

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I and the amendment of ARM 42.39.104 pertaining to the creation of additional canopy license tiers for marijuana cultivators ) NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT ) ) ) )

TO: All Concerned Persons

1. On August 16, 2022 at 11:00 a.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 29, 2022. Please contact Todd Olson, Department of Revenue, Director's Office, PO Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. The rule as proposed to be adopted provides as follows:

NEW RULE I MARIJUANA CULTIVATOR TIER 13 THROUGH 15 CANOPY LICENSE AND REGISTERED PREMISES REQUIREMENTS (1) Pursuant to 16-12-223(2), MCA, the department is authorized to create additional tiered canopy licenses for cultivators that meet the statutory criteria. The additional tiered canopy licenses are as follows:

(a) A tier 13 canopy license allows for a canopy of up to 60,000 square feet at up to 10 indoor cultivation facilities.

(b) A tier 14 canopy license allows for a canopy of up to 70,000 square feet at up to 11 indoor cultivation facilities.

(c) A tier 15 canopy license allows for a canopy of up to 80,000 square feet at up to 12 indoor cultivation facilities.

AUTH: 16-12-223, MCA

IMP: 16-12-223, MCA

REASONABLE NECESSITY: The department proposes to adopt New Rule I to establish the square footage and premises requirements for the tier 13 through 15 canopy licenses. The additional tiers in New Rule I are necessary because the department has received requests from providers that are at the current tier 12 maximum to increase their cultivation space. The department proposes the stated

sizes because the tier increases of 10,000 square feet per increase are consistent with the square footage increases between tiers 10, 11 and 12. Creating three additional tiers will allow those providers at the current maximum of tier 12 to increase their tier level, at a minimum, for three years as tier increases can only happen once a year, at annual license renewal, for licensees above a tier 5.

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

42.39.104 LICENSE, APPLICATION, AND RENEWAL FEES (1) Initial licensure and renewal fees for the following license types and endorsements are:

(a) through (d) remain the same.

(e) Cultivator license:

(i) through (xi) remain the same.

(xii) \$32,000 for a cultivator with a tier 11 canopy license; ~~and~~

(xiii) \$37,000 for a cultivator with a tier 12 canopy license;

(xiv) \$42,000 for cultivator with a tier 13 canopy license;

(xv) \$47,000 for a cultivator with a tier 14 canopy license; and

(xvi) \$52,000 for a cultivator with a tier 15 canopy license.

(f) through (6) remain the same.

AUTH: 16-12-112, 16-12-202, 16-12-204, 16-12-222, 16-12-226, 16-12-508, 16-12-533, MCA

IMP: 16-12-112, 16-12-204, 16-12-222, 16-12-226, 16-12-508, 16-12-533, MCA

**REASONABLE NECESSITY:** The department proposes to amend ARM 42.39.104 to establish additional canopy license fees which is necessary to support the creation of the new tier 13 through 15 canopy licenses in New Rule I. The department proposes the stated canopy license fees because they increase by the same increment amount - \$5,000 - as tier 10 through tier 12 canopy licenses, and consistent license fee structures are beneficial to the department's administration of the Marijuana Regulation and Taxation Act.

#### FISCAL IMPACT:

Based on New Rule I and the amendments to ARM 42.39.104, and in accordance with 2-4-302(1)(c), MCA, the department's proposed annual fee will have a fiscal impact, but the initial impact applies only to tier 12 cultivators who apply to increase to a tier 13 canopy license. As of the date of this notice, there are three providers at a tier 12 that are eligible to increase their tier level at their next annual renewal. If these licensees did upgrade their canopy licenses, the fiscal impact next renewal cycle to these licensees would be \$15,000. Future fiscal impact is somewhat indeterminable because, currently, there are zero tier 11 canopy licensees and seven tier 10 canopy licensees.

5. 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, PO 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., August 23, 2022.

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

7. 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 5 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.

8. 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).

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

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule may significantly and directly impact small businesses, and the potential impact is provided in the department's fiscal impact statement.

/s/ Todd Olson  
Todd Olson  
Rule Reviewer

/s/ Brendan Beatty  
Brendan Beatty  
Director of Revenue

Certified to the Secretary of State July 12, 2022