

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 42.2.613, 42.2.614, 42.2.615, ) PROPOSED AMENDMENT AND  
42.2.616, 42.39.102, 42.39.112, ) REPEAL  
42.39.115, 42.39.118, 42.39.123, )  
42.39.203, 42.39.413, 42.39.502, )  
42.39.505 and the repeal of ARM )  
42.39.109, 42.39.110, and 42.39.120 )  
pertaining to Montana Marijuana )  
Regulation and Taxation Act post- )  
legislative rules revisions and )  
contested case rules updates )

TO: All Concerned Persons

1. On July 18, 2022, at 1:00 p.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on July 1, 2022. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or [todd.olson@mt.gov](mailto:todd.olson@mt.gov).

3. GENERAL STATEMENT OF REASONABLE NECESSITY. Since July 2, 2021, the department has administered the Marijuana Regulation and Taxation Act, 16-12-101, et. seq., MCA (Act) and the former Medical Marijuana Act, 50-46-301, MCA, et. seq (MMP), which was repealed effective January 1, 2022 and replaced in totality by the Act.

Most amendments are necessary as general "housekeeping" - which amend or remove residual references to Title 50, Montana Code Annotated or remove outdated rule sections, like ARM 42.12.123(12). Other proposed amendments, such as those in ARM 42.2.613, 42.2.614, 42.2.615, and 42.2.616, are necessary to add "marijuana matters" to the department's existing dispute resolution processes, some of which began in 2021 when the department promulgated rules under MAR Notice No. 42-1031. Other amendments in ARM 42.2.613, 42.2.614, 42.2.615, and 42.2.616 reflect Administrative Law Judge (ALJ) references instead of hearings examiners, fixing Office of Dispute Resolution (ODR) internal referencing, and removal of an outdated procedural flowchart.

The department also proposes amendments in ARM 42.39.115(6) and (7), and in ARM 42.39.502(5), which the department believes are necessary to resolve or complete certain procedural aspects of the rules.

The department proposes to improve agency and stakeholder understanding of general rule verbiage such as amending the catchphrase (i.e., title) for ARM 42.39.403 because the rule is broader than just marijuana transporter licenses. These amendments do not impose additional requirements but clarify the subject matter better than the existing rule text.

The department proposes to update the authorizing and implementing statutes for the rules, where applicable, which is required under 2-4-305, MCA.

Lastly, the department's repeals are proposed because the administrative rules' statutory authority expired as of January 1, 2022, and the rules are now obsolete. The department is analyzing the necessity for replacement rules and will promulgate its proposals, if necessary, independent from this rulemaking.

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

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

42.2.613 DEFINITIONS The following definitions apply to rules found in this subchapter.

(1) "Administrative Law Judge" means, within the context of the department's ODR, the individual who:

(a) adjudicates or mediates a dispute between a person or other entity and the department after the dispute has been proceeded beyond informal review; and

(b) has general authority to regulate the course of appeals.

(1) through (7) remain the same but are renumbered (2) through (8).

~~(8)~~ (9) "Hearing" means a recorded, contested proceeding before a hearing examiner or an ALJ, acting as a finder of fact, during which the parties may offer testimony under oath with an opportunity to question the witnesses, offer exhibits, make arguments, and provide evidence.

~~(9) "Hearing examiner" means, within the context of the department's ODR, the individual who:~~

~~(a) adjudicates or mediates a dispute between a person or other entity and the department after the dispute has proceeded beyond informal review; and~~

~~(b) has general authority to regulate the course of appeals.~~

(10) "Initial conference" means a conference conducted by the ODR with the parties involved to consider the issues in dispute and determine:

(a) through (c) remain the same.

(d) whether the taxpayer will elect to bypass the ODR.

(11) and (12) remain the same.

(13) "Marijuana matters" means disputes arising from the department's administration of the Montana Marijuana Regulation and Taxation Act (Title 16, chapter 12, MCA, and ~~Title 50, chapter 46, MCA~~ ARM Title 42, chapter 39). Marijuana matters are contested cases conducted pursuant to the Montana

Administrative Procedure Act, Title 2, chapter 4, part 6, MCA. Marijuana matters are not subject to the dispute resolution procedures established by 15-1-211, MCA. (14) through (20) remain the same.

AUTH: 15-1-201, 15-1-211, 16-12-112 ~~50-46-344~~, MCA  
IMP: 15-1-211, 16-12-109, 16-12-112 ~~50-46-344~~, MCA

42.2.614 PURPOSE (1) and (2) remain the same.

(3) The department's dispute review procedure applies to all matters administered by the department except those exempted by 15-1-211, MCA, or other applicable law. Liquor matters and marijuana matters are handled pursuant to the Montana Administrative Procedure Act and are not subject to the department's dispute review procedure.

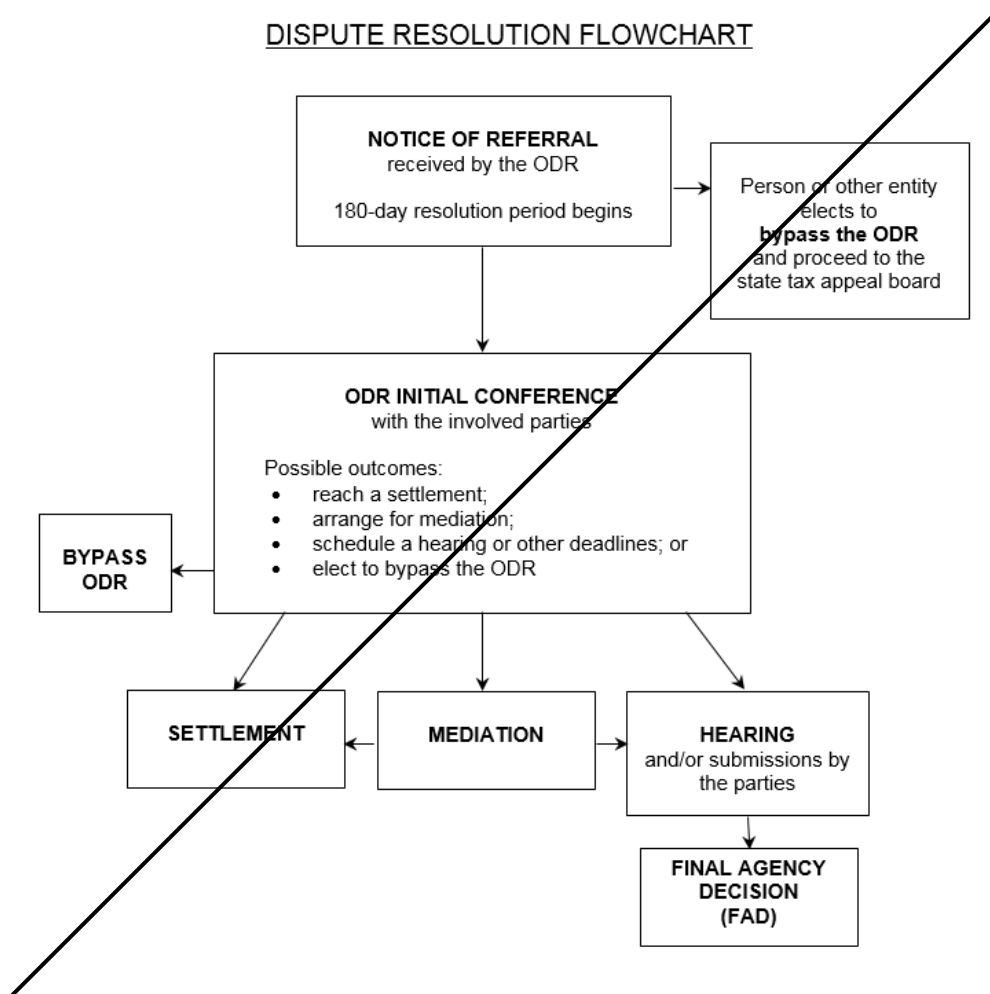
(4) ~~The flowchart in (6) provides the dispute resolution procedure.~~ A final agency decision must be issued within 180 days from the date the notice of referral to ~~the~~ ODR is received as provided for in 15-1-211, MCA, unless extended by mutual consent of the parties.

(5) remains the same.

~~(6) The following flowchart shows the dispute resolution process:~~

[the following flowchart is proposed for removal]

DISPUTE RESOLUTION FLOWCHART



AUTH: 15-1-201, 15-1-211, 16-12-112, MCA  
IMP: 15-1-211, 16-12-109, 16-12-112, 69-8-414, MCA

42.2.615 REFERRALS TO THE ODR (1) remains the same.

(2) Except for liquor matters and marijuana matters, as defined in ARM 42.2.613. A person or other entity who has filed an appeal with the ODR may, within 30 days of filing the appeal, elect to bypass review by that office and file an appeal with the state tax appeal board. If the person or other entity elects to bypass review by the ODR, the determination originally issued by the division will be deemed the final department decision.

(3) remains the same.

AUTH: 15-1-201, 15-1-211, 16-12-112, MCA  
IMP: 15-1-211, 16-12-109, 16-12-112, MCA

42.2.616 FORMALITY OF PROCEDURES (1) remains the same.

(2) The ~~hearing examiner~~ ALJ, in consultation with the parties, will evaluate the circumstances and complexity of each dispute being presented and determine

the most appropriate level of formality and procedure to follow.

(3) and (4) remain the same.

(5) Liquor matters and marijuana matters are handled pursuant to the Montana Administrative Procedure Act and are not subject to this rule.

AUTH: 15-1-201, 15-1-211, 16-12-112, MCA

IMP: 15-1-211, 16-12-109, 16-12-112, MCA

42.39.102 DEFINITIONS The following definitions apply to this chapter:

(1) through (18) remain the same.

(19) "Green county" means a county where the majority of voters voted to approve Initiative Measure No. 190 in the November 3, 2020 general election or where the local government approval provisions of 16-12-301, MCA, have been satisfied.

(20) through (23) remain the same.

(24) "Limited access area" means a building, room, or other contiguous area upon the ~~registered~~ licensed premises where marijuana is grown, cultivated, stored, weighed, packaged, sold, or processed for sale, under the control of the licensee.

(25) through (42) remain the same.

(43) "Red county" means a county where the majority of voters voted against approval of Initiative Measure No. 190 in the November 3, 2020 general election or where the local government has voted to prohibit all marijuana businesses pursuant to 16-12-301, MCA.

(44) through (54) remain the same.

AUTH: ~~50-46-344~~ 16-12-112, MCA

IMP: ~~50-46-303, 50-46-307, 50-46-308, 50-46-310, 50-46-318, 50-46-344, 16-12-101, 16-12-102, 16-12-104, 16-12-105, 16-12-112, 16-12-201, 16-12-207, 16-12-208, 16-12-210, 16-12-301, 16-12-501, 16-12-503, 16-12-508, 16-12-515, 16-12-533,~~ MCA

42.39.112 FINGERPRINT AND BACKGROUND CHECK REQUIREMENTS

(1) and (2) remain the same.

~~(3) If an adequate set of fingerprints cannot be obtained, a federal name-based background check can be conducted but may take up to 90 days to complete.~~

~~(4) Fingerprint background checks are required with the initial application and annual renewal applications.~~

(5) remains the same but is renumbered (3).

~~(6) If the certified fingerprinting agency charges a fee for fingerprinting, the applicant is responsible for the fee.~~

AUTH: ~~50-46-344~~ 16-12-112, MCA

IMP: ~~50-46-303, 50-46-307, 50-46-308, 50-46-311, 50-46-344~~ 16-12-112, 16-12-129, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.39.112 to remove current (3) from the rule because 16-12-129, MCA, requires a fingerprint-based background check, provides no accommodation for a name-based check except in years that a fingerprint-based check is not required. The department also proposes to remove (4) because 16-12-129, MCA, provides that fingerprint-based background checks are only required upon initial application and every five years thereafter. Lastly, the department proposes to remove (6) as obsolete because the payment of fees are addressed in ARM 42.39.104.

42.39.115 WORKER PERMITS (1) through (5) remain the same.

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

(7) 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

42.39.118 ALLOWABLE AMOUNTS (1) A registered cardholder may submit a petition for an increase in the monthly purchase limits defined in ~~46-12-505~~ 16-12-515, MCA, on a form approved by the department and submitted through the licensing system.

(a) and (b) remain the same.

(2) Usable marijuana may be in the form of flower or marijuana products.

The following conversion shall be used to determine the allowable amounts of non-flower marijuana:

(a) 1 ounce of marijuana flower is equal to:

(i) 800 mg of THC in marijuana-infused products including edibles; or

(ii) 8 grams or 8 mL of THC in marijuana concentrate.

(b) A ~~registered cardholder~~ customer may purchase or possess any combination of marijuana flower or marijuana products if the total calculated conversion is equal to or less than the legal purchase or possession amount.

AUTH: 16-12-112, MCA

IMP: 16-12-106, 16-12-112, 16-12-207, 16-12-210, 16-12-301, 16-12-503, 16-12-515, MCA

42.39.123 ADVERTISING (1) through (11) remain the same.

~~(12) The department's enforcement of the advertising restrictions provided under this rule shall begin on January 1, 2022.~~

AUTH: ~~Section 3, Ch. 505, L. 2021; 50-46-341, 50-46-344,~~ 16-12-112, 16-12-211, MCA

IMP: ~~50-46-341,~~ 16-12-112, 16-12-211, MCA

42.39.203 SEED-TO-SALE TRACKING AND RECONCILIATION

(1) remains the same.

(2) Each individual marijuana plant that reaches a height of twelve inches must be issued a unique identification number in the seed-to-sale tracking system, which follows the plant through all phases of production and final sale to a ~~registered cardholder~~ customer.

(3) through (13) remain the same.

AUTH: 16-12-112, MCA

IMP: 16-12-105, 16-12-108, 16-12-112, 16-12-203, 16-12-209, 16-12-210, 16-12-515, MCA

42.39.413 TRANSPORTATION OF MARIJUANA AND MARIJUANA PRODUCTS; MARIJUANA TRANSPORTER LICENSES (1) through (15) remain the same.

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

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

42.39.502 DEFICIENCY REPORTS (1) through (4) remain the same.

(5) If a licensee fails to respond to a deficiency report within ten days, the department may issue a notice of proposed department action. Failing to respond to a deficiency report within ten days may be cited as a separate violation subject to the imposition of a civil penalty.

(6) remains the same.

AUTH: 16-12-112, MCA

IMP: 16-12-101, 16-12-210, MCA

42.39.505 SERVICE OF NOTICES (1) A notice of proposed ~~department~~ adverse action issued by the department pursuant to ~~16-12-112, MCA, the~~ marijuana laws shall be served upon the licensee by sending a copy of the notice to the licensee by electronic means to the email address on file with the department.

(2) and (3) remain the same.

(4) A licensee must respond to the department in writing within 20 days of service of the notice of proposed ~~department~~ adverse action. Failure to respond will result in enforcement of the administration action proposed in the notice.

AUTH: 16-12-112, MCA

IMP: 2-4-601, 16-12-104, 16-12-105, 16-12-106, 16-12-107, 16-12-108, 16-12-109, 16-12-112, 16-12-202, 16-12-203, 16-12-206, 16-12-210, 16-12-221, 16-12-223, 16-12-503, 16-12-515, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department deems it necessary to propose an amendment to ARM 42.39.505(4) to clarify that all adverse actions (e.g., a denial of application) are subject to the 20-day response deadline and are not isolated to

proposed department actions (PDAs). The clarification is based on department interactions with applicants and licensees who have posed procedural questions regarding adverse actions.

5. The department proposes to repeal the following rules:

42.39.109 PROVIDER AND MARIJUANA-INFUSED PRODUCTS  
PROVIDER TIER 10 THROUGH TIER 12 CANOPY LICENSE AND REGISTERED  
PREMISES REQUIREMENTS

AUTH: 50-46-305, MCA  
IMP: 50-46-305, MCA

42.39.110 PROVIDER AND MARIJUANA-INFUSED PRODUCTS  
PROVIDER TIER 10 THROUGH TIER 12 CANOPY LICENSE ANNUAL FEE  
REQUIREMENTS

AUTH: 50-46-344, MCA  
IMP: 50-46-305, MCA

42.39.120 HEALTH CARE FACILITY PROCEDURES

AUTH: 50-46-344, MCA  
IMP: 50-46-303, 50-46-320, 50-46-344, MCA

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail [todd.olson@mt.gov](mailto:todd.olson@mt.gov) and must be received no later than 5:00 p.m. July 25, 2022.

7. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

8. 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 person in number 6 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.



9. An electronic copy of this notice is available on the department's web site at [www.mtrevenue.gov](http://www.mtrevenue.gov), or through the Secretary of State's web site at [sosmt.gov/ARM/register](http://sosmt.gov/ARM/register).

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

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Todd Olson  
Todd Olson  
Rule Reviewer

/s/ David R. Stewart  
David R. Stewart  
Authorized Signor  
for the Department of Revenue

Certified to the Secretary of State June 14, 2022.