

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(12) is proposed as necessary reiteration of the statutory application moratorium for applicants whose license has been revoked by the department.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.

NEW RULE VIII CIVIL PENALTIES (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.