

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, 42.2.621, 42.39.102,	)	PROPOSED AMENDMENT AND
42.39.106, 42.39.108, 42.39.117,	)	REPEAL
42.39.119, 42.39.310 and the repeal	)	
of ARM 42.39.101 pertaining to the	)	
Montana Medical Marijuana Program	)	
(MMP)	)	

TO: All Concerned Persons

1. On August 13, 2021, at 9:00 a.m., the Department of Revenue (department) will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana to consider the proposed amendment and repeal of the above-stated rules.

2. The department 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 30, 2021. 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.

3. GENERAL STATEMENT OF REASONABLE NECESSITY. The 67th Montana Legislature enacted House Bill 701 (HB 701) which adopts, revises, or repeals multiple requirements relating to the Marijuana Regulation and Taxation Act, 16-12-101, et. seq., MCA (Act) and the Medical Marijuana Act, 50-46-301, MCA, et. seq. Among the numerous provisions in HB 701 is the transfer of authority and operation of the Montana Medical Marijuana Program (MMP) from the Montana Department of Public Health and Human Services (DPHHS) to the department.

As a preliminary step to this rulemaking, the department transferred MMP administrative rules from ARM Title 37, chapter 107, subchapters 1, 2, and 4 to ARM Title 42, chapter 39, subchapters 1 through 3, under MAR Notice No. 42-1030, effective July 2, 2021. MMP testing laboratories rules located in ARM Title 37, chapter 107, subchapter 3, remain with DPHHS, however, because operation of the state laboratory is not exclusive to the Act or MMP, notwithstanding the laboratory's regulatory authority involving the Act and MMP.

This rulemaking package is necessary to support the department's new Cannabis Control Division and provides necessary procedural guidance for MMP stakeholders and the department for license application and general licensing matters, information reporting requirements, and regulatory compliance provided for in HB 701. Amendments such as those proposed in ARM 42.2.613 and 42.2.621 are necessary to add MMP contested case matters to the department's existing

dispute resolution processes under the Montana Administrative Procedure Act (MAPA).

The department proposes minor amendments to: (1) remove superfluous definitions or where the definition may be inconsistent with statute; (2) improve clarity of licensing processes and licensed premises requirements; and (3) improve general rule verbiage. These amendments do not impose additional requirements but clarify what is required of a licensee better than the text of existing rules.

Based on each rule's respective proposed amendments, the department must renumber rule subsections, where applicable.

Lastly, the department proposes to update the authorizing and implementing statutes for the rules, where applicable, which is required under MAPA.

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) through (3) remain the same.

(4) "Form APLS101F" is a document titled Request for Informal Review that is available at ~~revenue.mt.gov~~ mtrevenue.gov for use by a person or other entity to file a written objection with the ~~Department of Revenue~~ department for issues concerning the first notice of a tax adjustment.

(5) "Form APLS102F" is a document titled Notice of Referral to the Office of Dispute Resolution that is available at ~~revenue.mt.gov~~ mtrevenue.gov for use by a person or other entity to appeal an informal review determination to the ODR.

(6) "Form CAB-8" is a document titled Request for Informal Review for Centrally Assessed Companies that is available at ~~revenue.mt.gov~~ mtrevenue.gov for use by a centrally assessed company to appeal a first notice of tax assessment or classification.

(7) "Form CAB-9" is a document titled Notice of Referral to the Office of Dispute Resolution for Centrally Assessed Companies that is available at ~~revenue.mt.gov~~ mtrevenue.gov for use by a centrally assessed company to appeal an informal review determination to the ODR.

(8) through (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). 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.

(13) through (19) remain the same but are renumbered (14) through (20).

AUTH: 15-1-201, 15-1-211, 50-46-344, MCA;

IMP: 15-1-211, 50-46-344, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.2.613 to add a definition for "marijuana matters" to reflect statute that any marijuana matter in dispute is a contested case proceeding under MAPA. The definition is worded identically to the description of liquor matters, which also involve the department and are contested case proceedings under MAPA.

The department also proposes amendments to update the department's website address which has changed, and also to update a department reference in (4) for consistency with the Gregg Reference Manual, which is the style manual adopted for drafting administrative rules.

42.2.621 FINAL AGENCY DECISION AND APPEAL (1) remains the same.

(2) The director delegates to the ODR the authority to issue a FAD on liquor licensing protests, marijuana matters, bad debt matters, tax matters, and collection matters. The delegation to issue a FAD applies only to matters referred to the ODR.

(3) An FAD on liquor matters, marijuana matters, liquor licensing protests, and bad debt matters may be appealed to the district court by filing a petition for judicial review within 30 days after service of the FAD.

(4) An FAD on a tax matter or collection matter may be appealed to the state Montana Tax Appeal Board as provided in 15-2-302, MCA, by filing an appeal within 30 days following receipt of the FAD.

(5) remains the same.

AUTH: 15-1-201, 15-1-211, 15-1-217, 16-1-303, 50-46-344, MCA

IMP: 2-4-621, 2-4-623, 2-4-631, 2-15-112, 2-15-1302, 15-1-211, 15-2-302, 16-4-411, 50-46-344, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.2.621(2) to add marijuana matters to the disputes referred to the department's Office of Dispute Resolution (ODR) for disposition of a Final Agency Decision (FAD). The addition of marijuana matters to (3) reflects the option for an aggrieved person under an FAD to file a petition for judicial review of the decision in district court.

The department also proposes amendments to correct the name of the state tax appeal board which officially changed under Senate Bill 205 enacted by the 2021 Legislature.

42.39.102 DEFINITIONS The following definitions apply to this chapter:

(1) ~~"Applicant" means a person applying to become a provider, marijuana-infused products provider (MIPP), or registered cardholder.~~

(2) (1) "Authorized employee" means:

(a) an employee of the department who has received written authorization from the ~~Department of Public Health and Human Services~~ department director or the director's designee to obtain individual names and other identifying information from the marijuana registry;

(b) and (c) remain the same.

(3) through (5) remain the same but are renumbered (2) through (4).

~~(6)~~ (5) "Child resistant" means packaging designed or constructed to be significantly difficult for children under five years of age to open and not difficult for adults to use properly. The standard for child-resistant packaging is set by the federal consumer product safety commission (CPSC) and the testing procedures found in 16 CFR 1700.20 (2012).

(7) remains the same but is renumbered (6).

~~(8) "Department" means the Department of Public Health and Human Services.~~

(9) and (10) remain the same but are renumbered (7) and (8).

~~(11) "Financial interest" means any interest or ownership in the business or entity.~~

(12) through (14) remain the same but are renumbered (9) through (11).

~~(15) "ISO" means International Organization for Standardization.~~

~~(16)~~ (19) "Landlord Property owner permission form" means a completed, signed, and notarized form which gives a registered cardholder, applicant, or licensee who is renting or leasing the property where marijuana will be cultivated and manufactured for medical purposes, permission to do so, by the property owner. The form must be provided by the department.

(17) through (22) remain the same but are renumbered (12) through (17).

~~(23)~~ (18) "Proof of residency" means a readable photocopy of a current Montana driver's license ~~or~~, Montana state-issued identification card, or tribal identification card.

~~(24)~~ (20) "Registered premises" means the premises specified in an application for a license that is owned or in possession of the licensee and ~~within which~~ where the licensee is authorized to cultivate, manufacture, dispense, store, transport, or test medical marijuana.

(25) through (28) remain the same but are renumbered (21) through (24).

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-307, 50-46-308, 50-46-310, 50-46-318, 50-46-344, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.39.102 to add an introductory statement and clarify that the definitions apply to the entire chapter. The department proposes to remove the following definitions: current (1) and (8) because they are unnecessary; current (11) because the definition is inconsistent with the same definition provided in 50-46-302, MCA; and current (15) because it applies to the laboratory testing rules which remain with DPHHS.

The department is amending proposed (18) to include official tribal IDs as an acceptable form of identification to document residency under the Act or MMP; and amending proposed (19) because the term "landlord" is not specific to the property owner and the department requires the property owner to provide permission, via a department form, for a licensee to conduct marijuana-related business activities on a registered premises that is leased from the property owner.

42.39.106 REGISTERED CARDHOLDER APPLICATION PROCESS

(1) and (2) remain the same.

(3) A complete application must include the required fee, statements, and forms required in the application packet to be accepted and processed by the department. Any documents submitted electronically must be uploaded in a format that the department is able to access and view.

(4) and (5) remain the same.

~~(6) The department will approve or deny an application within 30 calendar days of receiving a complete application.~~

~~(7) A registered cardholder may not purchase, grow, or possess marijuana items prior to the effective date of the registration card.~~

~~(8)~~ (6) Any denial under this part is subject to judicial review a contested case hearing before the department's Office of Dispute Resolution, as provided for under ARM 42.2.621.

(9) remains the same but is renumbered (7).

~~(10)~~ (8) An applicant must designate either a licensed provider or licensed marijuana-infused products provider, unless the registered cardholder intends to cultivate or manufacture marijuana for their own use under 50-46-303, MCA. If the registered cardholder intends to cultivate or manufacture marijuana for their own use, a ~~landlord~~ property owner permission form must also be submitted, if applicable.

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-307, 50-46-310, 50-46-344, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.39.106(3) to reference optional electronic submission of applications and supporting documents for registration, which is consistent with current department business practices.

The department proposes to eliminate current (6), because it unnecessarily restates the law, and current (7), because it is inconsistent with personal cultivation of marijuana found in 16-12-106, MCA. The department amends proposed (6) to reflect that any marijuana matter in dispute is a contested case proceeding under MAPA and to provide the cross-reference to ARM 42.2.621 for improved guidance.

The department amends proposed (8) which is necessary for consistency with the revised definition of property owner permission form described in proposed (19) of ARM 42.39.102.

42.39.108 FEES (1) A cardholder applicant must submit to the department, with the initial application and renewal application, an application fee of \$30.

(2) A provider license applicant must submit to the department the following fees with the initial application and renewal application:

(a) remains the same.

(b) marijuana-infused product provider fee of \$500 per registered premises;

or

(c) chemical manufacturing endorsement fee of \$100; ~~or~~

(d) ~~custodial parent or legal guardian provider fee of \$100.~~

(3) and (4) remain the same.

(5) All fees must be submitted with the application and must be made payable to the Department of ~~Public Health and Human Services Revenue~~. ~~Cash is not accepted at the Medical Marijuana Program office and must be delivered to the Business and Financial Services Division (BFSD).~~

(6) remains the same.

AUTH: 50-46-344, MCA

IMP: 50-46-344, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to remove ARM 42.39.108(2)(d) as obsolete given the use of canopy license options for parents of minors, and proposes to amend (5) to reflect the department as the statutory agency operating the MMP.

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 (h) remain the same.

(i) the department is notified in writing by a ~~landlord~~ property owner revoking permission under 50-46-307, MCA;

(j) the applicant or registered cardholder did not report changes to the department in accordance with ARM ~~37.107.415~~ 42.39.311;

(k) the registry identification card has been found to be altered or manipulated in any way; ~~or~~

(l) the cardholder violates the daily possession or purchase limitations contained in 50-46-319; or

(l) (m) the registered cardholder is found to be in violation of any provision ~~any violations otherwise~~ under Title 50, chapter 46, part 3, MCA ~~have occurred.~~

(2) Any denial or revocation under this part is subject to ~~judicial review a~~ contested case hearing before the department's Office of Dispute Resolution, as provided under ARM 42.2.621.

AUTH: 50-46-344, MCA

IMP: ~~Section 35, Ch. 419, L. 2011, 45-9-203, 50-46-303, 50-46-308, 50-46-319, 50-46-320, 50-46-344, 61-11-101, MCA~~

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.39.117(1)(i) to reflect the change of landlord to property owner, which is consistent with the amendment described in proposed (19) of ARM 42.39.102. The department proposes inserting (1)(l) to notify registered cardholders that it is a revocable offense against a registry card for marijuana or marijuana-infused products to be re-sold by cardholders who abuse the daily purchase or possession limits. The department

proposes to amend proposed (1)(m) for consistency with similar requirements found in proposed ARM 42.39.119(1)(o).

The department also proposes to amend (2) to reflect that any marijuana matter in dispute is a contested case proceeding under MAPA and to provide the cross-reference to ARM 42.2.621 for improved guidance.

42.39.119 DENIAL OR REVOCATION OF APPLICATION, LICENSE, OR ENDORSEMENT (1) The department, after written notice to the applicant or licensee, may deny or revoke an application, license, or endorsement if:

(a) through (d) remain the same.

(e) the department is notified in writing by a ~~landlord~~ property owner revoking permission under 50-46-308, MCA;

(f) the applicant or licensee is found to be in violation of 50-46-308, 50-46-311, ~~and or~~ or 50-46-312, MCA;

(g) through (i) remain the same.

(j) the applicant or licensee did not report changes to the department in accordance with ~~ARM 37.107.415~~ 42.39.311;

(k) remains the same.

(l) the applicant is not in substantial compliance with any other licensing requirements established by this chapter; ~~or~~

(m) the provider or a provider's employee sells, or attempts to sell, marijuana or marijuana items in excess of the allowable purchase limits provided in 50-46-319, MCA;

(n) the provider or a provider's employee sells, or attempts to sell, marijuana or marijuana items to a person who does not possess a valid registry identification card at the time of sale; or

(m) remains the same but is renumbered (o).

(2) Any denial or revocation under this part is subject to ~~judicial review a contested case hearing before the department's Office of Dispute Resolution, as provided under ARM 42.2.621.~~

(3) A person whose application has been denied ~~or a current licensee whose license has been revoked~~ may not reapply for at least six months from the date of denial or revocation.

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-308, 50-46-312, 50-46-329, 50-46-330, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.39.119(1)(e) to reflect the change of landlord to property owner, which is consistent with the amendment described in proposed (19) of ARM 42.39.102, and (1)(f) to correct the "and" verbiage to "or" to clarify that violations of all listed statutes are not required as a basis for an adverse action against an applicant or licensee.

The department proposes to amend (1)(m) and (n) to notify providers that it is a revocable offense against a provider's license for marijuana or marijuana-infused products to be re-sold by cardholders who abuse the daily purchase or possession limits.

The department also proposes to amend (2) to provide and confirm that any marijuana matter in dispute is a contested case proceeding under MAPA and to provide the cross-reference to ARM 42.2.621 for improved guidance.

42.39.310 WASTE MANAGEMENT (1) and (2) remain the same.

~~(3) The allowable method to render marijuana plant waste unusable is by grinding and incorporating the marijuana plant waste with other ground materials so the resulting mixture is at least fifty percent nonmarijuana waste by volume. Material used to grind with the marijuana falls into two categories: compostable waste and noncompostable waste. A licensee must render marijuana plant waste unusable by:~~

~~(a) grinding or otherwise rendering the waste unrecognizable and mixing it with at least 50 percent nonmarijuana waste by volume before disposal; or~~

~~(b) grinding, compacting, or chopping the waste into pieces smaller than three inches.~~

~~(a) (4) A licensee may create Compostable mixed waste is marijuana waste to be disposed as for~~ compost feedstock or in another organic waste method, such as an anaerobic digester, ~~mixed by mixing marijuana plant waste~~ with food waste, yard waste, or vegetable based grease or oils.

~~(b) (5) A licensee may create Noncompostable mixed waste is marijuana waste to be disposed in a landfill or another disposal method, such as an incinerator, mixed by mixing marijuana plant waste~~ with paper waste, cardboard waste, plastic waste, or soil.

(4) remains the same but is renumbered (6).

~~(5) (7) 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) what was items~~ disposed;

~~(b) through (e)~~ remain the same.

~~(f) identity of the individual~~ who disposed the waste; and

~~(g)~~ remains the same.

~~(6) (8) A licensee must provide a minimum of 72 hours' notice in the seed-to-sale tracking system prior to rendering the marijuana item unusable and disposing of it.~~

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-308, 50-46-311, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.39.310 to improve organization of content by restructuring rule sections and to improve clarity of waste management compliance requirements by providing licensees with more detail and guidance.

5. The department proposes to repeal the following rule:

42.39.101 PURPOSE

AUTH: 50-46-344, MCA
IMP: 50-46-301, 50-46-303, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to repeal ARM 42.39.101 because the rule understates, and is superfluous to, the purpose stated in 50-46-301, 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 and must be received no later than 5:00 p.m., August 23, 2021.

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, or through the Secretary of State's web site at sosmt.gov/ARM/register.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor for HB 701, Representative Hopkins, was contacted by email on May 27, 2021, and on July 9, 2021.

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

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Scott Mendenhall
Scott Mendenhall
Deputy Director of Revenue

Certified to the Secretary of State July 13, 2021.