

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF AMENDMENT AND
ARM 42.2.613, 42.2.614, 42.2.615,)	REPEAL
42.2.616, 42.39.102, 42.39.112,)	
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 June 24, 2022, the Department of Revenue published MAR Notice No. 42-1053 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1016 of the 2022 Montana Administrative Register, Issue Number 12.

2. On July 18, 2022, a public hearing was held to consider the proposed amendment and repeal. No persons were present and no oral testimony was provided. The only written comments that the department received came from Karen J. Tracy, Assistant City Attorney for Billings, on behalf of the city of Billings, Montana.

3. The department has amended ARM 42.2.613, 42.2.614, 42.2.615, 42.2.616, 42.39.112, 42.39.115, 42.39.118, 42.39.123, 42.39.203, 42.39.413, 42.39.502, and 42.39.505 as proposed.

4. The department has repealed ARM 42.39.109, 42.39.110, and 42.39.120 as proposed.

5. The department has amended the ARM 42.39.102 as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

42.39.102 DEFINITIONS The following definitions apply to this chapter:
(1) through (18) remain as proposed.

(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. This definition does not include a municipality that has approved or disapproved a category or categories of marijuana businesses, as authorized in 16-12-301, MCA.

(20) through (42) remain as proposed.

(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. This definition does not include a municipality that has approved or disapproved a category or categories of marijuana businesses, as authorized in 16-12-301, MCA.

(44) through (54) remain as proposed.

AUTH: 16-12-112, MCA

IMP: 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

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: Ms. Tracy comments that 16-12-201(2)(b), MCA, refers to ". . . a jurisdiction that allows for the operation of marijuana businesses pursuant to 16-12-301. . ." and does not specify a "Green County" and "Red County." Further, 16-12-301, MCA, sets out the right of a city within a county that approved Initiative Measure No. 190 to hold an election to prohibit one or more of the marijuana business categories. The City of Billings is a "jurisdiction" that prohibits retail (i.e., recreational-use) marijuana dispensaries.

Ms. Tracy contends that by using definitions such as "red county" and "green county" the department creates confusion for jurisdictions such as the City of Billings which sits within a "green county" while having also opted out of certain categories as permitted by 16-12-301, MCA.

RESPONSE 1: The department agrees with Ms. Tracy's reading of the law that the citizens of a "jurisdiction" (e.g., an incorporated city or town) may opt, through election, for a different result that has been reached by the voters of the county in which the city or town is located.

However, during its implementation of the Marijuana Regulation and Taxation Act (MRTA), the department found it necessary to adopt certain terminology into the rules for brevity of concepts introduced under the MRTA. Thus, the definitions for "Green County" and "Red County" were adopted to describe the outcomes of known voter initiatives and became effective January 1, 2022. Those terms can be found in ARM 42.39.401, 42.39.405, and 42.39.409, in addition to ARM 42.39.102.

While the department declines to adopt a definition that is already provided in statute, it has amended "Green County" and "Red County" definitions, upon adoption, to lend more clarity and to separate jurisdictional concepts.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State August 16, 2022.