

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the adoption of New ) NOTICE OF ADOPTION  
Rules I through XIII pertaining to the )  
implementation of compliance and )  
enforcement requirements of the )  
Montana Marijuana Regulation and )  
Taxation Act and local-option )  
marijuana excise taxation )

TO: All Concerned Persons

1. On November 5, 2021, the Department of Revenue (department) published MAR Notice No. 42-1040 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1513 of the 2021 Montana Administrative Register, Issue Number 21.

2. On November 30, 2021, the department held a public hearing to consider the proposed adoption. There were no commenters present to provide testimony or commentary in support of the rulemaking. The following commenters appeared and provided oral testimony in opposition to the proposed rulemaking: Nathan Kosted, Stillwater Laboratories; Kate Cholewa, Montana Cannabis Industry Association (MTCIA); Evan Kajander, Apogee Gardens; and Kyle Babcock.

The department received written comments from interested persons in support of the proposed rules and also received written comments submitted by interested persons in opposition.

3. Based on comments provided and opposition testimony at the public hearing, which is referred to in Comment and Response No. 2, the department has withdrawn New Rule I from this rulemaking in its entirety.

4. The department has adopted New Rule II (42.39.122), New Rule IV (42.39.503), New Rule V (42.39.504), New Rule VI (42.39.505), New Rule VIII (42.39.507), New Rule IX (42.39.508), New Rule X (42.39.501), New Rule XI (42.39.502), and New Rule XIII (42.31.1101) as proposed.

5. The department has adopted the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE III (42.39.121) LICENSED PREMISES – SECURITY REQUIREMENTS (1) through (3) remain as proposed.

(4) A licensed premises must have a video monitoring system with cameras that:

(a) remains as proposed.

(b) record continuously twenty-four hours per day, or on a motion-sensor system, at a minimum of ten frames per second;

(c) and (d) remain as proposed.

(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;~~

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

~~(c) remains as proposed but is renumbered (b).~~

(6) and (7) remain as proposed.

AUTH: 16-12-112, MCA

IMP: 16-12-101, 16-12-112, 16-12-202, 16-12-207, 16-12-222, MCA

NEW RULE VII (42.39.506) SUSPENSION OR REVOCATION OF WORKER PERMITS (1) remains as proposed.

~~(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) remains as proposed but is renumbered (2).

AUTH: 16-12-112, MCA

IMP: 16-12-109, MCA

NEW RULE XII (42.39.110) GENERAL LICENSEE REQUIREMENTS

(1) through (5) remain as proposed.

(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) through (d) remain as proposed.

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

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

(g) 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

6. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT 1: Mr. Kosted made several brief comments that are aggregated in this Comment 1. Stillwater Laboratories reads the rules with delight, especially the portions relative to licensee and premises security, and marijuana workers. Mr. Kosted believes there is enough subjectivity in New Rule VII that the department will have a sufficient amount of latitude for compliance matters. Mr. Kosted commented that he is unsure, yet, of how these rules will work for marijuana testing laboratories. How will these rules work with the rules from DPHHS? Mr. Kosted opines that maybe the more appropriate regulatory agency for them would be DPHHS.

RESPONSE 1: The department thanks Mr. Kosted for acknowledgement of the regulatory effort drafted into the department's rules. As for his comments about marijuana testing laboratories having to comply with this department's rules in addition to those of DPHHS, Section 50, HB 701 is clear as to the respective agency's responsibilities and the necessary collaborative regulatory effort. The department and DPHHS do have a memorandum of understanding that will guide both agencies in our respective work with marijuana testing laboratories.

COMMENT 2: Ms. Cholewa commented that the point of sale (POS) requirement in New Rule I is unnecessary as many licensees use METRC as their POS system. Ms. Cholewa reads the statute requiring a point of sale system as tied to the semi-cashless requirement and asks why POS would be required without the semi-cashless component. Ms. Cholewa asks for the rule to be stricken from the rules package.

Ms. Emily Estkowski, owner of Kanopli, provided similar commentary to Ms. Cholewa, but a primary concern is that third-party POS software has known application programming interface (API) issues with METRC, which has been communicated to licensees, like Ms. Estkowski, by the department's METRC system vendor representatives.

RESPONSE 2: Based on the commentary provided and upon further consideration, the department has withdrawn New Rule I in its entirety from MAR Notice No. 42-1040.

COMMENT 3: Mr. Kajander commented to New Rule III and asks the department to reconsider the camera requirements in New Rule III(4) and (5). The basis for the request relates to the recording technology that is used in the systems. Most systems are cloud-based and switch on only when motion is detected because the file size relative to the minimum resolution requirements makes local storage of surveillance video impracticable and can be downloaded and transmitted more efficiently should either the licensee or the department request it.

RESPONSE 3: The department thanks Mr. Kajander for the observation and the department has amended the rule sections as recommended.

COMMENT 4: Similarly to Mr. Kajander's comments, Mr. Babcock commented that the amount of storage space necessary for the required number of cameras for the proposed 90-day period would equate to a massive amount of data - he opines 54 terabytes. Mr. Babcock asks the department to shorten the amount of storage time.

RESPONSE 4: The department thanks Mr. Babcock for the information and the department has amended the video storage requirement down to 60 days.

COMMENT 5: The department received several comments on New Rule VII(2), both in writing and at the public hearing, that could be summarized as general objection to the rule's grounds for the suspension or revocation of worker permits. Many commenters contend that the department misconstrued this portion of the legislative intent of House Bill 701 (HB 701).

The department also received direct feedback from the legislature, through its Revenue Interim Committee and Economic Affairs Interim Committee meetings, held on November 9 and November 17, 2021, respectively. Both committees voiced that the department would not be fulfilling legislative intent by adopting such stringent criteria for industry workers.

RESPONSE 5: The department thanks all commenters and the interim legislative committees for their comments. Based on the commentary and testimony received, the department has amended New Rule VII upon adoption to remove (2).

7. The effective date of the department's rule adoptions is January 1, 2022.

/s/ Todd Olson  
Todd Olson  
Rule Reviewer

/s/ Brendan Beatty  
Brendan Beatty  
Director of Revenue

Certified to the Secretary of State December 14, 2021