

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 42.39.106, 42.39.107,	)	REPEAL
42.39.117, 42.39.118, 42.39.202,	)	
42.39.203, 42.39.310, 42.39.311,	)	
42.39.312 and the repeal of ARM	)	
42.39.103, 42.39.108, 42.39.111,	)	
42.39.113, 42.39.114, 42.39.119,	)	
42.39.201, 42.39.301, 42.39.302,	)	
42.39.305, 42.39.306, and 42.39.313	)	
pertaining to medical marijuana	)	
program rules and the	)	
implementation of the Montana	)	
Marijuana Regulation and Taxation	)	
Act	)	

TO: All Concerned Persons

1. On November 5, 2021, the Department of Revenue (department) published MAR Notice No. 42-1042 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1534 of the 2021 Montana Administrative Register, Issue Number 21.

2. On November 30, 2021, the department held a public hearing to consider the proposed amendment and repeal. 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: Joanna Barney, Sacred Sun Farms; Pepper Petersen, Montana Cannabis Guild; and Evan Kajander, Apogee Gardens.

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. The department has amended ARM 42.39.106, 42.39.107, 42.39.118, 42.39.203, 42.39.312 and repealed ARM 42.39.103, 42.39.108, 42.39.111, 42.39.113, 42.39.114, 42.39.119, 42.39.201, 42.39.301, 42.39.302, 42.39.305, 42.39.306, and 42.39.313 as proposed.

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

42.39.117 DENIAL OF REGISTRY IDENTIFICATION CARD APPLICATION OR REVOCATION OF REGISTRY IDENTIFICATION CARD (1) The department,

after written notice to the applicant or registered cardholder, may deny or revoke an application or registry identification card if:

- (a) through (i) remain as proposed.
- (j) the cardholder violates the daily or monthly possession or purchase limitations contained in 16-12-515, MCA; or
- (k) and (2) remain as proposed.

AUTH: 16-12-112, MCA

IMP: 16-12-108, 16-12-112, 16-12-203, 16-12-503, 16-12-515, 45-9-203, 61-11-101, MCA

42.39.202 SEED-TO-SALE TRACKING SYSTEM USER REQUIREMENTS

- (1) through (10) remain as proposed.
- (11) If a licensee loses access to the seed-to-sale tracking system due to a power outage or other connectivity issue, the licensee must keep and maintain comprehensive records detailing all seed-to-sale inventory activities that were conducted during the loss of access.
- (12) through (14) remain as proposed.

AUTH: 16-12-112, MCA

IMP: 16-12-105, 16-12-112, 16-12-203, MCA

42.39.310 WASTE MANAGEMENT (1) through (7) remain as proposed.

- (8) A licensee must maintain accurate and comprehensive records regarding waste material in the seed-to-sale tracking system that accounts for, reconciles, and evidences all waste activity related to the disposal of marijuana to include:
  - (a) and (b) remain as proposed.
  - (c) date disposed; ~~and~~
  - (d) video evidence of disposal to be retained for 30 days; and
  - (e) reason for the disposal.
- (9) remains as proposed.

AUTH: 16-12-112, MCA

IMP: 16-12-103, 16-12-105, 16-12-112, 16-12-203, 16-12-210, MCA

42.39.311 REPORTING REQUIREMENTS (1) and (2) remain as proposed.

- (3) A licensee must notify the department within ten days of any changes in the following:
  - (a) remains as proposed.
  - (b) its standard operating hours;
  - (c) through (6) remain as proposed.

AUTH: 16-12-112, 16-12-533, MCA

IMP: 16-12-112, 16-12-202, 16-12-203, 16-12-503, 16-12-508, 16-12-533, MCA

5. 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: Ms. Barney asked the department to clarify in ARM 42.39.202(11) what constitutes a loss of access to the seed-to-sale tracking system and whether that is specific to dispensaries.

RESPONSE 1: The department understands Ms. Barney's question and responds to the first part that loss of access is not meant to be loss of access due to a license suspension, and the department has amended the rule to clarify. As to the second part, loss of access applies to all licensees.

COMMENT 2: Ms. Barney observes in her review of ARM 42.39.203 for tracking and reconciliation that inventory reconciliation is not a feature in METRC. Is this being built? Also does it apply to all license types?

RESPONSE 2: Inventory reconciliation in (8) has been in rule since 2018 and is not a new requirement. It is a daily reconciliation of all on-premises and in-transit inventory. If Ms. Barney is still unclear, the department directs her to call the Cannabis Control Division for additional assistance.

COMMENT 3: Ms. Barney asked the department to clarify whether there is still a 72-hour hold for waste marijuana.

RESPONSE 3: The department responds "yes," and directs Ms. Barney to current ARM 42.39.310(8), which was renumbered to (9) for this rulemaking.

COMMENT 4: Generally, Mr. Petersen commented his belief that ARM 42.39.117(1)(j) is confusing, although his concerns are directed at registered cardholder interactions with law enforcement, which is not within the authority of the department.

RESPONSE 4: The substance of ARM 42.39.117(1)(j) is in statute; and while the department declines to remove this provision entirely, because its removal would not change the requirement under the law, the rule has been amended to add "monthly" and removes "possession" to clarify the purchase limits.

COMMENT 5: Mr. Petersen commented to the reporting requirements for business hours in ARM 42.39.311(3)(b) and opined about the increased level of bureaucracy this creates.

Mr. Kajander had comments related to the same rule provision and said he had no problem with stating operating hours but asks how they will report changes – like adopting holiday hours.

RESPONSE 5: The department is not interested in the detailed comings and goings of licensees, but department inspectors must know when a marijuana

business is generally open in order to conduct inspections, which may be done without notice to the licensee. In an effort to clarify the rule further, the department has amended ARM 42.39.311(3)(b) to reflect the duty to report "standard" operating hours.

As to Mr. Kajander's question on how changes in hours are reported, the department responds that a general email to the department or notification to the inspector will suffice.

COMMENT 6: Mr. Kajander commented on the premises alteration requirements found in ARM 42.39.311(5) and questions why prior approval for alterations is required.

RESPONSE 6: The department responds that this provision has been in rule and was transferred to the department; it is not a new requirement. Because material or substantial changes to a licensed premises require building, electrical, or plumbing permits - and the related code compliance that goes with each - the department will continue to require that proposed material or substantial changes are approved and are compliant. The continuation of this compliance requirement was specifically requested by the legislature's Economic Affairs Interim Committee at its December 9, 2021 meeting.

6. The effective date of the department's amendments and repeals 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