensee with a dispensary located in a green county may continue to sell to registered cardholders and may begin selling to adult use consumers on January 1, 2022, under its existing license and may apply for a marijuana dispensary license at its next renewal date.

(4) A former medical marijuana licensee with a dispensary located in a red county may only sell to registered cardholders under its existing license until the local government approval process in 16-12-301, MCA, allows for adult use dispensaries.

(5) The fee for a marijuana dispensary license is per licensed premises and is the same regardless of whether a marijuana dispensary licensee sells only to registered cardholders or to registered cardholders and consumers.

(6) A marijuana dispensary licensee and its employees must not sell marijuana or marijuana products to any person obviously or apparently under the influence of drugs or alcohol.

(7) A marijuana dispensary licensee and its employees may sell marijuana paraphernalia to registered cardholders 18 years of age and older.

(8) Marijuana dispensary customers must not handle marijuana or marijuana products outside of its packaging prior to purchase. Customers may not return marijuana or marijuana products unless the items are unopened and in their original packaging. Nothing in this rule prevents a marijuana dispensary licensee from refusing product returns.

(9) A marijuana dispensary licensee and its employees are prohibited from engaging in the unlicensed practice of medicine. A marijuana dispensary licensee and its employees must not:

(a) offer or undertake to diagnose or cure any human or animal disease, ailment, injury, infirmity, deformity, pain, or other condition, physical or mental, by use of marijuana or marijuana products or any other means or instrumentality; or

(b) recommend or suggest modification or elimination of any course of treatment that does not involve the medical use of marijuana or marijuana products.

(10) All sales of marijuana and marijuana products must be recorded in real time in the seed-to-sale tracking system.

(11) A marijuana dispensary licensee and its employees must refuse to sell marijuana or marijuana products to registered cardholders who do not possess and present a valid registry identification card or temporary registry identification card at the time of sale.

(12) A marijuana dispensary licensee and its employees must refuse to sell marijuana or marijuana products to any consumer unless the consumer possesses and presents one of the following forms of valid and unexpired photo identification showing that the consumer is 21 years of age or older:

(a) a driver's license or temporary driver's permit issued by Montana or any other state or territory of the United States;

(b) an identification card issued by Montana or any other state or territory of the United States for the purpose of proof of age of the holder of the card;

(c) United States military identification card;

(d) a Merchant Mariner Credential or other similar document issued by the United States Coast Guard;

(e) a passport issued by, or recognized by, the United States Government or a permanent resident card issued by the United States Citizenship and Immigration Services of the Department of Homeland Security; or

(f) a tribal identification card issued by a tribal government which requires proof of the age of the holder of the card for issuance.

(13) The prohibition in 16-12-208, MCA, on marijuana dispensaries selling hemp also includes the prohibition of selling cannabidiol products.

(14) A marijuana dispensary licensee and its employees cannot sell marijuana or marijuana products in excess of the THC levels provided for in 16-12-224, MCA, except to registered cardholders.

(15) A marijuana dispensary licensee and an employee of a marijuana dispensary licensee may transport marijuana and marijuana products in accordance

with 16-12-222(4), MCA, and [NEW RULE V(4) through (15)] but may not transport marijuana or marijuana products of other licensees without a marijuana transporter license.

AUTH: 16-12-112, 16-12-222, MCA

IMP: 16-12-112, 16-12-201, 16-12-222, 16-12-224, MCA

**REASONABLE NECESSITY:** In addition to the department's general statement of reasonable necessity, the department proposes to adopt New Rule IV to provide certain requirements in the department's licensure of a marijuana dispensary.

Section (1) is necessary to specify what a marijuana dispensary licensee is authorized to do because marijuana dispensary activities are not described in the Act with a necessary level of detail.

Section (2) is necessary to the rule to clarify when the department is authorized to accept marijuana dispensary applications under 16-12-201, MCA, as amended by HB 701.

Sections (3) and (4) are proposed to reference the local government approval process required for a former medical marijuana licensee in either a red county or green county, which are defined in ARM 42.39.102. The department believes these rule sections are necessary reiterations of what the public may find difficult to locate in HB 701 or the Act, as amended, and the designated terms of red county and green county are a more convenient reference.

Section (5) is a necessary clarification for a marijuana dispensary applicant or licensee regarding fee structures regardless of the customer base for the business.

Section (6) is proposed as a necessary restatement of general license restrictions in the Act against the sale of marijuana or marijuana products to persons obviously or apparently under the influence of drugs or alcohol.

Section (7) is proposed as guidance for a marijuana dispensary licensee that it is permissible to sell marijuana paraphernalia to registered cardholders 18 years of age and older.

Section (8) is proposed as a general product restriction which is necessary for inventory control and to ensure that the marijuana or marijuana products are not subject to contamination through direct customer contact. Section (8) also provides the option for a marijuana dispensary licensee to accept customer returns when product is unopened and in its original packaging or to deny marijuana or marijuana products returns.

Section (9) is a necessary restatement of the Act which prohibits a marijuana dispensary licensee or its employees from engaging in the unlicensed practice of medicine. The subsections provide guidance and examples of what constitutes the unlicensed practice of medicine. Complaints or allegations of engaging in the unlicensed practice of medicine may result in administrative action against a marijuana dispensary and its license.

Sections (10) and (11) represent minor revisions of existing marijuana dispensary licensee requirements found in ARM 42.39.203 and are proposed as a part of the department's reorganization of the rules and for familiarity and

administrative consistency regarding marijuana or marijuana products sales under the Act.

Similar to other retail sales restrictions provided in the Act and in these proposed rules, is proposed (12). This informs a marijuana dispensary licensee and its employees of purchaser identification requirements that must be confirmed prior to the sale of marijuana or marijuana products to the purchaser. Failure to adhere to these requirements is a violation and can subject a licensee to administrative action or other penalties for unauthorized sales to persons who are not registered cardholders or to minors.

Section (13) informs and clarifies for a marijuana dispensary licensee that the legislature enacted 16-12-208(7), MCA, to restrict marijuana dispensary licensees from selling hemp; and based on the definition of hemp, also includes the restriction of these licensees to sell cannabidiol products. Reiteration of this restriction in rule is necessary because there are several marijuana dispensary licensees who have, or are, engaged in the sale of cannabidiol products.

Section (14) represents a necessary reiteration of the statutory retail sales restriction for marijuana and marijuana products that exceed statutory THC levels and reserves the sale of those products to registered cardholders only.

Section (15) is proposed for inclusion in the rule for ease of reference to the provision in the Act that permits marijuana dispensary licensees, among others, to transport marijuana or marijuana products between other licensed premises without a transporter license so long as the transportation otherwise complies with the Act and the transporter rules of the department. The cross-reference to the transporter rule is also provided for necessary guidance to those requirements.

NEW RULE V MARIJUANA TRANSPORTER LICENSES (1) A marijuana transporter license allows a marijuana transporter to physically distribute and deliver marijuana and marijuana products to a licensed premises and to registered cardholders within the state of Montana that present a valid registry identification card.

(2) The department shall begin accepting applications for marijuana transporter licenses on January 1, 2022.

(3) Applicants for a marijuana transporter license must submit to the department proof of a valid Montana driver's license.

(4) All distribution and delivery of marijuana and marijuana products must:

(a) occur in a motor vehicle as defined by ARM 42.39.102;

(b) depart from a licensed premises and be delivered to a licensed premises or to a registered cardholder's address;

(c) be accompanied by a transport manifest derived from the seed-to-sale tracking system that contains the following information:

(i) the physical address and license number of the departure location;

(ii) the physical address and license number or registered cardholder number of the arrival location;

(iii) date and time of departure;

(iv) date and time of arrival;

(v) transport vehicle year, make, model, and license plate number;