



MONTANA
ADMINISTRATIVE
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DEPARTMENT OF REVENUE

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2026-445.1

Summary

Proposed Amendment of ARM 42.39.203 Regarding Seed-to-sale Tracking System Reconciliation Clarifications and Improvements for Tracking Accuracy and Compliance

Hearing Date and Time

Monday, May 18, 2026, at 10:00 a.m.

Hearing Information

Auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana

Comments

Comments may be submitted using the contact information below. Comments must be received by Tuesday, May 26, 2026, 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, May 1, 2026, at 5:00 p.m.

Contact

Rulemaking Actions

AMEND

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

42.39.203 SEED-TO-SALE TRACKING AND RECONCILIATION

- (1) A licensee must use the department's seed-to-sale tracking system as the primary inventory and record keeping system. Licensees must use a unique identification number tag purchased from the seed-to-sale tracking system vendor for all seed-to-sale tracking purposes. For purposes of this rule and reconciling marijuana plant or package inventories in the seed-to-sale tracking system, the terms "plant tag" or "package tag" may be used as an abbreviated reference to either a unique identification number plant tag or a unique identification number package tag, where appropriate. If the more generic term "tag" is used, it applies to both marijuana plants and packages.
- (2) Each individual marijuana plant that reaches a height of twelve inches must be issued a ~~unique identification number plant tag~~ in the seed-to-sale tracking system, which follows the plant through all phases of production and final sale to a customer. The plant tag may be staked in the soil or otherwise placed with the plant until the plant reaches a height of 18 inches, at which point the tag must be physically affixed to the plant. The plant tag must follow the plant through all phases of cultivation until the harvested flower is assigned a package tag.
- (3) All marijuana items, test batches, harvest lots, and process lots must be issued a ~~unique identification number package tag~~ in the seed-to-sale tracking system.
- (4) ~~Unique identification numbers~~Tags cannot be reused, photocopied, or otherwise replicated for seed-to-sale tracking purposes.
- (5) Each ~~marijuana plant, marijuana item, test batch, test sample, harvest lot, and process lot that has been issued a unique identification number package tag~~ must have a ~~physical~~ the tag placed on it with the unique identification number affixed to it.
 - (a) Packages of marijuana flower and usable marijuana, including trim and manicure, must be individually packaged, tracked, and tested. These packages may not exceed five pounds, except for:

- (i) packages designated solely for concentrate and extract production that will forego testing pursuant to ARM 42.39.614; and
 - (ii) whole, wet marijuana plants packaged directly out of harvest.
- (b) Packages of process lots may not exceed 5,000 units of sale.
- (6) A licensee may not create or distribute any sub-packages until the source package has successfully passed all required testing.
- (7) Multiple process lots may not be combined and tracked under one package tag after testing unless the process lot will be manufactured into a new product in conformance with these rules. All new products must be submitted for testing pursuant to ARM 42.39.614.
- ~~(6)~~(8) The All tags must be unaltered, legible, and placed in a position that can be clearly read and must be kept free from dirt and debris.
- ~~(7)~~ Licensees must use unique identification tags purchased from the seed-to-sale tracking system vendor.
- ~~(8)~~(9) All on-premises and in-transit marijuana item inventories must be reconciled in the seed-to-sale tracking system at the close of business by 11:59 p.m. each day. Examples include:
 - (a) plant counts recorded in the seed-to-sale tracking system match actual plant counts at the licensed premises;
 - (b) marijuana product quantities recorded in the seed-to-sale tracking system match actual marijuana product quantities at the licensed premises;
 - (c) all marijuana inventory physically matches its recorded location in the seed-to-sale tracking system;
 - (d) information on marijuana facts panels matches the corresponding product test results;
 - (e) each marijuana product item is recorded in the seed-to-sale tracking system within the variance provided for in 16-12-224, MCA;
 - (f) depleted packages are recorded as finished in the seed-to-sale tracking system on the same day the package reaches zero quantity;
 - (g) process lots are accurately recorded in the seed-to-sale tracking system the same day they are started;
 - (h) rejection of any inaccurately manifested products and receipt of a corrected manifest from the originating licensee;
 - (i) harvest lots and process lots are recorded as finished in the seed-to-sale tracking system on the same day they are completed; and

(j) identification of all test failed product as remediated prior to additional testing or manufacturing.

~~(9)~~(10) For each marijuana sale or transfer to a registered cardholder, the licensee or its employee must verify the registered cardholder's eligibility and daily and monthly purchase limits and record in the seed-to-sale tracking system at the time of sale or transfer:

- (a) the quantity of each item sold or transferred to a registered cardholder;
- (b) the price before tax; and
- (c) the date of the sale or transfer to a customer.

~~(10)~~(11) Licensees must record in the seed-to-sale tracking system:

- (a) wet weight of all each harvested marijuana plants immediately after harvest the same day the plant is harvested;
- (b) information for marijuana items by unit count;
- (c) weight per unit of a product;
- (d) weight and disposal of post harvest waste materials, per the requirements described in ARM 42.39.310 the schedule date for a plant harvest at least 72-hours before beginning the harvest;
- (e) strain specific harvests;
- ~~(e)~~(f) theft or loss of marijuana items; and
- ~~(f)~~(g) other information as may be reasonably required by the department.

~~(11)~~(12) These requirements do not apply to marijuana items held by a laboratory licensee that are undergoing analytical testing, so long as the marijuana items do not leave the laboratory's licensed premises and are reconciled on the same day that the quality assurance testing concludes. Package adjustments must be accompanied by an entry in the seed-to-sale tracking system that accurately details the reason for the adjustment. Package adjustments shall not be used to resolve:

- (a) inaccurate sales;
- (b) moving marijuana or marijuana products between packages; or
- (c) discrepancies in the quantity of transferred inventory.

~~(12)~~(13) All samples taken for quality assurance testing must be recorded in the seed-to-sale tracking system.

~~(13)~~(14) Licensed testing laboratories must record all testing results in the seed-to-sale tracking system.

- (15) Licensees must monitor all compliance notifications from the seed-to-sale tracking system and must resolve any compliance notification issues within 30 days.
- (16) All packages under administrative action must be quarantined and may not be sold, altered, or manufactured, except that such packages may be destroyed pursuant to ARM 42.39.310.
- (17) A licensee must utilize the seed-to-sale tracking system in conformance with this rule and inventory tracking system procedures, including but not limited to accurately recording:
- (a) harvest lots, including but not limited to number of plants in the harvest, amount of waste generated from the harvest, amount of moisture loss during the harvest period, and packages derived from the harvest;
 - (b) the manufacture of process lots, including but not limited to when the manufacturing process begins, the package tag numbers of all input and output packages, and the amount of manufacturing waste;
 - (c) the item category for all marijuana and marijuana products;
 - (d) all remediation steps taken to resolve marijuana or marijuana products that have failed testing; and
 - (e) detailed documentation explaining the destruction of marijuana plants, marijuana, and marijuana products.
- (18) Only seeds may be accepted from outside the seed-to-sale tracking system. Licensees must contact the department to request the input of seeds into the seed-to-sale tracking system.

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

Implementing statute(s): 16-12-105, 16-12-108, 16-12-112, 16-12-203, 16-12-209, 16-12-210, 16-12-515, MCA

Reasonable Necessity Statement

The department proposes to amend ARM 42.39.203 to provide clearer guidance to marijuana licensees regarding their obligations under Montana's seed-to-sale tracking system, improve licensee compliance, and enhance seed-to-sale tracking accuracy.

Specifically, the proposed amendments – and the rationale for each section and subsection, as applicable, are as follows:

Section (1) Primary Tracking System and Tag Purchase Requirements - Under existing rule, licensees are already required to use department-approved tags. The amendments are reorganized from (7) and are not a substantive. A proposed amendment also seeks to shorten “unique identification number tags” references to “plant tags,” “package tags,” or “tags” to make the rule less cumbersome without ambiguity.

Section (2) Plant Tag Requirements and Affixation Standards - This amendment is necessary to provide clear, practical guidance on tag management for marijuana plants at various stages of growth. The current rule states that the unique identification number "follows the plant through all phases of production and final sale to a customer," but this language has created confusion because plants do not typically proceed to final sale—they are harvested and converted to products. The amended language clarifies that:

- The term "plant tag" is more accurate and understandable than "unique identification number"
- Plant tags may be staked in soil for younger plants (practical accommodation for plants between 12-18 inches)
- Plant tags must be physically affixed once plants reach 18 inches (ensuring secure tracking and responding to industry concern about the current requirement that a tag be affixed at 12 inches)
- Plant tags follow plants only through cultivation, not to final sale (correcting the misleading current language)
- Harvested flower receives a separate package tag (clarifying the transition from plant tracking to product tracking)

These clarifications reflect current department expectations and industry best practices. They are necessary to reduce compliance errors and provide licensees with clear, actionable standards.

Section (3) Package Tag Requirements - This amendment is necessary for consistency with the terminology established in subsection (2) and throughout the rule. The term "package tag" more accurately describes the physical tag used to track packaged marijuana products, as distinct from "plant tags" used during cultivation. This is a clarifying change that improves understanding without changing the underlying obligation.

Section (4) Tag Reuse, Photocopying, and Replication Prohibition - This amendment is necessary to close a compliance gap that has emerged in practice. While the current rule prohibits reusing unique identification numbers, some licensees have attempted to photocopy or replicate tags, believing this does not constitute "reuse." This practice undermines the integrity of the seed-to-sale tracking system by creating duplicate identifiers that cannot be distinguished in the system.

The amendment clarifies that tags must be authentic, vendor-supplied items and cannot be reproduced by any means. In other words, only one physical tag with each identifier may exist.

Section (5) Tag Affixation Requirements and Additions -

- Removal of "marijuana plant" is a non-substantive reorganization. Plants are now addressed comprehensively in (2), so removal here eliminates redundancy.
- Addition of "test sample" is necessary because test samples are already required to be tracked in the seed-to-sale system under current (12) but the text does not explicitly state test samples must be tagged. This amendment clarifies what is already implicit in the tracking requirement.
- Language simplification ("the tag affixed to it"): This is a clarifying change that uses more direct language. The requirement remains the same—physical tags must be attached to tracked items.

Subsection (5)(a) - 5-pound package maximum. This amendment is necessary to establish clear package size standards that facilitate testing compliance, inventory management, and product traceability. Large, undivided packages create testing and tracking challenges. The 5-pound limit:

- Aligns with testing protocols (i.e., SOP-001 v.4) that require representative sampling
- Prevents circumvention of testing requirements through oversized packages
- Establishes reasonable exceptions for concentrate production inputs and whole wet plants
- Reflects industry best practices for inventory management

The department also clarifies that there are limited exceptions for concentrate production (which may forego certain testing under ARM 42.39.614) and whole wet plants directly from harvest which are necessary to avoid requiring licensees to break down material that will undergo further processing or immediate manufacturing.

Subsection (5)(b) - 5,000 unit maximum for process lots. This amendment is necessary to prevent excessively large process lots that become difficult to track, test, and manage. A 5,000-unit limit ensures that:

- Process lots remain manageable for quality control
- Testing results are representative of the actual product batch
- Inventory adjustments and corrections can be made without affecting excessively large quantities
- Compliance with variance allowances under 16-12-224, MCA remains practical

Proposed (6) Sub-Package Creation and Testing Requirements (new section). This amendment is necessary to prevent a compliance gap that has led to untested marijuana products entering the supply chain. Under current practice, some licensees have created sub-packages from source packages before testing is complete, then distributed those sub-packages even when the source package later failed testing. This creates serious public health and safety risks. The new subsection (6) clarifies that testing must be completed before subdivision, all sub-packages inherit the testing status of their source package, and no distribution of sub-packages may occur until testing is passed.

This new rule section cross references what is already required under ARM 42.39.614 (testing requirements) and the statutory framework's emphasis on product safety. The testing requirement has always applied, but this amendment makes explicit the timing and sequence that testing must occur before subdivision and distribution.

Proposed (7) Combining Process Lots After Testing (new section). This new rule section is necessary to prevent circumvention of testing requirements through post-testing combination of process lots. The amendment addresses a compliance issue where licensees have combined multiple tested process lots under a single tag to avoid re-testing when making formulation adjustments or corrections. The rule section establishes that once tested, process lots must maintain separate tracking identities, combination is only permissible when creating a genuinely new product, and any new product created through combination must undergo complete testing.

Like proposed (6), proposed (7) reinforces existing testing requirements in ARM 42.39.614 by preventing a tracking practice that undermines those requirements. The principle that each distinct product must be tested is already established; this amendment clarifies that combining tested lots creates a new product requiring new testing.

Proposed (8) (Renumbered (6)) - Tag Legibility and Condition Standards. These amendments are necessary for clarity and completeness. "All tags" instead of "the tag" is a clarifying change that emphasizes the requirement applies to every tag used by the licensee, not just singular tags. This prevents any interpretation that only certain categories of tags must meet legibility standards. Adding "unaltered" is necessary because altered tags compromise tracking system integrity. Licensees have occasionally modified tags (crossing out information, adding handwritten notes, or physically altering tag features), which creates confusion and potential tracking errors. The requirement that tags be unaltered is implicit in the concept of a unique identification system, but making it explicit prevents these practices. Again, this change formalizes what a functional tracking system already requires.

Current (7) is proposed for removal as obsolete/non-substantive because that requirement is now incorporated into (1).

Proposed (9) - Daily Reconciliation Requirements and Examples (Renumbered (8)). These amendments are necessary to provide clear, objective standards for daily reconciliation and to address widespread confusion about what "reconciliation" means. By 11:59 p.m. instead of "at the close of business" is necessary because "close of business" is relative as licensees have different operating hours and "close of business" has been interpreted inconsistently. The specific time of 11:59 pm:

- Provides an objective, uniform standard
- Ensures reconciliation occurs daily, not at indefinite intervals
- Aligns with the tracking system's daily reporting cycle
- Allows all licensees to complete reconciliation regardless of operating hours

Proposed (9)(a) through (9)(j) - Examples of reconciliation. These additions are necessary because the current rule requires daily reconciliation but does not specify what must be reconciled. This has led to inconsistent compliance, with some licensees believing reconciliation means only counting plants while others understand it requires comprehensive inventory verification. The ten examples provided clarify what reconciliation includes. The amendments further clarify and specify what is already required by the general reconciliation obligation. A tracking system cannot function if records do not match physical reality—these examples make explicit what effective reconciliation necessarily entails. The examples reflect existing department enforcement priorities and licensee obligations under the statutory framework.

Proposed (10) (Renumbered (9)) - Sales and Transfer Recording Requirements. Renumbering only.

Proposed (11) (Renumbered (10)) - Recording Requirements in Tracking System - Subsection (11)(a) are clarifying amendments. Changing "all" to "each" emphasizes that every individual plant must be recorded separately. Changing "immediately after harvest" to "the same day the plant is harvested" provides a realistic, clear timeframe. "Immediately" is impractical in cultivation operations where multiple plants are harvested and processed over several hours. "Same day" provides a clear deadline while accommodating operational realities. The obligation to record wet weight remains unchanged—only the timing is clarified. Deletion of (d) is proposed and appropriate because waste disposal recording is comprehensively addressed in ARM 42.39.310, and the cross-reference was creating confusion about whether dual recording was required. The deletion eliminates redundancy. This is a non-substantive change as the obligation to track waste remains in ARM 42.39.310. New (d) is necessary to enable the department to conduct timely inspections and compliance monitoring. Currently, licensees

sometimes harvest without advance notice, making it impossible for the department to observe compliance with harvest protocols. The 72-hour advance notice:

- Allows the department to schedule inspections
- Provides licensees adequate flexibility in scheduling
- Enables verification of plant counts before harvest
- Helps prevent diversion during the harvest process

New subsection (11)(e) - Strain-specific harvest recording. This amendment is necessary because strain information is critical for product labeling, testing analysis, and consumer safety. Currently, strain information is required on final products but the rule does not explicitly require recording it at harvest. This creates compliance gaps where strain identity becomes unclear during processing. Recording strain at harvest ensures accurate product labeling downstream, enables strain-specific testing analysis, prevents mixing of strains within batches, and supports consumer choice and safety.

Adding "reasonably" in subsection (11)(g) is necessary to provide appropriate scope limitation on the department's authority to require additional information. The word "reasonably" ensures that any future information requirements must be rationally related to tracking and regulatory purposes.

Proposed (12) (Renumbered from (11)) Package Adjustments and Prohibited Uses. The proposed amendments are necessary to address a significant compliance problem while removing an unnecessary exemption – the laboratory testing exemption. The current section exempts laboratory-held items from reconciliation requirements if they remain on laboratory premises and are reconciled same-day when testing concludes. This exemption is unnecessary because laboratories are already required to reconcile testing samples under proposed (13), and the exemption has created confusion about whether laboratories must comply with daily reconciliation. Removing this language clarifies that laboratories must comply with standard reconciliation requirements.

New package adjustment requirements are also proposed in (12)(a) through (c). The additional language is necessary because package adjustments are a critical tracking system function that has been misused. Package adjustments are intended to correct data entry errors or account for legitimate variance, but some licensees have used adjustments to cover-up inaccurate sales records, move product between packages without proper documentation, or to conceal discrepancies in transferred inventory. Proposed (12) requires:

- All adjustments must include detailed explanatory entries
- Adjustments may not be used to resolve inaccurate sales

- Adjustments may not be used to move product between packages (which requires proper transfer documentation)
- Adjustments may not be used for inventory transfer discrepancies (which must be addressed through proper manifest corrections)

The tracking system's integrity depends on accurate, documented adjustments - the amendments make explicit what constitutes proper versus improper adjustment practices.

Proposed (13) (Renumbered from (12)). Renumbering only.

Proposed (14) (Renumbered from (13)) - Testing Laboratory Recording and Certificate Upload Requirements. The addition of the certificate of analysis upload requirement is necessary to ensure testing results are fully documented and accessible within the tracking system. Currently, laboratories must "record all testing results" but the rule does not explicitly require uploading the complete certificate of analysis (COA), though in practice, this is already being done. Full COA upload is necessary because licensees need detailed testing data for accurate product labeling, the department requires complete testing records for compliance verification, consumers and healthcare providers need access to detailed product testing information, and downstream purchasers need to verify product testing claims. Lastly, recording results without the supporting documentation is insufficient for regulatory and commercial purposes.

Proposed (15) - Compliance Notification Monitoring and Resolution. This new section is necessary to establish clear licensee expectations for responding to system-generated compliance alerts. The tracking system generates automated notifications when it detects potential compliance issues. However, the current rule does not specify that licensees must monitor and respond to these notifications, leading to unresolved compliance issues accumulating over time. The new requirement establishes that licensees must actively monitor compliance notifications (not just respond when contacted by the department), resolution of compliance issues must occur within 30 days (providing reasonable time while preventing indefinite delays), and that monitoring and resolution are mandatory compliance obligations. The amendment puts into rule what is already necessary for effective system use. The tracking system cannot function as intended if compliance notifications are ignored. The 30-day resolution deadline balances the need for timely compliance with the operational reality that some issues require investigation and corrective action.

Proposed (16) - Administrative Action and Quarantine Requirements. This amendment is necessary to prevent the distribution of products that are subject to administrative holds, investigations, or compliance actions. Currently, the tracking system can flag packages with administrative holds, but the rule does not explicitly prohibit continued use of those packages. The new section clarifies that administrative action triggers automatic quarantine, quarantined

products cannot enter the supply chain, quarantined products cannot be altered or manufactured into other products (preventing evidence destruction or contamination spreading), and destruction remains permissible under waste disposal rules. The department contends that the amendment makes explicit what is already necessary when the department or tracking system places administrative restrictions on inventory. The public health and safety rationale underlying administrative actions is defeated if licensees can continue using the flagged inventory.

Proposed (17) - Comprehensive Seed-to-Sale System Utilization Requirements. This amendment is necessary to establish comprehensive tracking system utilization standards that go beyond basic data entry. The current rule requires use of the tracking system but does not specify the level of detail and accuracy required for various tracking functions.

Subsection (17)(a) - Harvest lot details. This amendment is necessary to ensure comprehensive harvest documentation including number of plants harvested, waste generated, moisture loss, and packages derived from the harvest. This information is critical for:

- Verifying that all harvested plant material is accounted for
- Tracking typical moisture loss rates (to identify potential diversion through false waste claims)
- Ensuring harvest yields align with plant counts
- Enabling package-to-plant traceability

Subsection (17)(b) - Manufacturing process lot details. This amendment is necessary to document the complete manufacturing process including start time, input/output package tags, and manufacturing waste. This enables:

- Complete traceability from input materials to finished products
- Verification of manufacturing yields and waste rates
- Detection of diversion during manufacturing
- Compliance verification with manufacturing protocols

Subsection (17)(c) - Item category recording. This amendment is necessary to ensure all marijuana and marijuana products are properly categorized in the system (flower, concentrate, edible, topical, etc.). Proper categorization is essential for:

- Purchase limit enforcement (different categories have different limits)
- Testing requirement application (different categories require different tests)
- Tax calculation and reporting
- Statistical tracking and reporting

Subsection (17)(d) - Remediation documentation. This amendment is necessary to ensure complete documentation of remediation efforts for failed products. Documentation must show:

- What remediation steps were taken
- When remediation occurred
- What testing failures were being addressed
- What the post-remediation disposition was

This is critical for public safety - failed products must be documented through remediation to ensure they meet safety standards before re-entering the supply chain.

Subsection (17)(e) - Destruction documentation. This amendment is necessary to ensure detailed documentation of all marijuana destruction, including what was destroyed, why, when, and how. Destruction is a high-risk activity for diversion, and detailed documentation:

- Prevents false destruction claims masking diversion
- Ensures proper waste disposal procedures are followed
- Provides audit trail for inventory reduction
- Enables verification that destroyed products were appropriate for destruction

The department reiterates that the five above-described subsections are clarifying amendments that specify what "use" of the tracking system requires. The information described is already necessary for effective tracking - these provisions make explicit what data must be recorded and at what level of detail.

Proposed (18) Seed Input Requirements. This new section is necessary for the department to clarify that only marijuana seeds may be accepted from outside the seed-to-sale tracking system, pursuant to 16-12-203(3), MCA, which provides that marijuana for use under the Montana Marijuana Regulation and Taxation Act (MMRTA) must be cultivated and manufactured in Montana. The requirement that licensees contact the department to request seed input is necessary to maintain tracking system integrity (by ensuring all entry points are documented), enable the department to verify seed legitimacy and source, and to prevent circumvention of tracking through false "seed" entries.

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 amendments 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 April 1, 2026, there are 211 cultivators, 143 manufacturers, and two testing laboratory licensees active within Montana.

The department contends that any small business impact directly related to the enhanced seed-to-sale reconciliation and compliance efforts does not arise from the proposed rulemaking, as they are secondary to the public policy goals articulated by the Legislature under the MMRTA. The department also contends that impacted opponents are taking issue with industry best practices, improved guidance for operating compliant cannabis businesses, and the department's efforts to close operational or legal loopholes that are contrary to the MMRTA.

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

Bill Sponsor Notification

The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

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

Scott Mendenhall, Deputy Director of Revenue