



**MONTANA
ADMINISTRATIVE
REGISTER**



DEPARTMENT OF REVENUE

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-227.1

Summary

Adoption of NEW RULES 1 and 2 to continue implementation of House Bill 948 (HB 948) (2023), to fulfill the recommendations of the Synthetic Cannabinoid Advisory Council, and to implement the state's revised ban on synthetic cannabinoids enacted under House Bill 49 (2025)

Hearing Date and Time

Wednesday, November 5, 2025, at 11:00 a.m.

Hearing Information

Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana

Comments

Comments may be submitted using the contact information below. Comments must be received by Wednesday, November 12, 2025, at 5:00 p.m.

Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Friday, October 17, 2025, at 5:00 p.m.

Contact

Todd Olson, Rule Reviewer - Department of Revenue, Legal Services Office
(406) 444-7905
todd.olson@mt.gov

General Reasonable Necessity Statement

The proposed new rules concerning synthetic cannabinoids continue the department's implementation of House Bill 948 (HB 948)(2023) and fulfill the recommendations of the Synthetic Cannabinoid Advisory Council (council) established under HB 948. The proposed new rules also implement the state's revised ban on synthetic cannabinoids under the rulemaking authority granted to the department by the legislature under HB 49 (2025)(HB 49). These new rules clarify statutory definitions, identify and prohibit specific substances, and establish enforcement procedures critical for public safety, regulatory clarity, and statutory compliance.

Rulemaking Actions

ADOPT

The rules proposed to be adopted are as follows:

NEW RULE 1 DEFINITIONS

The following definitions apply to this chapter:

- (1) "Chemical synthesis" means a process to create a chemical substance through a chemical reaction or conversion by human agency, which changes the molecular structure of any chemical substance, including but not limited to those substances derived from the plant Cannabis family Cannabaceae, that involves the use of chemicals and reagents, as opposed to those of natural origin.
 - (a) The term includes:
 - (i) the decarboxylation of synthetic acidic cannabinoids with or without the use of a chemical catalyst; and
 - (ii) the decarboxylation of natural acidic cannabinoids with the use of a chemical catalyst.
 - (b) The term does not include the decarboxylation of acidic natural cannabinoids without the use of a chemical catalyst.

- (2) “Decarboxylation” means the conversion of an acidic cannabinoid into its neutral form typically with the use of thermal energy such as the conversion of delta-9 THCA into delta-THC with heat.
- (3) “Natural cannabinoid product” means consumer products that contain natural cannabinoids and do not include synthetic cannabinoids.
- (4) “Natural cannabinoids” or “phytocannabinoids” means a cannabinoid present or occurring naturally in the biomass of the plant Cannabis family Cannabaceae. These may be separated and further purified by chemical or mechanical manufacturing, as defined in ARM 42.39.102, directly from the biomass.
 - (a) The term includes cannabinoids produced by the decarboxylation of natural acidic cannabinoids without the use of a chemical catalyst.
 - (b) The term may include:
 - (i) intoxicating or non-intoxicating cannabinoids; and
 - (ii) cannabinoids with a synthetic equivalent.
 - (c) The term does not include:
 - (i) synthetic cannabinoids or synthetically derived cannabinoids;
 - (ii) cannabinoids produced by the decarboxylation of synthetic acidic cannabinoids with or without the use of a chemical catalyst; or
 - (iii) cannabinoids produced by the decarboxylation of natural acidic cannabinoids with the use of a chemical catalyst.
- (5) “Synthetic cannabinoids” means the same as provided in 16-12-102, MCA.
 - (a) The term includes:
 - (i) cannabinoids produced by the decarboxylation of synthetic acidic cannabinoids with or without the use of a chemical catalyst; and
 - (ii) cannabinoids produced by the decarboxylation of natural acidic cannabinoids with the use of a chemical catalyst.
 - (b) The term may include:
 - (i) intoxicating or non-intoxicating cannabinoids; and
 - (ii) cannabinoids with a naturally occurring equivalent.
 - (c) The term does not include:
 - (i) natural cannabinoids; or
 - (ii) cannabinoids produced by the decarboxylation of natural acidic cannabinoids without the use of a chemical catalyst.

Authorizing statute(s): 16-12-112, MCA

Implementing statute(s): 16-12-101, 16-12-112, 16-12-117, MCA

Reasonable Necessity Statement

NEW RULE 1 implements the council's recommendation to provide clear, science-based definitions for natural cannabinoids, synthetic cannabinoids, chemical synthesis, decarboxylation, and related consumer products. This ensures the department can reliably distinguish lawful from unlawful products in line with HB 948 and 16-12-117, MCA. New Rule 1 utilizes consensus language from the council to exclude compounds produced through chemical catalysts and ban those synthetic forms identified as presenting identifiable risks. Moreover, the definitions are designed to accommodate evolving cannabinoid chemistry, helping to prevent statutory obsolescence.

NEW RULE II SYNTHETIC CANNABINOIDS PROHIBITED

- (1) The following cannabinoids are considered synthetic cannabinoids and any products with these cannabinoids at any appreciable levels are synthetic cannabinoid products:
 - (a) Tetrahydrocannabinol alkyl analogues C4 or higher including but not limited to the following:
 - (i) Delta-8 tetrahydrocannabiphorol (D8-THCP);
 - (ii) Delta-9 tetrahydrocannabiphorol (D9-THCP);
 - (iii) Delta-8 tetrahydrocannabioctyl (D8-THCJD);
 - (iv) Delta-9 tetrahydrocannabioctyl (D9-THCJD);
 - (v) Delta-8 tetrahydrocannabutol (D8-THCB);
 - (vi) Delta-9 tetrahydrocannabutol (D9-THCB);
 - (vii) Delta-8 tetrahydrocannabihexol (D8-THCH);
 - (viii) Delta-9 tetrahydrocannabihexol (D9-THCH);
 - (b) Delta-10 tetrahydrocannabinol (D10-THC) and isomers;
 - (c) Delta-8 tetrahydrocannabinol (D8-THC) and isomers;
 - (d) Delta-7 tetrahydrocannabinol (D7-THC) and isomers;

- (e) Delta-6a,10a tetrahydrocannabinol (D6a,10a-THC) and isomers;
 - (f) Ester forms of tetrahydrocannabinol including but not limited to:
 - (i) Delta-8 tetrahydrocannabinol acetate (D8-THCO);
 - (ii) Delta-9 tetrahydrocannabinol acetate (D9-THCO);
 - (iii) Delta-8 tetrahydrocannabiphorol acetate (D8-THCPO);
 - (g) Exo-tetrahydrocannabinol;
 - (h) Hydrogenated forms of tetrahydrocannabinol including but not limited to the following:
 - (i) Hexahydrocannabinol (HHC);
 - (ii) Hexahydrocannabiphorol (HHCP);
 - (iii) Hexahydrocannabihexol (HHCH);
 - (iv) Hexahydrocannabinol acetate (HHCO);
 - (i) Hydrogenated forms of cannabidiol (CBD) including but not limited to:
 - (i) H4-cannabidiol (H4-CBD);
 - (ii) H4-cannabidiol dimethylheptyl (H4-CBD-DMH);
 - (j) Synthetic forms of THC including but not limited to Dronabinol; and
 - (k) Tetrahydrocannabinol monomethyl ether (THCM).
- (2) The department may determine that other cannabinoids are synthetic cannabinoids if findings indicate:
- (a) the cannabinoid is novel relative to known naturally occurring cannabinoids; or
 - (b) the cannabinoid appears in a product at levels that are not achievable through natural production in the Cannabis plant.
- (3) If the department determines a cannabinoid is a synthetic cannabinoid under (2), a licensee may demonstrate to the department with clear and convincing evidence that the cannabinoids present in its product are not synthetic cannabinoids. A licensee may demonstrate that the cannabinoids are not synthetic through:
- (a) production batch records;
 - (b) a standard operating procedure that clearly and concisely indicates the process, starting materials, and reagents used to make the product; or
 - (c) traceability of sourced raw materials.

- (4) A certificate of analysis is not considered clear and convincing evidence of whether a product contains synthetic cannabinoids.

Authorizing statute(s): 16-12-112, MCA

Implementing statute(s): 16-12-101, 16-12-112, 16-12-117, MCA

Reasonable Necessity Statement

New Rule 2 specifically implements and enforces the statutory prohibition on synthetic cannabinoids established by 16-12-101 and 16-12-117, MCA. The Montana Legislature has delegated rulemaking authority to the department so that it may define, identify, and regulate synthetic cannabinoids in accordance with legislative intent and scientific developments.

New Rule 2(1) identifies specific synthetic cannabinoids that are prohibited.

New Rule 2(2) states the department's discretion to determine that other, as-yet-unidentified cannabinoids are synthetic, based on factors such as a cannabinoid's novelty or its presence at levels unlikely to be achieved through natural processes.

New Rule 2(3) enables licensees to demonstrate to the department that a cannabinoid deemed synthetic under (2) is in fact naturally derived, outlining examples of evidence acceptable for such demonstrations.

Small Business Impact

With regard to the small business impact analysis requirements of 2-4-111, MCA, as amended by HB 592 (2025), the department has analyzed the proposed rule adoptions and the group or class of businesses directly affected by this rulemaking, and concludes those impacted small businesses are the testing laboratories, cultivators, dispensaries, or manufacturers of marijuana and marijuana products if they meet the definition of a small business under 2-4-102(13), MCA. As of September 1, 2025, there are 214 cultivators, 144 manufacturers, and one testing laboratory licensee active within Montana.

The department contends that any small business impact directly related to the prohibition of synthetic cannabinoids does not arise from the proposed rulemaking but through the legislature's enactment of public policy under HB 948 and HB 49. Any impacts to industry through this rulemaking are secondary and are mitigated to the greatest extent possible in New Rule 2(3), which enables licensees to demonstrate to the department that a cannabinoid

deemed synthetic under New Rule 2(2) is in fact naturally derived, outlining examples of evidence acceptable for such demonstrations.

Documentation of the small business impact analysis is available upon request.

Bill Sponsor Notification

The primary bill sponsor of House Bill 49 was contacted by electronic mail and by U.S. mail on July 22, 2025. The department received no comments from the bill sponsor to incorporate into the proposal notice.

Interested Persons

The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the contact person in this notice or may be made by completing a request form at any rules hearing held by the Department of Revenue.

Rule Reviewer

Todd Olson

Approval

Brendan Beatty, Director