

BEFORE THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.107.118 and 37.107.305) PROPOSED AMENDMENT
pertaining to the Montana medical)
marijuana program)

TO: All Concerned Persons

1. On May 3, 2018, at 1:00 p.m., the Department of Public Health and Human Services 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 of the above-stated rules.

2. The Department of Public Health and Human Services 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. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on April 20, 2018, to advise us of the nature of the accommodation that you need. Please contact Todd Olson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-9503; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.107.118 MARIJUANA AND MARIJUANA-INFUSED PRODUCTS PROVIDER LICENSEE REQUIREMENTS (1) through (5) remain the same.

(6) ~~A licensee may have up to 50 square feet of canopy space per registered cardholder:~~ will have a canopy assigned to them by the department according to the table below at the time of license approval. The department will monitor a licensee's number of registered cardholders quarterly. If a licensee is eligible for a different canopy, a licensee may request a canopy reassessment at any time. The department may also reassess a licensee's canopy, at any time, based on the licensee's number of registered cardholders.

<u>Canopy</u>	<u># of Reg. Cardholders</u>	<u>Sq. Ft. Maximum</u>
<u>Canopy 1*</u>	<u>Up to 20</u>	<u>400</u>
<u>Canopy 2</u>	<u>21 - 30</u>	<u>420</u>
<u>Canopy 3</u>	<u>31 - 40</u>	<u>580</u>
<u>Canopy 4</u>	<u>41 - 50</u>	<u>780</u>
<u>Canopy 5</u>	<u>51 - 70</u>	<u>1,060</u>

<u>Canopy 6</u>	<u>71 - 100</u>	<u>1,420</u>
<u>Canopy 7</u>	<u>101 - 130</u>	<u>1,900</u>
<u>Canopy 8</u>	<u>131 - 170</u>	<u>2,540</u>
<u>Canopy 9</u>	<u>171 - 230</u>	<u>3,400</u>
<u>Canopy 10</u>	<u>231 - 300</u>	<u>4,540</u>
<u>Canopy 11</u>	<u>301 - 400</u>	<u>6,060</u>
<u>Canopy 12</u>	<u>401 - 540</u>	<u>8,100</u>
<u>Canopy 13</u>	<u>541 - 720</u>	<u>10,820</u>
<u>Canopy 14</u>	<u>721 - 960</u>	<u>14,440</u>
<u>Canopy 15</u>	<u>961 - 1280</u>	<u>19,260</u>
<u>Canopy 16</u>	<u>1281 - 1710</u>	<u>25,700</u>
<u>Canopy 17</u>	<u>1711 - 2280</u>	<u>34,280</u>
<u>Canopy 18</u>	<u>2281 - 3050</u>	<u>45,720</u>
<u>Canopy 19</u>	<u>3051 - 4065</u>	<u>60,980</u>
<u>Canopy 20</u>	<u>4066 +</u>	<u>81,230</u>

*Canopy 1 allows up to 400 square feet, but no greater canopy allocation than 20 square feet per registered cardholder.

(a) Square footage of canopy space is the total amount of square footage dedicated to live plant production at a registered premise consisting of the area of the floor, platform, or means of support or suspension of the plant and is measured horizontally starting from the outermost point of the furthest mature flowering plant in a designated growing space and continuing around the outside of all mature flowering plants located within the designated growing space;

(b) A licensee may designate multiple grow areas at a registered premises but those spaces must be separated by a physical boundary such as an interior wall or by at least eight feet of open space;

(c) total canopy size is calculated by multiplying 50 square feet of canopy by the number of registered cardholders; and

(d) remains the same, but is renumbered (c).

(7) through (18) remain the same.

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-308, 50-46-312, 50-46-319, 50-46-326, 50-46-328, 50-46-329, 50-46-330, MCA

37.107.305 MARIJUANA TESTING LABORATORY LICENSEE REQUIREMENTS (1) through (14) remain the same.

(15) A licensee must provide and maintain, at its own expense, analytical testing laboratory professional liability insurance with an aggregate limit of one million dollars prior to the issuance of a license.

(16) A licensee must obtain and maintain a \$25,000 surety bond which names the department as loss payee in the event the licensee fails to adhere to the

security plan approved by the department, or it otherwise operates the facility in a manner that allows for or results in theft, loss, or diversion of marijuana items. A copy of the bond must be submitted to the department prior to a license being issued.

(17) In addition to the requirements contained in rule, the department has developed and published the METRC MT Testing Lab User Guide, dated April 10, 2018 (Guide), which it adopts and incorporates by reference. The purpose of the Guide is to implement requirements for testing laboratories. A copy of the Guide may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Montana Marijuana Program, P.O. Box 202953, Helena, MT 59620-2953 or at <http://dphhs.mt.gov/marijuana>.

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-311, 50-46-312, 50-46-326, 50-46-328, 50-46-329, MCA

4. STATEMENT OF REASONABLE NECESSITY

ARM 37.107.118

The department proposes amendments to ARM 37.107.118 and its current allocation to providers of 50 square feet of canopy per cardholder, taking into consideration specific factors that 50-46-344, MCA, requires the department to consider. Subsection (2) of that statute sets forth the criteria the department must consider in establishing the canopy for a provider or marijuana-infused products provider:

- (a) safety and security issues;
- (b) the provision of adequate access to usable marijuana to accommodate the needs of registered cardholders; and
- (c) economies of scale and their effect on the ability of licensees to comply with regulatory requirements and undercut illegal market prices.

The department received comments from two interim legislative committees concerned that the current canopy design in rules do not meet legislative intent.

In addressing these concerns, the department considered information gathered from site visits, consultations with other state medical marijuana programs, and industry reporting related to marijuana yields per square foot. The department proposes a multi-level canopy allotment system that will give cardholders adequate access to medicine, while limiting the risk of overproduction by capping the amount of grow space based on the number of cardholders providers serve. The multi-level canopy allotment allows adequate space for current growing operations, while giving licensees the ability to increase their allotted canopy as their cardholder count increases. The department also proposes clarifying the measurement definition according to SB 333.

By allowing for variable production within the canopy proposal, economies of scale are encouraged in order for a provider to serve additional registered cardholders within a given canopy allotment while still maintaining equitable allocation. The canopy allotment addresses the market advantage given to larger providers under the current canopy calculations.

ARM 37.107.305

The department proposes amendments to ARM 37.107.305 to define bonding and insurance requirements for certified testing laboratories required by SB 333. In addition to the requirements contained in rule, the department has developed and published the METRC MT Testing Lab User Guide, dated April 10, 2018 (Guide), which it adopts and incorporates by reference. The purpose of the Guide is to implement requirements for quality assurance testing for laboratories and quality sampling protocols. The rule amendment also provides methods of access to the Guide through department resources.

Fiscal Impact

The department anticipates no fiscal impact arising from the proposed rulemaking.

5. The department intends to apply these rule amendments retroactively to April 10, 2018 in order to comply with the requirements of SB 333 (2017).

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 Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., May 11, 2018.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department 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 that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by electronic mail on March 29, 2018.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules may significantly and directly impact small businesses.

/s/ Flint Murfitt
Flint Murfitt, Attorney
Rule Reviewer

/s/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State April 3, 2018.