

~~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.~~

~~(34) 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~~

NEW RULE I 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

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, or on a motion sensed system, 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;~~

~~(a)~~ keep all recordings for a minimum of ~~90~~60 days; and

~~(b)~~ 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

NEW RULE III 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 the assessment of a civil penalty in accordance with 16-12-109, MCA.

(2) Whenever the department seeks to impose a reprimand, suspension, revocation, 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

VII].

AUTH: 16-12-112, MCA

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

NEW RULE IV SUSPENSION AND REVOCATION OF A LICENSE (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 ~~III~~].

(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 15-64-102 through -106, MCA.

(7) A suspended license 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

NEW RULE ~~V~~ 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

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 III~~V~~]. 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.~~

~~(23)~~ 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

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 ~~IIIV~~].

(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

NEW RULE ~~VIIIX~~ 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

NEW RULE ~~IX~~ 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) ~~compliance~~ inset;
- (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 X~~I~~] 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

NEW RULE X~~I~~ 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

NEW RULE XI~~I~~ 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;

(d) the emergency procedures required by (6);

(e) the written security plan required by [NEW RULE III(1)].

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

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

(h) for marijuana dispensary licensees, a written standard operating procedure for the destruction of returned marijuana or marijuana products.

AUTH: 16-12-112, MCA

IMP: 16-12-112, MCA

NEW RULE XII 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 -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 -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 -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 -317, MCA, are not paid when due, the department may issue a warrant for distraint as provided in Title 15, Chapter 1, part 7, Montana Code Annotated.

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