



GOVERNOR GREG GIANFORTE
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March 5, 2024

**INFORMATIONAL COPY OF MAR NOTICE NO. 42.1072
PROVIDED TO ECONOMIC AFFAIRS INTERIM COMMITTEE**

PRESENTATION FORMAT

Black text interline (~~strikethrough~~) and underline = original proposed new rules or proposed amendments to existing rules

**RED INTERLINE (~~STRIKETHROUGH~~) AND UNDERLINE = RULE TEXT
REVISED UPON ADOPTION BASED ON TESTIMONY RECEIVED AT THE PUBLIC
HEARING OR COMMENTS RECEIVED IN WRITING**

GENERAL STATEMENT OF REASONABLE NECESSITY. The 68th Montana Legislature enacted several pieces of legislation that revised the Legislature's interpretation and implementation of the Montana Marijuana Regulation and Taxation Act (MMRTA) from 2021 and included House Bills (HB) 128, 903, and 948.

For purposes relative to this rulemaking, and among other enactments, HB 128 provided for the general revision of marijuana laws; clarified limitations of the MMRTA; removed outdated dates; removed background check requirements for certain individuals; extended the moratorium for new marijuana licenses; transferred authority over marijuana testing laboratories from the Department of Public Health and Human Services to the department; clarified legislative intent on a cultivator's ability to increase tiers; revised requirements for a combined-use license; and extended the department's rulemaking authority.

HB 903 notably revised the definition for "former medical marijuana licensee" in 16-12-102, MCA, to those cultivators, manufacturers, and dispensaries licensed or having an application for licensure pending on April 27, 2021, instead of November 3, 2020. This change expanded licensure to those applicants and licensees not accounted for under House Bill 701 (2021) (HB 701).

Based on the above-described legislative changes, this rulemaking is necessary to align ARM 42.39.104, 42.39.115, 42.39.401, 42.39.405, 42.39.409, 42.39.413, 42.39.415 with the statutes amended by HB 128 and HB 903.

The department also proposes to adopt NEW RULES I through III which involves the transfer of content from ARM 42.39.401 (see current (9), (10), and (12) through (15) of the rule) to the respective new rules to clarify requirements applicable to marijuana manufacturers who are engaged in chemical, infused product, and mechanical manufacturing of marijuana and marijuana products. The department contends NEW RULES I through III are necessary for the department to carry out its statutory duty to protect Montana consumers and are based on the evolution of the manufacturing

processes employed by licensees to render the expansive varieties of marijuana products that are available in the marketplace.

Lastly, the department proposes amendments to the above-described rules to simplify and clarify department procedures and licensee requirements, which are both department goals under the Governor's Executive Order 2021-01, "Red Tape Relief Initiative."

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

NEW RULES PROPOSED TO BE ADOPTED:

NEW RULE I (42.39.402) MARIJUANA MANUFACTURER LICENSE – CHEMICAL MANUFACTURING (1) A marijuana manufacturer licensee that applies to engage in chemical manufacturing must indicate that type of manufacturing activity on its initial license or license renewal application. There is no additional cost for a marijuana manufacturer licensee who elects a chemical manufacturing designation on its initial license or license renewal application.

(2) A marijuana manufacturer licensee that engages in chemical manufacturing must:

(a) use only hydrocarbon-based solvents that are at least 99 percent pure, except when using solvents outlined in (3)(a);

(b) only use food grade nonhydrocarbon-based solvents, such as water, vegetable glycerin, vegetable oils, or animal fats;

(c) use a professional grade, closed-loop extraction system designed to recover the solvents;

(d) have processing equipment approved for use by the fire code official with jurisdiction over the licensed premises;

(e) have an emergency eye-wash station in any room in which chemical manufacturing is occurring;

(f) have all applicable safety data sheets readily available at the licensed premises; and

(g) have a current, written standard operating procedure available for inspection at the licensed premises that details employee training on closed-loop system operation and proper handling of solvents and gasses used in processing or stored on the licensed premises.

(3) A marijuana manufacturer licensee that engages in chemical manufacturing may use:

(a) a chemical extraction process using a nonhydrocarbon-based or other solvent, such as water, vegetable glycerin, vegetable oils, animal fats, isopropyl alcohol, or ethanol; or

(b) a chemical extraction process using the solvent carbon dioxide, provided that the process:

- (i) does not involve the use of heat over 180 degrees Fahrenheit; and
- (ii) uses a professional grade closed-loop carbon dioxide gas extraction system where every vessel is rated to a minimum of 600 pounds per square inch.

(4) A marijuana manufacturer licensee that engages in chemical manufacturing may not use class 1 solvents according to the Q3 Tables and List Guidance for Industry published by the U.S. Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, Center for Biologics Evaluation and Research.

AUTH: 16-12-104, 16-12-112, 16-12-221, MCA

IMP: 16-12-104, 16-12-109, 16-12-112, 16-12-201, 16-12-203, 16-12-207, 16-12-208, 16-12-210, 16-12-221, 16-12-301, MCA

NEW RULE II (42.39.403) MARIJUANA MANUFACTURER LICENSEE – INFUSED PRODUCTS (1) A marijuana manufacturer licensee that applies to engage in marijuana infused product manufacturing must indicate that type of manufacturing activity on its initial license or license renewal application. There is no additional cost for a marijuana manufacturer licensee who elects an infused product manufacturing designation on its initial license or license renewal application.

(2) A marijuana manufacturer licensee that engages in marijuana infused product manufacturing must store all products that require refrigeration or freezing in a refrigerator or freezer until the time of sale and affix these foods with a label that indicates the product must be kept refrigerated or frozen, as appropriate.

(3) A marijuana manufacturer licensee that engages in marijuana infused product manufacturing may not:

(a) utilize a branded, commercially manufactured food product (e.g., Chex Mix, Nerds Ropes) as a marijuana infused product except when commercially manufactured food products are used as ingredients in a marijuana infused product in a way that renders them unrecognizable as the commercial food product in the final marijuana-infused product and the licensee does not state or advertise to the consumer that the final marijuana infused product contains the commercially manufactured food product EXCEPT ON THE PRODUCT'S INGREDIENT LIST;

(b) infuse any food with marijuana that requires heated, time-temperature control or a hot holding unit to keep it safe for human consumption and may not serve hot or heated foods that promote onsite consumption;

(c) infuse raw or cooked meat; or

(d) infuse root vegetables, including but not limited to garlic and onion, in oil.

~~(4) A marijuana manufacturer licensee that produces marijuana infused products must have current, written SOPs at the licensed premises available for inspection that detail the following:~~

~~(a) an employee illness policy that requires employees to report to the person in charge information about their health and activities as they relate to diseases that are transmissible through food; and~~

~~(b) procedures for monitoring and maintaining refrigeration and cold holding equipment, if applicable.~~

AUTH: 16-12-104, 16-12-112, 16-12-221, MCA

IMP: 16-12-104, 16-12-109, 16-12-112, 16-12-201, 16-12-203, 16-12-207, 16-12-208, 16-12-210, 16-12-221, 16-12-301, MCA

NEW RULE III (42.39.404) MARIJUANA MANUFACTURING LICENSE – MECHANICAL MANUFACTURING (1) A marijuana manufacturer licensee that applies to engage in mechanical manufacturing must indicate that type of manufacturing activity on its initial license or license renewal application. There is no additional cost for a marijuana manufacturer licensee who elects a mechanical manufacturing designation on its initial license or license renewal application.

~~(2) A marijuana manufacturer licensee must have current, written SOPs at the licensed premises available for inspection that details the procedures for the safe handling, maintenance, and storage of a hydraulic press.~~

AUTH: 16-12-104, 16-12-112, 16-12-221, MCA

IMP: 16-12-104, 16-12-109, 16-12-112, 16-12-201, 16-12-203, 16-12-207, 16-12-208, 16-12-210, 16-12-221, 16-12-301, MCA

RULES AS PROPOSED TO BE AMENDED:

42.39.104 LICENSE, APPLICATION, AND RENEWAL FEES (1) Initial licensure and renewal fees for the following license types and endorsements are:

(a) Two-year marijuana transporter license: \$10,000.

(b) Combined-use marijuana license: \$7,500.

(c) Marijuana testing laboratory license: \$5,000 per licensed premises.

~~(d) Marijuana dispensary license: \$5,000 per licensed premises. (D)~~

MARIJUANA DISPENSARY LICENSE: \$5,000 PER LICENSED PREMISES.

~~(e) (d) (E)~~ Cultivator license:

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

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

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

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

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

(vi) \$13,000 for a cultivator with a tier 5 canopy license;

(vii) \$15,000 for a cultivator with a tier 6 canopy license;

(viii) \$17,500 for a cultivator with a tier 7 canopy license;

- (ix) \$20,000 for a cultivator with a tier 8 canopy license;
- (x) \$23,000 for a cultivator with a tier 9 canopy license;
- (xi) \$27,000 for a cultivator with a tier 10 canopy license;
- (xii) \$32,000 for a cultivator with a tier 11 canopy license; and
- (xiii) \$37,000 for a cultivator with a tier 12 canopy license.
- (f) ~~(e)~~ (F) Manufacturer license:
 - (i) \$5,000 for each manufacturing facility that produces, on a monthly basis, less than ten pounds of concentrate;
 - (ii) \$10,000 for each manufacturing facility that produces, on a monthly basis, between ten pounds of concentrate and 15 pounds of concentrate; **AND**
 - (iii) \$20,000 for each manufacturing facility that produces, on a monthly basis, **between 15 pounds and 20 pounds OR MORE** of concentrate; **and**.
 - ~~(iv) any manufacturing licensee that produces, on a monthly basis, more than 15 pounds of concentrate, shall pay an additional \$1,000 per pound. \$30,000 for each manufacturing facility that produces, on a monthly basis, between 20 and 30 pounds of concentrate;~~
 - ~~(v) \$40,000 for each manufacturing facility that produces, on a monthly basis, between 30 and 40 pounds of concentrate;~~
 - ~~(vi) \$50,000 for each manufacturing facility that produces, on a monthly basis, between 40 and 50 pounds of concentrate;~~
 - ~~(vii) \$60,000 for each manufacturing facility that produces, on a monthly basis, over 50 pounds of concentrate;~~
- ~~(g)~~ (G) Storage facility endorsement: \$1,000 per licensed storage facility.
- ~~(g)~~ (H) The application fee to change location of a licensed premises: \$2,500.
- (2) At the time of the initial application and at renewal, an applicant shall pay the department a nonrefundable processing fee equal to 20 percent of the applicable license fee identified in (1). The department will not begin processing an application until it receives all processing fees. A licensee shall pay the department the remaining 80 percent of the license fee upon department notification of approval of its application or renewal.
- (3) ~~The fee for an Initial worker permit and a renewal permit is \$50. A replacement permit is \$10.~~
- (4) ~~The fee for an Initial registry identification card and a renewal card is \$20. A Replacement registry identification card is \$10.~~
- ~~(5) Application to change or update controlling beneficial owners, financial interest holders, sources of funding, or other business organization: \$1,000, which is nonrefundable and must be paid in full before the department will begin processing the application.~~
- ~~(5)~~ (5) Background checks: the department shall assess the applicant a fee of \$30 per background check. This fee is separate from and in addition to the nonrefundable processing fee assessed in (2).

~~(6) Location changes: the fee for changing the location of any licensed premises is \$2,500.~~

AUTH: 16-12-112, 16-12-202, ~~16-12-204~~, 16-12-221, 16-12-222, 16-12-226, 16-12-508, 16-12-533, MCA

IMP: 16-12-112, ~~16-12-204~~, 16-12-221, 16-12-222, 16-12-226, 16-12-508, 16-12-533, MCA.

42.39.115 WORKER PERMITS; ADDITIONAL TESTING LABORATORY WORKER REQUIREMENT (1) A marijuana worker permit is required for any individual age 18 and over who performs work for or on behalf of any aspect of a marijuana business or testing laboratory.

~~(2) Individuals with current, valid agent badges in good standing with the department may continue to work with their existing agent badge.~~

~~(3) All individuals required to have a worker permit shall undergo a criminal background before March 31, 2022, on a form provided by the department.~~

~~(4) If an individual fails to submit to a background check before March 31, 2022, their worker permit will be subject to suspension or revocation.~~

~~(5) Individuals may apply for worker permits under 16-12-226, MCA, at their next renewal date.~~

(2) Applicants applying to work in a marijuana testing laboratory must undergo a criminal background check and pay the background check fee provided in ARM 42.39.104 before the department will begin processing the application.

~~(6) (3)~~ Applicants must pay the fee provided in ARM 42.39.104 within ten days of submitting an application applying. Failure to pay the fee within the 10-day period will result in denial of the application.

~~(7) (4)~~ When an application is denied for any reason, an applicant must reapply and resubmit the fee provided in ARM 42.39.104.

AUTH: 16-12-112, MCA

IMP: 16-12-112, 16-12-226, MCA

42.39.401 MARIJUANA MANUFACTURER LICENSES – GENERAL PROVISIONS (1) A marijuana manufacturer license allows a marijuana manufacturer to convert or to compound marijuana into marijuana products. A marijuana manufacturer licensee may buy marijuana and marijuana products from licensed marijuana cultivators and licensed marijuana manufacturers and may sell marijuana products to licensed marijuana dispensaries.

(2) The department shall begin accepting applications for marijuana manufacturers that are not former medical marijuana licensees, as defined in 16-12-102~~(14)~~, MCA, on July 1, 2023 2025.

~~(3) A licensee may continue to operate under their existing marijuana-infused products provider license and may apply for a marijuana manufacturer license at their next renewal date.~~

~~(4)~~ (3) Licensees will elect their tier level at their next renewal date and pay the fee provided in ARM 42.39.102 4.

~~(5)~~ (4) A marijuana manufacturer licensee that manufactures above its licensure level may be subject to administrative proceedings. In determining whether a marijuana manufacturer licensee has manufactured above its licensure level, the department will determine the average amount of concentrate produced each month over the previous 12 months.

~~(6)~~ (5) The licensed premises of a former medical marijuana licensee that is located in a red county is not eligible to apply to increase its licensure level until the local government approval process in 16-12-301, MCA, allows for marijuana manufacturing.

~~(7)~~ (6) A marijuana manufacturer licensee must take all reasonable measures and precautions to ensure the following:

(a) that the placement of equipment and storage of materials allow for the maintenance of sanitary operations for the manufacture of marijuana products;

(b) that all surfaces, including utensils and equipment used for the preparation of marijuana products, shall be cleaned and sanitized as frequently as is necessary to protect against contamination; and

~~(c) that the water supply is safe and potable; and~~

~~(d)~~ (c) that the storage and transport of finished marijuana products shall be under conditions that will protect products against physical, chemical, and microbial contamination.

~~(8)~~ (7) A marijuana manufacturer licensee must:

(a) use equipment, counters, and surfaces for manufacturing that are food grade, do not react adversely with any solvent being used, reduce the potential for development of microbials, molds, and fungi, and can be easily cleaned;

(b) maintain detailed instructions for making each infused product, concentrate, or extract, which shall be kept confidential by the department; and

(c) conduct necessary safety checks prior to commencing ~~processing~~
manufacturing;

~~(d) use only potable water and ice made from potable water; and~~

~~(e) provide hand-washing facilities designed to ensure that employee hands are not a source of contamination of marijuana infused products, contact surfaces, or packaging materials used for marijuana infused products.~~

~~(9) A marijuana manufacturer licensee that engages in chemical manufacturing must:~~

~~(a) use only hydrocarbon-based solvents that are at least 99 percent pure, except when using solvents outlined in (10)(b);~~

~~(b) only use nonhydrocarbon-based solvents that are food grade;~~

- ~~(c) use only potable water and ice made from potable water;~~
- ~~(d) use a professional grade closed-loop extraction system designed to recover the solvents;~~
- ~~(e) have equipment used in processing approved for use by the fire official having jurisdiction over the licensed premises;~~
- ~~(f) have an emergency eye wash station in any room in which chemical manufacturing is occurring; and~~
- ~~(g) have all applicable safety data sheets readily available.~~
- ~~(10) A marijuana manufacturer licensee that engages in chemical manufacturing may use:~~
 - ~~(a) a mechanical and/or physical extraction process;~~
 - ~~(b) a chemical extraction process using a nonhydrocarbon-based or other solvent, such as water, vegetable glycerin, vegetable oils, animal fats, isopropyl alcohol, or ethanol; or~~
 - ~~(c) a chemical extraction process using the solvent carbon dioxide, provided that the process:~~
 - ~~(i) does not involve the use of heat over 180 degrees Fahrenheit; and~~
 - ~~(ii) uses a professional grade closed-loop carbon dioxide gas extraction system where every vessel is rated to a minimum of six hundred pounds per square inch.~~
- ~~(11) (8) A marijuana manufacturer licensee that engages in chemical manufacturing may not use:~~
 - ~~(a) class 1 solvents according to the Q3 Tables and List Guidance for Industry published by the U.S. Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, Center for Biologics Evaluation and Research;~~
 - ~~(b) (a) pressurized, canned fuel intended for use in camp stoves, handheld torch devices, refillable cigarette lighters, and similar products; or~~
 - ~~(c) (b) denatured alcohol.~~
- ~~(12) A marijuana manufacturer licensee shall not utilize a branded, commercially manufactured food product (e.g., Chex Mix, Nerds Ropes) as an edible marijuana product except when commercially manufactured food products are used as ingredients in an edible marijuana product in a way that renders them unrecognizable as the commercial food product in the final edible marijuana product; and the licensee does not state or advertise to the consumer that the final edible marijuana product contains the commercially manufactured food product.~~
- ~~(13) A marijuana manufacturer licensee may not infuse any food with marijuana that requires heated, time-temperature control or a hot holding unit to keep it safe for human consumption and may not serve hot or heated foods that promote onsite consumption.~~
- ~~(14) Any foods that require refrigeration or freezing to keep them safe for human consumption must be stored in a refrigerator or freezer until the time of sale and must~~

~~be affixed with a label that indicates the product must be kept refrigerated or frozen, as appropriate.~~

~~(15) (9)~~ A marijuana manufacturer licensee may not treat or otherwise alter a marijuana product with any synthetic cannabinoid additive, including Delta-8 tetrahydrocannabinol, that would increase potency, toxicity, or addictive potential manufacture, process, or offer for sale a synthetic marijuana product as defined in 16-12-102, MCA.

~~(16) (10)~~ A marijuana manufacturer licensee must have current written standard operating procedures SOPs at the licensed premises and available for inspection for the following:

(a) ~~each category and type of marijuana that it produces~~ for each final form product, the equipment, ingredients, and manufacturing process used, which shall be kept confidential by the department EACH CATEGORY AND TYPE OF MARIJUANA THAT IT PRODUCES;

(b) ~~cleaning~~ how all equipment, counters, and surfaces are thoroughly cleaned;

(c) proper handling and storage of any solvent, gas, or other chemical used in processing or on the licensed premises;

(d) proper disposal of any waste produced during processing in accordance with ARM 42.39.310; and

~~(e) training employees on how to use the closed-loop system and handle and store the solvents and gasses safely.~~

(e) how employees are trained in the use of all emergency equipment such as eye wash stations, fire extinguishers, chemical spill kits, or any applicable safety concern; and

(f) precautions to ensure that employees with illnesses or open lesions be excluded from any operations which may be expected to result in contamination of marijuana products until their condition is corrected.

~~(17) (11)~~ A marijuana manufacturer licensee and an employee of a marijuana manufacturer licensee may only transport ~~their~~ marijuana and marijuana products that are in the licensee's seed-to-sale tracking system inventory in accordance with 16-12-222(4), MCA, and ARM 42.39.413(4) ~~(3)~~ through ~~(15) (18)~~ but and may not transport the marijuana or marijuana products of other licensees without a marijuana transporter license.

AUTH: 16-12-112, MCA

IMP: ~~16-12-204,~~ 16-12-221, 16-12-222, MCA

42.39.405 MARIJUANA CULTIVATOR LICENSES (1) A marijuana cultivator license allows a marijuana cultivator to plant, cultivate, grow, dry, package, and label marijuana and sell marijuana to licensed marijuana manufacturers, licensed dispensaries, and to other licensed marijuana cultivators, and to sell marijuana products

to licensed dispensaries. Marijuana cultivator licensees may not sell marijuana flower to other marijuana cultivator licensees.

(2) The department shall begin accepting applications for marijuana cultivators that are not former medical marijuana licensees, as defined in 16-12-102(14), MCA, on July 1, ~~2023~~ 2025.

~~(3) A licensee may continue to operate under its existing license and may apply for a marijuana cultivator license at its next renewal date.~~

(4) ~~(3)~~ The licensed premises of a former medical marijuana licensee that is located in a red county is not eligible to apply to increase its licensure level until the local government approval process in 16-12-301, MCA, allows for marijuana cultivation.

~~(5)~~ (4) A former medical marijuana licensee who engaged in outdoor cultivation before November 3, 2020, may continue to engage in outdoor cultivation but may not expand their existing outdoor cultivation space.

~~(6)~~ (5) For purposes of determining the appropriate canopy license tier:

(a) an existing outdoor cultivation space counts as a cultivation facility as used in ~~(5)~~ (4) and its square footage counts toward the total allowable square footage under each tier;

(b) a canopy is measured horizontally starting from the outermost point of a plant on the perimeter of a dedicated growing space and continuing around the outside of all plants located within the dedicated growing space;

(c) a marijuana cultivator licensee may designate multiple canopy areas at a cultivation facility, but each canopy area must be separated by a physical boundary such as an interior wall or by at least eight feet of open space.

~~(7)~~ (6) A marijuana cultivator licensee that cultivates above its licensure level may be subject to administrative proceedings.

~~(8)~~ (7) A marijuana cultivator licensee must create and maintain a manual of written ~~standard operating procedures~~ SOPs to produce marijuana. The marijuana cultivator licensee must keep the manual at the licensed premises and make it available for department inspection at all times. The manual must include, at a minimum:

(a) when and how all pesticides or other chemicals are to be applied during the production process;

(b) water usage and wastewater disposal protocols; and

(c) a waste disposal plan.

~~(9)~~ (8) If a marijuana cultivator licensee makes a material change to the standard operating procedures, it must document the change and revise the written standard operating procedures manual accordingly.

~~(10)~~ (9) A marijuana cultivator licensee must maintain on the licensed premises:

(a) the material safety data sheet for all pesticides, fertilizers, or other agricultural chemicals used in the production of marijuana at the licensed premises; and

(b) the original label, or a copy, for all pesticides, fertilizers, or other agricultural chemicals used in the production of marijuana at the licensed premises.

~~(44)~~ (10) A marijuana cultivator licensee must maintain a log of all pesticides, fertilizers, or other agricultural chemicals used in the production of marijuana in the seed-to-sale tracking system, which must be updated ~~weekly~~ MONTHLY. The log shall be kept confidential by the department.

~~(42)~~ (11) A marijuana cultivator licensee may not cultivate hemp at a licensed premises.

~~(43)~~ (12) A marijuana cultivator licensee and an employee of a marijuana cultivator licensee may only transport ~~their own~~ marijuana and marijuana products that are in the licensee's seed-to-sale tracking system inventory in accordance with 16-12-222(4), MCA, and ARM 42.39.413~~(4)~~ (3) through ~~(15)~~ (18) ~~but~~ and may not transport the marijuana or marijuana products of other licensees without a marijuana transporter license.

AUTH: 16-12-112, MCA

IMP: 16-12-112, 16-12-203, ~~46-42-204~~, 16-12-221, 16-12-210, 16-12-222, 16-12-223, MCA

42.39.409 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 2025.

~~(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)~~ (3) 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)~~ (4) 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)~~ (5) 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)~~ (6) A marijuana dispensary licensee and its employees may sell marijuana paraphernalia to registered cardholders 18 years of age and older and to consumers 21 years of age and older.

(7) A marijuana dispensary licensee may not sell a branded, commercially manufactured food product (e.g., Chex Mix, Nerds Ropes) as a marijuana infused product except when commercially manufactured food products are used as ingredients in a marijuana infused product in a way that renders them unrecognizable as the commercial food product in the final marijuana-infused product and the licensee does not state or advertise to the consumer that the final marijuana infused product contains the commercially manufactured food product **EXCEPT ON THE PRODUCT'S INGREDIENT LIST.**

(8) Marijuana dispensary customers must not handle marijuana or marijuana products outside of its packaging prior to purchase. Customers may return marijuana or marijuana products but the dispensary must destroy those products ~~and the destruction must be entered into the seed-to-sale tracking system.~~ 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 at the medical marijuana tax rate 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, including any state or territory that has authorized digital driver's license;

(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 or passport card 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 is limited to hemp flower and hemp plants.~~

(13) Any foods that require refrigeration or freezing to keep them safe for human consumption must be stored in a refrigerator or freezer until the time of sale and must be affixed with a label that indicates the product must be kept refrigerated or frozen, as appropriate.

(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 that offers retail deli-style sales must maintain and make available for inspection a standard operating procedure detailing sterile handling techniques to handle marijuana flower.

~~(15) (16)~~ A marijuana dispensary licensee and an employee of a marijuana dispensary licensee may only transport marijuana and marijuana products that are in the licensee's seed-to-sale tracking system inventory in accordance with 16-12-222(4), MCA, and ARM 42.39.413(4) ~~(3)~~ through ~~(15) (18)~~ but and may not transport marijuana or marijuana products of other licensees without a marijuana transporter license.

~~(16) (17)~~ A marijuana dispensary licensee, its employees, or a commercial third party must not deliver marijuana or marijuana products to consumers.

~~(17) A marijuana dispensary licensee may continue to sell marijuana and marijuana products that have been tested under the medical marijuana program statutes and administrative rules.~~

(18) A marijuana dispensary must not maintain or make available for sale any product that has not received a "test passed" status from a licensed marijuana testing laboratory.

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

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

42.39.413 TRANSPORTATION OF MARIJUANA AND MARIJUANA PRODUCTS; 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) (2)~~ Applicants for a marijuana transporter license must submit to the department proof of a valid Montana driver's license.

~~(4) (3)~~ 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, in which case the registered cardholder must provide a valid registry identification card to the transporter prior to the transporter completing the transport;

(c) be accompanied by a transport manifest derived from the seed-to-sale tracking system that contains the following information AND REMAINS WITH THE PRODUCT THE ENTIRE TIME IN TRANSIT:

(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) the most direct route to be traveled to complete the transport;~~

~~(iii)~~ ~~(iv)~~ (III) actual date and estimated time of departure;

~~(iv)~~ ~~(v)~~ (IV) actual date and estimated time of arrival;

~~(v)~~ ~~(vi)~~ (V) transporter's driver's license number, vehicle make, model, and license plate number;

~~(vi)~~ ~~(vii)~~ (VI) name and signature of each licensee or its employee accompanying the transport; and

~~(vii)~~ ~~(viii)~~ (VII) a complete description of the marijuana or marijuana product being transported. The description must include:

(A) the name and type of product being transported;

(B) accurate amount of product being transported verified by count or with a weighing device pursuant to 30-12-203, MCA, and ARM 24.351.101; and

(C) RFID tracking tag numbers of the product being transported;

(d) be accomplished within 48 ~~72 hours~~ SEVEN DAYS from the date and time of departure.

(4) If the transport requires an overnight stay during the planned direct route to complete the transfer, the transporting licensee must:

(a) identify the stay on the transport manifest prior to transport;

(b) accept the in-transit product into the storage facility's inventory or other licensed premises; and

(c) store the in-transit product in ~~the~~ A licensee's licensed premises.

(5) The transporter of the marijuana or marijuana product must record in the seed-to-sale tracking system:

(i) the actual time of departure from the originating license; and

(ii) the actual time of arrival at the destination.

~~(5)~~ (6) The transport manifest may not be voided or changed after leaving the departure location.

~~(6)~~ (7) A copy of the transport manifest must be given to each licensed premises receiving the inventory described in the transport manifest.

~~(7)~~ (8) A receiving licensed premises is prohibited from receiving any marijuana or marijuana products without a valid transport manifest.

~~(9) A receiving licensed premises may not accept any marijuana or marijuana products from a transporter that does not match the description and/or quantity shipped on the transport manifest.~~

~~(10)~~ (9) Upon receipt, the receiving licensed premises shall ensure that the product received is as described in the transport manifest, verified by count or with a weighing device pursuant to 30-12-203, MCA, and ARM 24.351.101. A receiving licensed premises must immediately record receipt of the transported inventory.

~~(11)~~ (10) The receiving licensed premises must document any differences between the items described for transport in the transport manifest versus what was actually received and immediately report discrepancies to the department.

~~(12) Except as provided in in (b), a receiving licensed premises must reject a transport that contains marijuana or marijuana products that do not match the description and/or quantity shipped on the transport manifest.~~

~~(a) Transport manifest discrepancies must be reconciled by the originating licensee at the originating licensed premises prior to transport.~~

~~(b) A receiving licensed premises may accept packages on a transfer manifest with a +/- of 0.9 grams per pound for scale variance and -5 to -7 grams per pound for drying.~~

~~(8) A receiving licensed premises is responsible for ensuring that the marijuana or marijuana products match the description in the transport manifest. A receiving licensed premises must immediately record receipt of the transported inventory.~~

~~(9) The receiving licensed premises must document any differences between the items described for transport in the transport manifest versus what was actually received and immediately report discrepancies to the department.~~

~~(10)~~ (13) (11) While in transport, all marijuana and marijuana products must be shielded from public view and secured in a locked storage compartment inside the body of the transport vehicle.

~~(11)~~ (14) (12) All motor vehicles used to transport marijuana or marijuana products:

(a) shall be considered a licensed premises for purposes of inspection by the department. Transport vehicles may be stopped and inspected by the department at any licensed premises or during transport;

(b) shall be lockable and equipped with a security alarm system;

(c) shall not leave the state of Montana while any amount of marijuana or marijuana product is in the motor vehicle; and

(d) shall not have any external markings, words, or symbols that indicate the vehicle is used for the transport of marijuana or marijuana products or that it is owned or leased by a marijuana business.

(12) (15) (13) A marijuana transporter licensee or employee of a marijuana transporter licensee must not sell marijuana or marijuana products; or transport marijuana or marijuana products directly to consumers.

(13) ~~(16)~~ (14) A marijuana transport licensee must contact the department within 24 hours if a vehicle transporting marijuana items is involved in an accident that involves product loss.

(14) ~~(17)~~ (15) Copies of the transport manifest and delivery receipts must be presented to law enforcement officers or authorized department employees, if requested.

(15) ~~(18)~~ (16) If a marijuana transporter licensee maintains a licensed premises to temporarily store marijuana or marijuana products, the licensee must have a marijuana storage facility endorsement for each storage facility as provided in ARM 42.39.420.

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

42.39.415 COMBINED USE LICENSES (1) A combined use license allows a federally recognized tribe located in the state or a business entity that is majority-owned by a federally recognized tribe located in the state to maintain a marijuana cultivation facility license and one marijuana dispensary ~~on the same licensed premises license~~.

~~(2) The department shall begin accepting applications for combined use licenses on January 1, 2022.~~

~~(3) (2) A combined use licensee is subject to the marijuana laws, including 16-12-223, MCA.~~

AUTH: 16-12-112, 16-12-225, MCA
IMP: 16-12-225, MCA

END