

## SJ 31: FEE STRUCTURE ANALYSIS

### BACKGROUND

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At its April meeting, the Economic Affairs Interim Committee (EAIC) requested additional analysis on the fee structure for manufacturers.

Section 16-12-221, MCA, provides fees for manufacturers based on the amount of concentrate produced on a monthly basis and allows the Department of Revenue to create additional fee levels as necessary.

#### **16-12-221. Manufacturer – requirements – limitations – fees.**

(6) (a) The department shall charge a manufacturer license fee for an initial application and at each renewal. The license fee is based on the amount of concentrate produced at a manufacturing facility on a monthly basis. The annual fees for licensees are:

(i) \$5,000 for each manufacturing facility that produces, on a monthly basis, less than 1 pound of concentrate and up to 10 pounds of concentrate;

(ii) \$10,000 for each manufacturing facility that produces, on a monthly basis, between 10 pounds of concentrate and 15 pounds of concentrate; and

(iii) *\$20,000 for each manufacturing facility that produces, on a monthly basis, 15 pounds or more of concentrate.* (emphasis added)

(b) The department may create additional fee levels as necessary.

ARM 42.39.104 is the general rule for all license, application, and renewal fees for marijuana licenses that was adopted, effective January 1, 2022. Subsection (1)(f)(i) through (1)(f)(iv) of ARM 42.39.104 outlines manufacturing licensing fees and generally follows 16-12-221, MCA.

(i) \$5,000 for each manufacturing facility that produces, on a monthly basis, less than ten pounds of concentrate;

(ii) \$10,000 for each manufacturing facility that produces, on a monthly basis, between ten pounds of concentrate and 15 pounds of concentrate;

(iii) \$20,000 for each manufacturing facility that produces, on a monthly basis, 15 pounds of concentrate; and

(iv) any manufacturing licensee that produces, on a monthly basis, more than 15 pounds of concentrate, *shall pay an additional \$1,000 per pound.* (emphasis added)

Statute allows the department to create additional fee levels as necessary in 16-12-221(6)(b), MCA; however, the rule as adopted does not follow the statute as currently written.

## ANALYSIS

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At the April 20 meeting, the committee asked the department to propose rule changes to address the issue. The department responded to staff with the following:

Given there is an October 1 hard stop for new rulemaking (rules must be adopted by this date), we are concerned about our ability to fix the rule before session. Also, the creation of additional tiers could be problematic and face a challenge given that the current language of 16-12-221(6)(a)(iii) provides that a tier 3 is "15 pounds or more." In other words, the statutory language arguably covers everything above 15 pounds and the attempt to create additional production ranges could be challenged as engrafting additional requirements not contemplated by the statute.

The department's preference is to see a statutory fix that creates multiple tiers, much like 16-12-223 does for cultivator tiers. Administratively, the "\$1,000 per pound" above a set value is difficult to manage. It requires the department to audit manufacturers and create invoices outside of the normal licensing fee process. It also creates uncertainty for providers.

## RECOMMENDATION

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Based on the reasoning provided above, the department proposes the following amendment:

### **16-12-221. (Effective January 1, 2022) Manufacturer -- requirements -- limitations -- fees.**

(6) (a) The department shall charge a manufacturer license fee for an initial application and at each renewal. The license fee is based on the amount of concentrate produced at a manufacturing facility on a monthly basis. The annual fees for licensees are:

(i) \$5,000 for each manufacturing facility that produces, on a monthly basis, less than 1 pound of concentrate and up to 10 pounds of concentrate;

(ii) \$10,000 for each manufacturing facility that produces, on a monthly basis, between 10 pounds of concentrate and 15 pounds of concentrate;~~and~~

(iii) \$20,000 for each manufacturing facility that produces, on a monthly basis, between 15 pounds of concentrate ~~or more~~and 20 pounds of concentrate;

(iv) \$30,000 for each manufacturing facility that produces, on a monthly basis, between 20 pounds of concentrate and 30 pounds of concentrate;

(v) \$40,000 for each manufacturing facility that produces, on a monthly basis, between 30 pounds of concentrate and 40 pounds of concentrate;

(vi) \$50,000 for each manufacturing facility that produces, on a monthly basis, between 40 pounds of concentrate and 50 pounds of concentrate;

(vii) \$60,000 for each manufacturing facility that produces, on a monthly basis, between 50 pounds of concentrate and 60 pounds of concentrate;

(viii) \$70,000 for each manufacturing facility that produces, on a monthly basis, between 60 pounds of concentrate and 70 pounds of concentrate;

(ix) \$80,000 for each manufacturing facility that produces, on a monthly basis, between 70 pounds of concentrate and 80 pounds of concentrate; and

(x) \$90,000 for each manufacturing facility that produces, on a monthly basis, over 80 pounds of concentrate.

(b) The department may create additional fee levels as necessary.

Alternatively, the statute can be amended to follow the current rule, and no rule changes are necessary:

(6) (a) The department shall charge a manufacturer license fee for an initial application and at each renewal. The license fee is based on the amount of concentrate produced at a manufacturing facility on a monthly basis. The annual fees for licensees are:

(i) \$5,000 for each manufacturing facility that produces, on a monthly basis, less than 1 pound of concentrate and up to 10 pounds of concentrate;

(ii) \$10,000 for each manufacturing facility that produces, on a monthly basis, between 10 pounds of concentrate and 15 pounds of concentrate; and

(iii) \$20,000 for each manufacturing facility that produces, on a monthly basis, 15 pounds ~~or more~~ of concentrate ~~and~~.

(b) Any manufacturing licensee that produces, on a monthly basis, more than 15 pounds of concentrate, shall pay an additional \$1,000 a pound.

~~(b) The department may create additional fee levels as necessary.~~

Finally, if the EAIC chooses to keep the original tier levels and remove the \$1,000 incremental fee, the current rule can be amended to reflect current statute, and no amendments are necessary.

## COMMITTEE OPTIONS

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Option A: Amend 16-12-221, MCA, to create additional tiers in statute.

Option B: Amend 16-12-221, MCA, to follow the Department of Revenue's current rule.

Option C: Recommend the Department of Revenue amend current rule to reflect current statute—do not amend 16-12-221, MCA.

Option D: Leave as is.